

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

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2026

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 001-33221

HERON THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

25 Fenton Main Street, Suite 300

Cary, North Carolina

(Address of principal executive offices)

94-2875566

(I.R.S. Employer
Identification No.)

27511

(Zip Code)

Registrant's telephone number, including area code: (858) 251-4400

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 \$0.01 per share	HRTX	The Nasdaq Capital Market

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☐
		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. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares of the registrant's common stock, par value \$0.01 per share, outstanding as of August 5, 2026 was 189,852,307.

HERON THERAPEUTICS, INC.
FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2026

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In this Quarterly Report on Form 10-Q, all references to "Heron," the "Company," "we," "us," "our" and similar terms refer to Heron Therapeutics, Inc. and its wholly owned subsidiary, Heron Therapeutics B.V., Heron Therapeutics®, the Heron logo, ZYNRELEF®, APONVIE®, CINVANTI®, SUSTOL®, and Biochronomer® are our trademarks, which are protected under applicable intellectual property laws and are the property of Heron. All other trademarks appearing or incorporated by reference into this Quarterly Report on Form 10-Q are the property of their respective owners. Solely for convenience, the trademarks referred to in this Quarterly Report on Form 10-Q may appear without the ®, ™ or SM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks. We do not intend our use or display of other parties' trademarks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. We make such forward-looking statements pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, including Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In some cases, you can identify forward-looking statements by the use of the words "anticipate," "assume," "believe," "could," "estimate," "expect," "intend," "may," "might," "project," "should," "will," "would," and other expressions that predict or indicate future events and trends and which do not relate to historical matters. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations and financial position, business and commercialization strategy, products and product candidates, research pipeline, ongoing and planned preclinical studies and clinical trials, regulatory submissions and approvals, addressable patient population, research and development expenses, timing and likelihood of success, as well as plans and objectives of management for future operations, are forward-looking statements. You should not rely on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. These risks, uncertainties and other factors may cause our actual results, performance or achievements to be materially different from our anticipated future results, performance or achievements expressed or implied by the forward-looking statements.

Forward-looking statements include, but are not limited to, statements including:

- our ability to successfully commercialize, market and achieve market acceptance of ZYNRELEF[®] (bupivacaine and meloxicam) extended-release solution ("ZYNRELEF"), APONVIE[®] (aprepitant) injectable emulsion ("APONVIE"), CINVANTI[®] (aprepitant) injectable emulsion ("CINVANTI"), and SUSTOL[®] (granisetron) extended-release injection ("SUSTOL" and together with ZYNRELEF, APONVIE and CINVANTI, our "Products") in the United States ("U.S."), and our positioning relative to products that now or in the future compete with our Products or product candidates;
- our estimates regarding the potential market opportunities for our Products and our product candidates, if approved;
- our ability to establish and maintain successful commercial arrangements, including our co-promotion agreement with CrossLink Network, LLC ("CrossLink Network");
- the realization of anticipated benefits from our co-promotion agreement with CrossLink Network;
- the timing, outcome, and our ability to successfully defend ourselves against pending or threatened litigation or investigations, including unforeseen third-party infringement claims involving our Products and product candidates;
- the scope of protection we are able to establish and maintain for our intellectual property rights regarding our Products, our product candidates, our Biochronomer Technology and our other technology;
- our ability to continue as a going concern without additional funding;
- the ability of our common stock to meet the minimum requirements for continued listing on the Nasdaq Capital Market;
- whether we are required to write-off any additional inventory in the future;
- our ability to establish satisfactory pricing and obtain adequate reimbursement from government and third-party payors of our Products and product candidates that receive regulatory approvals;
- whether clinical trials of our Products and product candidates are indicative of the results in future clinical trials;
- our ability to develop, acquire and advance product candidates into, and successfully complete, clinical trials, and our ability to submit for and obtain regulatory approval for product candidates in our anticipated timing, or at all;
- the clinical utility of our Products and product candidates and their potential advantages compared to other treatments;
- our competitors' activities, including decisions as to the timing of competing product launches, generic entrants, pricing and discounting;

- the safety and efficacy results of our clinical trials and other required studies for expansion of the indications for our Products and approval of any product candidates and the data to support such clinical trials, potential regulatory approval or further development of any of our Products or product candidates;
- our ability to meet the postmarketing study requirements within the mandated timelines of the U.S. Food and Drug Administration ("FDA") and to obtain favorable results and comply with standard postmarketing requirements, including U.S. federal advertising and promotion laws, federal and state anti-fraud and abuse laws, healthcare information privacy and security laws, safety information, safety surveillance and disclosure of payments or other transfers of value to healthcare professionals and entities for Products or any of our product candidates;
- our ability to successfully develop and achieve regulatory approval for any product candidates utilizing our proprietary Biochronomer[®] drug delivery technology ("Biochronomer Technology");
- our ability to establish key collaborations and vendor relationships for our Products and any product candidates;
- our ability to successfully develop and commercialize any technology that we may in-license or products we may acquire;
- our ability to establish and maintain arrangements for the manufacture of our Products and product candidates and the ability and sufficiency of our current manufacturing third-party partners to produce clinical and commercial quantities of our Products and product candidates without delays, supply constraints or changes in the regulatory or geopolitical environment;
- the failure to renew, or the revocation of, any license or other required permits;
- our ability to scale manufacturing capacity appropriately to meet demand;
- unanticipated delays due to manufacturing difficulties, supply constraints or changes in the regulatory environment, including as a result of geopolitical uncertainty;
- our ability to successfully operate in non-U.S. jurisdictions in which we may choose to do business, including compliance with applicable regulatory requirements and laws;
- our inability to achieve, or delay in achieving or sustaining profitability;
- the impacts of global economic and political developments on our business and the financial market, including the impact of geopolitical conflicts and acts of war, terrorism and civil disorder, global pandemics and other public health emergencies, tariffs and other trade protection measures, changes to interest rates and inflationary pressure, natural and man-made disasters, and other sources of volatility, which could result in economic slowdowns or recessions and market disruptions and adversely affect our financial condition, results of operations and cash flows;
- the impact of evolving legal and regulatory requirements and interpretations thereof, including legislative or executive actions, policy changes in governmental agencies and judicial decisions overturning or establishing new precedents;
- changes in the industry we operate;
- our ability to retain, attract and hire key personnel;
- our estimates regarding our capital requirements;
- our ability to obtain additional financing and raise capital as necessary to fund operations or pursue business opportunities;
- our ability to comply with covenants in our Working Capital Facility Agreement;
- the cost and availability of capital and any restrictions imposed by lenders or creditors; and
- the volatility and unpredictability of the stock market, credit market conditions and impact on the value of our common stock and our ability to access capital markets.

You should refer to the "Risk Factors" section of our Annual Report on Form 10-K for the year ended December 31, 2025, which was filed with the SEC on February 26, 2026, (the "2025 Annual Report"), Quarterly Reports on Form 10-Q and other reports

for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. Any forward-looking statements in this Quarterly Report on Form 10-Q reflect our current views with respect to future events or to our future financial performance. Given these uncertainties, you should not place undue reliance on these forward-looking statements. These forward-looking statements were based on information, plans and estimates as of the date of this Quarterly Report on Form 10-Q, and while we may elect to update these forward-looking statements in our future filings under the Exchange Act, we assume no obligation to update any forward-looking statements to reflect changes in underlying assumptions or factors, new information, future events or other changes, except as required by law. You should therefore not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this Quarterly Report on Form 10-Q.

PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

HERON THERAPEUTICS, INC.

Condensed Consolidated Balance Sheets
(In thousands)

	June 30, 2026	December 31, 2025
	(Unaudited)	(See Note 2)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 20,721	\$ 28,647
Short-term investments	21,943	17,984
Accounts receivable, net	89,571	89,587
Inventory, net	90,585	92,746
Prepaid expenses and other current assets	7,025	9,102
Total current assets	229,845	238,066
Property and equipment, net	11,814	12,403
Right-of-use lease asset	5,596	—
Other assets	5,007	5,408
Total assets	<u>\$ 252,262</u>	<u>\$ 255,877</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 11,641	\$ 8,994
Accrued clinical and manufacturing liabilities	22,178	26,597
Accrued payroll and employee liabilities	6,632	9,270
Other accrued liabilities	51,494	51,237
Current lease liability	200	—
Total current liabilities	92,145	96,098
Non-current notes payable, net	108,725	107,899
Non-current convertible notes payable, net	33,925	32,739
Non-current lease liability	5,504	—
Other non-current liabilities	5,055	4,808
Total liabilities	245,354	241,544
Stockholders' equity:		
Common stock	1,895	1,883
Series A convertible preferred stock	1,050	1,050
Additional paid-in capital	1,957,358	1,951,185
Accumulated other comprehensive (loss) income	(6)	4
Accumulated deficit	(1,953,389)	(1,939,789)
Total stockholders' equity	6,908	14,333
Total liabilities and stockholders' equity	<u>\$ 252,262</u>	<u>\$ 255,877</u>

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Operations and Comprehensive (Loss) Income

(Unaudited)

(In thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2026	2025	2026	2025
Net product sales	\$ 37,666	\$ 37,200	\$ 72,377	\$ 76,103
Cost of product sales	11,572	9,857	22,210	18,314
Gross profit	26,094	27,343	50,167	57,789
Operating expenses:				
Research and development	2,702	2,934	5,087	5,213
General and administrative	11,276	14,471	23,421	27,173
Sales and marketing	14,160	11,575	28,468	23,886
Total operating expenses	28,138	28,980	56,976	56,272
(Loss) income from operations	(2,044)	(1,637)	(6,809)	1,517
Other expense, net	(3,445)	(744)	(6,791)	(1,263)
Net (loss) income	(5,489)	(2,381)	(13,600)	254
Other comprehensive (loss) income:				
Unrealized loss on short-term investments	-	(2)	(10)	(14)
Comprehensive (loss) income	\$ (5,489)	\$ (2,383)	\$ (13,610)	\$ 240
Basic net (loss) income per share	\$ (0.03)	\$ (0.02)	\$ (0.07)	\$ 0.00
Diluted net (loss) income per share	\$ (0.03)	\$ (0.02)	\$ (0.07)	\$ 0.00
Weighted average common shares outstanding, basic	190,335	154,020	189,993	153,804
Weighted average common shares outstanding, diluted	190,335	154,020	189,993	197,751

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Stockholders' Equity (Deficit)

(Unaudited)

(In thousands)

	Common Stock		Series A Convertible Preferred Stock		Additional Paid-In	Accumulated Other Comprehensive	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	(Loss) Income	Deficit	Equity
Balance as of December 31, 2025	188,314	\$ 1,883	70	\$ 1,050	\$ 1,951,185	\$ 4	\$ (1,939,789)	\$ 14,333
Issuance of common stock under equity incentive plan	262	3	—	—	(54)	—	—	(51)
Stock-based compensation expense	—	—	—	—	2,976	—	—	2,976
Net loss	—	—	—	—	—	—	(8,111)	(8,111)
Net unrealized loss on short-term investments	—	—	—	—	—	(10)	—	(10)
Comprehensive loss	—	—	—	—	—	—	—	(8,121)
Balance as of March 31, 2026 (unaudited)	188,576	1,886	70	1,050	1,954,107	(6)	(1,947,900)	9,137
Issuance of common stock under equity incentive plan	654	7	—	—	(150)	—	—	(143)
Issuance of common stock under the employee stock purchase plan	229	2	—	—	223	—	—	225
Stock-based compensation expense	—	—	—	—	3,178	—	—	3,178
Net loss and comprehensive loss	—	—	—	—	—	—	(5,489)	(5,489)
Balance as of June 30, 2026 (unaudited)	189,459	1,895	70	\$ 1,050	\$ 1,957,358	\$ (6)	\$ (1,953,389)	\$ 6,908

	Common Stock		Series A Convertible Preferred Stock		Additional Paid-In	Accumulated Other Comprehensive	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	(Loss) Income	Deficit	(Deficit)
Balance as of December 31, 2024	152,128	1,521	—	—	1,884,409	\$ 13	\$ (1,919,594)	\$ (33,651)
Issuance of common stock under equity incentive plan	299	3	—	—	61	—	—	64
Stock-based compensation expense	—	—	—	—	2,511	—	—	2,511
Net income	—	—	—	—	—	—	2,635	2,635
Net unrealized loss on short-term investments	—	—	—	—	—	(12)	—	(12)
Comprehensive income	—	—	—	—	—	—	—	2,623
Balance as of March 31, 2025 (unaudited)	152,427	1,524	—	—	1,886,981	1	(1,916,959)	(28,453)
Issuance of common stock under equity incentive plan	438	5	—	—	189	—	—	194
Issuance of common stock under the employee stock purchase plan	388	4	—	—	583	—	—	587
Stock-based compensation expense	—	—	—	—	2,797	—	—	2,797
Net loss	—	—	—	—	—	—	(2,381)	(2,381)
Net unrealized loss on short-term investments	—	—	—	—	—	(2)	—	(2)
Comprehensive loss	—	—	—	—	—	—	—	(2,383)
Balance as of June 30, 2025 (unaudited)	153,253	1,533	—	\$ -	1,890,550	\$ (1)	\$ (1,919,340)	\$ (27,258)

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Cash Flows

(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2026	2025
Operating activities:		
Net (loss) income	\$ (13,600)	\$ 254
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Stock-based compensation expense	6,154	5,308
Depreciation and amortization	981	1,162
Amortization of debt discount and debt issuance costs	446	417
Accretion of discount on short-term investments	(294)	(520)
Retirement and impairment of property and equipment	7	—
Loss on disposal of property and equipment	—	95
Change in operating assets and liabilities:		
Accounts receivable	16	(1,050)
Inventory	(852)	(19,805)
Prepaid expenses and other assets	2,322	698
Accounts payable	2,545	328
Accrued clinical and manufacturing liabilities	(1,019)	(8,083)
Accrued payroll and employee related liabilities	(2,638)	(3,083)
Other accrued expenses	2,179	4,541
Net cash used in operating activities	(3,753)	(19,738)
Investing activities:		
Purchases of short-term investments	(27,856)	(32,087)
Maturities and sales of short-term investments	24,181	41,958
Purchases of property and equipment	(529)	(317)
Proceeds from sale of property and equipment	—	53
Net cash (used in) provided by investing activities	(4,204)	9,607
Financing activities:		
(Payments) receipts for stock issued under the equity incentive plan	(194)	258
Proceeds from purchases under the employee stock purchase plan	225	587
Net cash provided by financing activities	31	845
Net decrease in cash and cash equivalents	(7,926)	(9,286)
Cash and cash equivalents at beginning of period	28,647	25,802
Cash and cash equivalents at end of period	<u>\$ 20,721</u>	<u>\$ 16,516</u>
Supplemental disclosure of cash flow information:		
Interest paid	\$ 5,320	\$ 2,412
Right-of-use assets obtained in exchange for new operating lease liabilities	<u>\$ 5,695</u>	<u>\$ —</u>

See accompanying notes.

HERON THERAPEUTICS, INC.

Notes to Condensed Consolidated Financial Statements (Unaudited)

1. Business

We are a commercial-stage biotechnology company focused on improving the lives of patients by developing and commercializing therapeutic innovations that improve medical care. Our advanced science, patented technologies, and innovative approach to drug discovery and development have allowed us to create and commercialize a portfolio of products that aim to advance the standard of care for acute care and oncology patients.

ZYNRELEF[®] (bupivacaine and meloxicam) extended-release solution ("ZYNRELEF") is approved in the United States ("U.S.") for the management of postoperative pain. APONVIE[®] (aprepitant) injectable emulsion ("APONVIE") is approved in the U.S. for the prevention of postoperative nausea and vomiting. CINVANTI[®] (aprepitant) injectable emulsion ("CINVANTI") and SUSTOL[®] (granisetron) extended-release injection ("SUSTOL") are both approved in the U.S. for the prevention of chemotherapy-induced nausea and vomiting.

Liquidity and Going Concern

As of June 30, 2026, we had cash, cash equivalents and short-term investments of \$42.7 million. From our inception through June 30, 2026, we have financed our operations, including technology and product research and development, primarily through issuances of our common stock, convertible notes and warrants, product sales and debt financings. Subsequent to the receipt of the Fourth Amendment to the Working Capital Facility Agreement (described further below) and based on our current operating plan and projections, management believes that the Company's cash, cash equivalents and short-term investments will be sufficient to meet the Company's anticipated cash requirements for a period of at least one year from the issuance of the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q. We have based this estimate on assumptions that may prove wrong, and we could utilize our available capital resources sooner than we currently expect, which would have a material impact on our operations.

Our Working Capital Facility Agreement contains a minimum cash covenant, a minimum revenue covenant and a minimum EBITDA covenant. In the event of a default under the Working Capital Facility Agreement or any future debt agreement, our lenders could declare all outstanding principal, together with accrued and unpaid interest, to be immediately due and payable. If the payment of the debt is accelerated, cash flows from our operations may be insufficient to repay such debt in full. On August 7, 2026, we entered into a Waiver, Consent, and Fourth Amendment to the Working Capital Facility Agreement (the "Fourth Amendment to the Working Capital Facility Agreement") to the Initial Working Capital Facility Agreement, as amended by the First Amendment to the Working Capital Facility Agreement, the Second Amendment to the Working Capital Facility Agreement and the Third Amendment to the Working Capital Facility Agreement. The Fourth Amendment to the Working Capital Facility Agreement, among other things, (a) waives the minimum revenue and minimum EBITDA financial covenants for the fiscal quarter ended June 30, 2026 and (b) amends the Working Capital Facility Agreement as more fully described in this Form 10-Q (see Note 8 - Long-Term Debt and Convertible Notes).

Our financial statements have been prepared assuming we will continue as a going concern, which contemplates, among other things, the realization of assets and satisfaction of liabilities in the normal course of business. The condensed consolidated financial statements included in this Quarterly Report on Form 10-Q do not include adjustments to reflect the possible future effects on the recoverability and classification of recorded assets or the amounts of liabilities that might be necessary should we be unable to continue as a going concern.

2. Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and the requirements of the SEC for interim reporting. Accordingly, since they are interim statements, they do not include all of the information and disclosures required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three and six months ended June 30, 2026, are not necessarily indicative of the results that may be expected for other quarters or the year ending December 31, 2026. The condensed consolidated balance sheet as of December 31, 2025 has been derived from the audited consolidated financial statements as

of that date. For more complete financial information, these condensed consolidated financial statements and the related notes thereto should be read in conjunction with the audited consolidated financial statements included in our 2025 Annual Report.

3. Accounting Policies

Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of Heron Therapeutics, Inc. and its wholly owned subsidiary, Heron Therapeutics B.V., which was organized in the Netherlands in March 2015. Heron Therapeutics B.V. has no operations and no material assets or liabilities, and there have been no significant transactions related to Heron Therapeutics B.V. since its inception.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and disclosures made in the accompanying notes to the financial statements. Our significant accounting policies that involve significant judgment and estimates include revenue recognition, investments, inventory and the related reserves, accrued clinical and manufacturing liabilities, income taxes, stock-based compensation and accounting for debt and equity transactions. Actual results could differ materially from those estimates.

Cash, Cash Equivalents and Short-Term Investments

Cash and cash equivalents consist of cash and highly liquid investments with contractual maturities of three months or less from the original purchase date.

Short-term investments consist of securities with contractual maturities of greater than three months from the original purchase date. Securities with contractual maturities greater than one year are classified as short-term investments on the condensed consolidated balance sheets, as we have the ability, if necessary, to liquidate these securities to meet our liquidity needs in the next 12 months. We have classified our short-term investments as available-for-sale securities in the accompanying condensed consolidated financial statements. Available-for-sale securities are stated at fair market value, with net changes in unrealized gains and losses reported in other comprehensive (loss) income and realized gains and losses included in other expense, net. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in interest income within other expense, net.

Our bank and investment accounts have been placed under a control agreement in accordance with our working capital facility agreement (see Note 8 - Long-Term Debt and Convertible Notes).

Concentration of Credit Risk

Cash, cash equivalents and short-term investments are financial instruments that potentially subject us to concentrations of credit risk. We deposit our cash in financial institutions. At times, such deposits may be in excess of insured limits. We have not experienced any losses in such accounts and believe we are not exposed to significant risk with respect to our cash, cash equivalents and short-term investments, however, any loss incurred or a lack of access to such funds could have a significant adverse impact on the Company's financial condition, results of operations and cash flows.

We may also invest our excess cash in money market funds, U.S. government and agencies, corporate debt securities and commercial paper. We have established guidelines relative to our diversification of our cash investments and their maturities in an effort to maintain safety and liquidity. These guidelines are periodically reviewed and modified to take advantage of trends in yields and interest rates.

ZYNRELEF, APONVIE, CINVANTI and SUSTOL are distributed in the U.S. through a limited number of specialty distributors and full line wholesalers (collectively, "Customers") that resell to healthcare providers and hospitals, the end users of our Products.

The following table includes the percentage of net product sales and accounts receivable balances for our three major Customers, each of which comprised 10% or more of our product sales:

	Net Product Sales		Accounts Receivable
	Three Months Ended June 30, 2026	Six Months Ended June 30, 2026	As of June 30, 2026
Customer A	41.1%	38.8%	40.1%
Customer B	30.6%	33.4%	34.3%
Customer C	26.1%	25.7%	24.8%
Total	97.8%	97.9%	99.2%

Accounts Receivable, Net

Accounts receivable are recorded at the invoice amount, net of an allowance for credit losses. The allowance for credit losses reflects accounts receivable balances that are believed to be uncollectible. In estimating the allowance for credit losses, we consider (1) our historical experience with collections and write-offs; (2) the credit quality of our Customers and any recent or anticipated changes thereto; (3) the outstanding balances and past due amounts from our Customers; and (4) reasonable and supportable forecast of economic conditions expected to exist throughout the contractual term of the receivable. As of June 30, 2026, and December 31, 2025, we do not have an allowance for credit losses.

Inventory, Net

Inventory is stated at the lower of cost or estimated net realizable value on a first-in, first-out, or FIFO, basis. We periodically analyze our inventory levels and write down inventory that has become obsolete, inventory that has a cost basis in excess of its estimated realizable value and inventory quantities that are in excess of expected sales requirements as cost of product sales. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required, which would be recorded as cost of product sales.

Property and Equipment, Net

Property and equipment is stated at cost less accumulated depreciation and amortization. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets (generally 5 years). Leasehold improvements are stated at cost and amortized on a straight-line basis over the shorter of the estimated useful life of the asset or the lease term.

Leases

We determine if an arrangement is a lease or contains lease components at inception. Operating leases with an initial term greater than 12 months are recorded as lease liabilities with corresponding right-of-use ("ROU") lease assets on the condensed consolidated balance sheets. ROU lease assets represent our right to use the underlying assets over the lease term, and lease liabilities represent the present value of our obligation to make lease payments arising from the lease. Lease liabilities are recognized at the lease commencement based on the present value of lease payments over the lease term. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at the commencement date in determining the present value of lease payments. We use the implicit rate when readily determinable. The ROU lease assets equal the lease liabilities, less unamortized lease incentives, unamortized initial direct costs and the cumulative difference between rent expense and amounts paid under the lease. The lease term includes any option to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense is recognized on a straight-line basis over the lease term. We have elected the practical expedient to not separate lease and non-lease components.

Revenue Recognition

Revenue is recognized in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("Topic 606"). Topic 606 is based on the principle that revenue should be recognized to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

Product Sales

Our Products are distributed in the U.S. through a limited number of Customers that resell to healthcare providers and hospitals, the end users of our Products.

Revenue is recognized in an amount that reflects the consideration we expect to receive in exchange for our Products. To determine revenue recognition for contracts with Customers within the scope of Topic 606, we perform the following five steps: (i) identify the contract(s) with a Customer; (ii) identify the performance obligations of the contract(s); (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract(s); and (v) recognize revenue when (or as) we satisfy the performance obligations. We recognize revenue from Product sales when there is a transfer of control of the Product to our Customers. We typically determine transfer of control based on when the Product is delivered, and title passes to our Customers.

Product Sales Allowances

We recognize product sales allowances as a reduction of product sales in the same period the related revenue is recognized. Product sales allowances are based on amounts owed or to be claimed on the related sales. Such variable consideration includes estimates that take into consideration the terms of our agreements with Customers, historical product returns, rebates or discounts taken, the shelf life of the product and specific known market events, such as competitive pricing and new product introductions. If actual future results vary from our estimates, we may need to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustment. Our product sales allowances include:

- **Product Returns**—We allow the majority of our Customers to return product for credit beginning three months prior to the product expiration date and up to 12 months after the product expiration date. As such, there may be a significant period of time between the time the product is shipped and the time the credit is issued on returned product.
- **Distributor Fees**—We pay distribution service fees to our Customers based on a contractually fixed percentage of the wholesale acquisition costs and fees for data. These fees are paid no later than two months after the quarter in which product was shipped.
- **Group Purchasing Organization ("GPO") Discounts and Rebates**—We offer cash discounts to GPO members. These discounts are taken when the GPO members purchase product from our Customers, who then charge back to us the discount amount. Additionally, we offer volume and contract-tier rebates to GPO members. Rebates are based on actual purchase levels during the quarterly rebate purchase period.
- **GPO Administrative Fees**—We pay administrative fees to GPOs for services and access to data. These fees are based on contracted terms and are paid after the quarter in which the product was purchased by the GPO's members.
- **Medicaid Rebates**—We participate in Medicaid rebate programs, which provide assistance to certain low-income patients based on each individual state's guidelines regarding eligibility and services. Under the Medicaid rebate programs, we pay a rebate to each participating state, generally within six months after the quarter in which the product was sold.
- **Prompt Pay Discounts**—We may provide discounts on product sales to our Customers for prompt payment based on contractual terms.

We believe our estimated allowance for product returns and GPO discounts requires a high degree of judgment and is subject to change based on our experience and certain quantitative and qualitative factors. We believe our estimated allowances for distributor fees, GPO rebates and administrative fees, Medicaid rebates and prompt pay discounts do not require a high degree of judgment because the amounts are settled within a relatively short period of time.

Our product sales allowances and related accruals are evaluated each reporting period and adjusted when trends or significant events indicate that a change in estimate is appropriate. Changes in product sales allowance estimates could materially affect our results of operations and financial position.

The following table provides disaggregated net product sales (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2026	2025	2026	2025
CINVANTI net product sales	\$ 21,793	\$ 24,143	\$ 42,328	\$ 49,886
SUSTOL net product sales	540	2,404	1,088	5,263
ZYNRELEF net product sales	11,056	8,189	21,291	16,230
APONVIE net product sales	4,277	2,464	7,670	4,724
Total net product sales	<u>\$ 37,666</u>	<u>\$ 37,200</u>	<u>\$ 72,377</u>	<u>\$ 76,103</u>

The following table provides a summary of activity with respect to our product returns, distributor fees and discounts, rebates and administrative fees, which are included in other accrued liabilities on the condensed consolidated balance sheets (in thousands):

	Product Returns	Distributor Fees	Discounts, Rebates and Administrative Fees	Total
Balance at December 31, 2025	\$ 4,515	\$ 7,328	\$ 34,152	\$ 45,995
Provision	334	17,307	111,454	129,095
Payments/credits	(636)	(16,506)	(110,083)	(127,225)
Balance at June 30, 2026	<u>\$ 4,213</u>	<u>\$ 8,129</u>	<u>\$ 35,523</u>	<u>\$ 47,865</u>

Comprehensive (Loss) Income

Comprehensive (loss) income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Net changes in unrealized gains and losses on available-for-sale securities are included in other comprehensive (loss) income and represent the difference between our net (loss) income and comprehensive (loss) income for all periods presented.

Net (Loss) Income per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding for the period, including pre-funded warrants to purchase shares of common stock. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock and common stock equivalents outstanding for the period determined using the treasury stock method. For purposes of this calculation, stock options, restricted stock units, warrants and shares of common stock underlying convertible notes are considered to be common stock equivalents and are included in the calculation of diluted net loss per share only when their effect is dilutive.

Because we have incurred a net loss for the three and six months ended June 30, 2026 and the three months ended June 30, 2025, the following common stock equivalents were not included in the computation of net loss per share because their effect would be anti-dilutive (in thousands):

	As of June 30,	
	2026	2025
Stock options outstanding	28,263	29,697
Restricted stock units outstanding	10,579	4,133
Warrants outstanding	298	298
Series A Preferred Stock convertible to common shares	700	—
Shares of common stock underlying convertible notes outstanding	19,444	9,819

For the six months ended June 30, 2025, we recognized net income. Accordingly, the computations of the numerator (earnings or loss) and denominator (shares) to calculate the basic and diluted earnings per share amounts presented in the accompanying condensed consolidated statements of operations and comprehensive (loss) income are as follows (in thousands, except per share amounts):

	Six Months Ended June 30, 2025	
	Income	Shares
Basic:		
Net income	\$ 254	153,804
Earnings per share, basic	\$ 0.00	
Diluted:		
Net income	\$ 254	153,804
Effect of dilutive securities:		
Stock options outstanding	—	29,697
Restricted stock units outstanding	—	4,133
Warrants outstanding	—	298
Shares of common stock underlying convertible notes outstanding	—	9,819
Net income, diluted	\$ 254	197,751
Earnings per share, diluted	\$ 0.00	

Segment Reporting

Management, upon consideration of the organizational structure of the business and information reviewed by the Company's Chief Executive Officer, who is also the Company's chief operating decision maker ("CODM"), has concluded that we have one reportable segment. All revenues for the three and six months ended June 30, 2026 and 2025 were generated from customers in the U.S. The CODM allocates resources and evaluates the performance of the reportable segment, which is the consolidated entity, primarily based on net loss as reported on the consolidated statements of operations and comprehensive (loss) income. The significant expenses reviewed by the CODM are cost of product sales, research and development expenses, general and administrative expenses, and sales and marketing expenses as reported on the consolidated statements of operations and comprehensive (loss) income. The Company's operating segments do not record intercompany revenue nor allocate any expenses. The CODM does not evaluate operating segments using discrete asset information.

Recently Issued Accounting Standards Not Yet Adopted

From time to time, new accounting pronouncements are issued by the FASB or other standard setting bodies that we adopt as of the specified effective date. We have evaluated recently issued accounting pronouncements and do not believe any will have a material impact on our condensed consolidated financial statements or related financial statement disclosures.

In November 2024, the FASB issued ASU 2024-03, *Income Statement - Reporting Comprehensive Income - Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses* ("ASU 2024-03"), which requires disaggregated disclosures of certain categories of expenses that are included in the face of the financial statements. This standard is effective for fiscal years beginning after December 15, 2026 and interim periods beginning after December 15, 2027. Early adoption is permitted. The Company is currently evaluating the impact on our disclosures.

In December 2025, the FASB issued ASU 2025-11, *Interim Reporting (Topic 270): Narrow-Scope Improvements*, which provides clarity regarding the existing required interim GAAP disclosures. This standard is effective for interim reporting periods within annual reporting periods beginning after December 15, 2027. Early adoption is permitted. The Company is currently evaluating the impact on our disclosures.

4. Fair Value Measurements

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the

measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The FASB ASC Topic 820, *Fair Value Measurements and Disclosures*, establishes a fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

- Level 1—Observable inputs such as quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

We measure cash, cash equivalents and short-term investments at fair value on a recurring basis. The fair values of such assets were as follows (in thousands):

	Balance at June 30, 2026	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and money market funds	\$ 18,027	\$ 18,027	\$ —	\$ —
U.S. treasury bills and government agency obligations	7,905	7,905	—	—
Foreign commercial paper	8,366	—	8,366	—
U.S. corporate debt securities	4,397	—	4,397	—
U.S. commercial paper	2,477	—	2,477	—
Foreign corporate debt securities	1,492	—	1,492	—
Total	\$ 42,664	\$ 25,932	\$ 16,732	\$ —

	Balance at December 31, 2025	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and money market funds	\$ 22,313	\$ 22,313	\$ —	\$ —
U.S. treasury bills and government agency obligations	9,534	9,534	—	—
Foreign commercial paper	3,979	—	3,979	—
U.S. corporate debt securities	7,035	—	7,035	—
U.S. commercial paper	1,545	—	1,545	—
Foreign corporate debt securities	2,225	—	2,225	—
Total	\$ 46,631	\$ 31,847	\$ 14,784	\$ —

We have not transferred any investment securities between the three levels of the fair value hierarchy for the three and six months ended June 30, 2026 and 2025.

As of June 30, 2026, cash equivalents included \$8.3 million of available-for-sale securities with contractual maturities of three months or less and short-term investments included \$12.0 million of available-for-sale securities with contractual maturities of three months to one year. As of December 31, 2025, cash equivalents included \$11.6 million of available-for-sale securities with contractual maturities of three months or less and short-term investments included \$5.4 million of available-for-sale securities with contractual maturities of three months to one year. The money market funds as of June 30, 2026 and December 31, 2025 are included in cash and cash equivalents on the condensed consolidated balance sheets.

A company may elect to use fair value to measure accounts receivable, available-for-sale securities, accounts payable, guarantees and issued debt, among others. If the use of fair value is elected, any upfront costs and fees related to the item such as debt issuance costs must be recognized in earnings and cannot be deferred. The fair value election is irrevocable and generally made on an

instrument-by-instrument basis, even if a company has similar instruments that it elects not to measure based on fair value. Unrealized gains and losses on existing items for which fair value has been elected are reported as a cumulative adjustment to beginning retained earnings and any changes in fair value are recognized in earnings. We have elected to not apply the fair value option to our financial assets and liabilities.

Financial instruments, including cash, cash equivalents, receivables, inventory, prepaid expenses, other current assets, accounts payable and accrued expenses are carried at cost, which is considered to be representative of their respective fair values because of the short-term maturity of these instruments. Short-term available-for-sale investments are carried at fair value. Our notes payable and convertible notes payable outstanding at June 30, 2026 and December 31, 2025 do not have a readily available ascertainable market value; however, their carrying value, which is measured at carrying value less unamortized debt issuance costs and debt discounts, is considered to approximate their fair value, as the terms were based on market conditions.

5. Short-Term Investments

The following is a summary of our short-term investments (in thousands):

	June 30, 2026			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. treasury bills and government agency obligations	\$ 7,908	\$ —	\$ (3)	\$ 7,905
Foreign commercial paper	6,571	—	(1)	6,570
U.S. corporate debt securities	3,500	—	(1)	3,499
U.S. commercial paper	2,478	—	(1)	2,477
Foreign corporate debt securities	1,492	—	—	1,492
Total	<u>\$ 21,949</u>	<u>\$ —</u>	<u>\$ (6)</u>	<u>\$ 21,943</u>

	December 31, 2025			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. treasury bills and government agency obligations	\$ 5,542	\$ 2	\$ —	\$ 5,544
Foreign commercial paper	3,979	—	—	3,979
U.S. corporate debt securities	5,439	1	—	5,440
U.S. commercial paper	1,545	—	—	1,545
Foreign corporate debt securities	1,475	1	—	1,476
Total	<u>\$ 17,980</u>	<u>\$ 4</u>	<u>\$ —</u>	<u>\$ 17,984</u>

The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. We regularly monitor and evaluate the realizable value of our marketable securities. We did not recognize any impairment losses during the three and six months ended June 30, 2026 and 2025.

Unrealized gains and losses associated with our investments are reported in accumulated other comprehensive (loss) income. Realized gains and losses associated with our investments, if any, are reported in the statements of operations and comprehensive (loss) income. We did not recognize any realized gains or losses during the three and six months ended June 30, 2026 and 2025.

6. Inventory

Inventory consists of the following (in thousands):

	June 30, 2026	December 31, 2025
Raw materials	\$ 58,088	\$ 59,250
Work in process	24,275	26,613
Finished goods	8,222	6,883
Total inventory	<u>\$ 90,585</u>	<u>\$ 92,746</u>

	June 30, 2026		December 31, 2025
CINVANTI	\$ 24,987	\$	27,417
SUSTOL	426		1,307
ZYNRELEF	61,156		60,436
APONVIE	4,016		3,586
Total inventory	<u>\$ 90,585</u>	<u>\$</u>	<u>92,746</u>

For the three and six months ended June 30, 2026, cost of product sales included charges of \$1.0 million and \$1.3 million, respectively, relating to reserves and write-offs of inventory. For the three and six months ended June 30, 2025, cost of product sales included charges of \$0.5 million relating to reserves and write-offs of inventory.

7. Commitments and Contingencies

Litigation and other contingencies

The Company is, from time to time, subject to a variety of litigation and other proceedings incidental to its business, including lawsuits involving claims relating to intellectual property matters, employment matters, commercial disputes; as well as regulatory investigations or enforcement. The Company may also become subject to lawsuits as a result of past or future acquisitions, or as a result of liabilities retained from, or representations, warranties or indemnities provided in connection with divested businesses. Some of these lawsuits may include claims for punitive and consequential as well as compensatory damages. A recent court ruling in an intellectual property matter has had a material adverse effect on the Company's financial position, results of operations or cash flows. The outcomes of the Company's legal proceedings and other contingencies are inherently unpredictable and subject to significant uncertainties. There can be no assurance that there will not be a change in the scope of one or more of these matters or that any other future legal matters will or will not be material to Company's financial position, results of operations or cash flows for a particular period.

Leases

In August 2025, we entered into an operating lease agreement for 16,837 square feet of office space in Cary, North Carolina. The lease commenced on May 1, 2026, and will expire 111 months from the lease commencement date, with the option to extend for one additional period of 84 months upon written notice. We recorded a right-of-use lease asset and lease liability of \$5.7 million, upon lease commencement. We provided the landlord with a letter of credit for \$0.2 million, which is included within cash and cash equivalents in the condensed consolidated balance sheet.

In December 2025, we entered into a short-term operating lease agreement for 9,882 square feet of office space in Cary, North Carolina, with a lease term that expired on February 28, 2026.

During the three and six months ended June 30, 2026, we recognized \$0.1 million and \$0.2 million of operating lease expense, respectively. During the three months ended June 30, 2026, we did not incur any cash payments for our operating leases. During the six months ended June 30, 2026, we paid \$0.1 million for our operating leases.

During the three and six months ended June 30, 2025, we recognized \$0.8 million and \$1.6 million of operating lease expense. During the three and six months ended June 30, 2025, we paid \$0.8 million and \$1.6 million for our operating leases, respectively.

Annual future minimum lease payments as of June 30, 2026 are as follows (in thousands):

2026	\$	—
2027		576
2028		646
2029		665
2030		685
Thereafter		3,412
Total future minimum lease payments		5,984
Less: discount		280
Total lease liabilities	\$	5,704

8. Long-Term Debt and Convertible Notes

Working Capital Facility Agreement

On August 9, 2023, we entered into a working capital facility agreement (the "Initial Working Capital Facility Agreement") with Hercules Capital, Inc., as administrative agent, collateral agent, and lender (the "Lender"). The Initial Working Capital Facility Agreement provided for an aggregate principal amount of up to \$50.0 million with tranching availability as follows: (i) \$25.0 million at closing on August 9, 2023 ("tranche 1A"), (ii) \$5.0 million available through December 15, 2024 ("tranche 1B") and (iii) \$20.0 million available from the earlier of: (a) the full draw of tranche 1B and (b) the expiration of tranche 1B, and available through December 15, 2025 ("tranche 1C"), and in the case of tranches 1B and 1C, subject to certain customary conditions to draw down.

The Initial Working Capital Facility Agreement had a term of four years, with a springing maturity date that was 91 days prior to the stated maturity of our 2026 Convertible Notes (as defined below), if still outstanding at such time. The loans thereunder did not have any scheduled amortization payments and accrued interest at a floating rate equal to 9.95% per annum, payable in cash on a monthly basis and upon maturity or payoff. In addition, any loans under the Initial Working Capital Facility Agreement also accrued paid-in-kind interest at a fixed rate of 1.5% per annum which was due upon maturity or payoff.

In addition, in connection with the tranche 1A funding, we issued warrants to the Lender to purchase up to 297,619 shares of our common stock at an exercise price of \$1.68 per share (the "Lender Warrants"). The Lender Warrants are equal to 2.00% of the principal amount of the tranche 1A loans funded by the Lender (the "Warrant Coverage"). The Initial Working Capital Facility Agreement also required that we issue additional warrants to the Lender at the time of each draw down of tranches 1B and 1C with the same Warrant Coverage. Each Lender Warrant is exercisable for seven years from the date of issuance. The Lender Warrant issued in conjunction with the tranche 1A funding remains outstanding at June 30, 2026.

On February 13, 2025, we entered into an amendment to the Initial Working Capital Facility Agreement (the "First Amendment to the Working Capital Facility Agreement") to extend the maturity date to the earlier of (a) September 1, 2027 and (b) to the extent that any of the 2026 Convertible Notes remain outstanding on such date, (i) May 12, 2026 or (ii) in the event that the maturity date of any 2026 Convertible Notes is extended, prior to May 12, 2026, to August 11, 2026, or later, the date that is 91 days prior to the maturity date of such further extended 2026 Convertible Notes.

On August 8, 2025, we entered into an amendment to the Initial Working Capital Facility Agreement, as amended by the First Amendment to the Working Capital Facility Agreement (the "Second Amendment to the Working Capital Facility Agreement"). The Second Amendment to the Working Capital Facility Agreement (i) provides for an aggregate principal amount of up to \$150.0 million plus the accrued and unpaid paid-in-kind interest on the existing debt under the Initial Working Capital Facility Agreement at closing on August 12, 2025, (ii) extends the maturity date under the First Amendment to the Working Capital Facility Agreement to September 1, 2030, (iii) adjusts the interest rate to Prime, with a 7.5% floor, plus 1.95%, (iv) adjusts the paid-in-kind interest rate to 1.0% per annum, which is due upon maturity or payoff, (v) provides for payment of a 1.0% upfront facility charge and an end of term charge of up to 6.25% of principal drawn. The loans under the Second Amendment to the Working Capital Facility Agreement do not have any scheduled amortization payments. The approximately \$150.0 million aggregate principal has tranching availability as follows: (i) \$110.0 million plus capitalized paid-in-kind interest of approximately \$0.8 million on August 12, 2025 ("tranche 1"), (ii) \$20.0 million available through December 15, 2026 ("tranche 2") and (iii) \$20.0 million available from the earlier of: (a) the full draw

of tranche 2 and (b) September 30, 2027 ("tranche 3"), and in the case of tranches 2 and 3, subject to certain customary conditions to draw down.

The Second Amendment to the Working Capital Facility Agreement contains a minimum cash covenant, a minimum revenue covenant and a minimum EBITDA covenant. In the event of a default under the Working Capital Facility Agreement or any future debt agreement, our lenders could declare all outstanding principal, together with accrued and unpaid interest, to be immediately due and payable. The Second Amendment to the Working Capital Facility Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, and dividends and other distributions, subject to certain exceptions.

On January 30, 2026, we entered into an amendment to the Initial Working Capital Facility Agreement, as amended by the First Amendment to the Working Capital Facility Agreement and the Second Amendment to the Working Capital Facility Agreement (the "Third Amendment to Working Capital Facility Agreement") to increase the end of term charge to be up to 6.50%, depending on the end of term.

On August 7, 2026, we entered into a Waiver, Consent and Fourth Amendment to the Working Capital Facility Agreement (the "Fourth Amendment to the Working Capital Facility Agreement") to the Initial Working Capital Facility Agreement, as amended by the First Amendment to the Working Capital Facility Agreement, the Second Amendment to the Working Capital Facility Agreement and the Third Amendment to the Working Capital Facility Agreement. The Fourth Amendment to the Working Capital Facility Agreement, among other things, (a) waives the minimum revenue and minimum EBITDA financial covenants for the fiscal quarter ended June 30, 2026 and (b) amends the Working Capital Facility Agreement to (i) require a prepayment by the Company of \$17,500,000 in principal amount outstanding under the Working Capital Facility Agreement (the "Prepayment"), consisting of a \$13,500,000 prepayment made upon effectiveness of the Fourth Amendment to the Working Capital Facility Agreement and a second prepayment of up to \$4,000,000 due on or before September 15, 2026 (which second prepayment may be reduced, including to zero, if certain conditions set forth therein are met), together with End of Term Fees of \$661,500 and up to \$196,000, respectively plus accrued PIK Interest (as defined under the Fourth Amendment to the Working Capital Facility Agreement) due on such Prepayment with any fees associated with the Prepayment to be waived, (ii) eliminate the future availability of \$20.0 million through December 15, 2026 ("tranche 2") and \$20.0 million through September 30, 2027 ("tranche 3"), (iii) revises the minimum revenue covenant, the minimum EBITDA covenant and the minimum cash covenant effective as of the reporting period ending August 31, 2026, (iv) permits the Company to enter into an agreement for certain products, subject to lenders' approval of the final terms, and (v) includes certain other covenants regarding other potential strategic transactions.

The Initial Working Capital Facility Agreement, together with the First Amendment to the Working Capital Facility Agreement, the Second Amendment to the Working Capital Facility Agreement, the Third Amendment to the Working Capital Facility Agreement and the Fourth Amendment to the Working Capital Facility Agreement are referred to collectively as the "Working Capital Facility Agreement".

The Second Amendment to the Working Capital Facility Agreement was accounted for in accordance with ASC Topic 470, Debt. Amendments are assessed by management to determine appropriate treatment as troubled debt restructurings, extinguishments or modifications. The Second Amendment to the Working Capital Facility Agreement qualifies as a debt extinguishment and issuance of a new debt instrument. We recorded a loss on extinguishment during the quarter ended September 30, 2025, of \$5.5 million, equal to the carrying value of the Second Amendment to the Working Capital Facility Agreement less the carrying value of the First Working Capital Facility Agreement on August 12, 2025 of \$0.3 million, the facility charge of \$1.1 million paid to the lenders, the remaining Initial Working Capital Facility Agreement end of term fee of \$0.2 million and the present value of Second Amendment to the Working Capital Facility Agreement end of term fee of \$3.9 million. The Initial Working Capital Facility Agreement end of term fee is payable on September 1, 2027. The remaining Second Amendment to the Working Capital Facility Agreement end of term fee will be accreted to interest expense over the term of the agreement using the effective interest rate method.

The Third Amendment to the Working Capital Facility Agreement was accounted for in accordance with ASC Topic 470, Debt. Amendments are assessed by management to determine appropriate treatment as troubled debt restructurings, extinguishments or modifications. The Third Amendment to the Working Capital Facility Agreement qualifies as a modification.

The tranche 1 funding under the Second Amendment to the Working Capital Facility Agreement is accounted for as debt and was recorded as a liability on the condensed consolidated balance sheets. In addition, the additional borrowings available under the Second Amendment to the Working Capital Facility Agreement are accounted for as a single freestanding financial instrument that are not assets or obligations of ours and will be accounted for when and if we borrow additional tranches in the future.

In connection with the Second Amendment to the Working Capital Facility Agreement, we incurred debt issuance costs of \$3.5 million, which was recorded as a debt discount. The debt discount is being amortized into interest expense using the effective interest rate method over the term of the Second Amendment to the Working Capital Facility Agreement. The effective interest rate as of June 30, 2026 is 11.7%.

For the three months ended June 30, 2026, interest expense related to the Working Capital Facility Agreement was \$3.2 million, which included \$2.7 million related to the stated interest rate, \$0.3 million related to paid-in-kind interest, and \$0.2 million related to the amortization of the debt discounts and accretion of the end of term fee.

For the six months ended June 30, 2026, interest expense related to the Working Capital Facility Agreement was \$6.4 million, which included \$5.3 million related to the stated interest rate, \$0.6 million related to paid-in-kind interest, and \$0.5 million related to the amortization of the debt discounts and accretion of the end of term fee.

For the three months ended June 30, 2025, interest expense related to the Working Capital Facility Agreement was \$0.9 million, which included \$0.6 million related to the stated interest rate, \$0.1 million related to paid-in-kind interest, and \$0.2 million related to the amortization of the debt discounts and accretion of the end of term fee.

For the six months ended June 30, 2025, interest expense related to the Working Capital Facility Agreement was \$1.8 million, which included \$1.3 million related to the stated interest rate, \$0.2 million related to paid-in-kind interest, and \$0.3 million related to the amortization of the debt discounts and accretion of the end of term fee.

As of June 30, 2026, the carrying value of the Working Capital Facility Agreement was \$108.7 million, which is comprised of the \$110.8 million principal amount outstanding, \$0.9 million of accumulated paid-in-kind interest, less debt discounts of \$3.0 million. The end of term fee accreted as of June 30, 2026, of \$5.1 million is recorded in other non-current liabilities on the condensed consolidated balance sheets.

2026 Senior Unsecured Convertible Notes

In May 2021, we entered into a note purchase agreement with funds affiliated with Baker Bros. Advisors LP for a private placement of \$150.0 million aggregate principal amount of senior unsecured convertible notes due 2026 (the “2026 Convertible Notes”).

On August 8, 2025, we entered into an exchange agreement pursuant to which \$150.0 million aggregate principal amount of the 2026 Convertible Notes outstanding were exchanged for (i) 16,666,666 shares of common stock for an aggregate principal amount of \$25.0 million of the 2026 Convertible Notes and (ii) the remaining \$125.0 million plus accrued and unpaid interest under the 2026 Convertible Notes paid in cash, and which closed on August 12, 2025. As of June 30, 2026, no 2026 Convertible Notes remain outstanding.

For the three months ended June 30, 2025, interest expense related to the 2026 Convertible Notes was \$0.6 million, which included \$0.5 million related to the stated interest rate and \$0.1 million related to the amortization of debt issuance costs.

For the six months ended June 30, 2025, interest expense related to the 2026 Convertible Notes was \$1.2 million, which included \$1.1 million related to the stated interest rate and \$0.1 million related to the amortization of debt issuance costs.

2031 Senior Unsecured Convertible Notes

On August 8, 2025, we entered into a note purchase agreement with a fund affiliated with Rubric Capital Management LP, for a private placement of \$35.0 million aggregate principal amount of senior unsecured convertible notes due 2031 (the “2031 Convertible Notes”), which closed on August 12, 2025. We received a total of \$31.9 million, net of issuance costs and original issuance discount, from the issuance of the 2031 Convertible Notes.

The 2031 Convertible Notes were issued at par. The 2031 Convertible Notes bear interest at a rate of 5.0% per annum, payable in cash semi-annually in arrears on March 1 and September 1 of each year, or at a rate of 7.0% per annum for paid-in-kind interest prior to September 1, 2026. The 2031 Convertible Notes mature on March 1, 2031, unless earlier converted, redeemed or repurchased.

The 2031 Convertible Notes are subject to redemption at our option, after September 1, 2026, but only if the last reported sale price per share of our common stock exceeds 200% of the conversion price for a specified period of time. The redemption price will be equal to the principal amount of the 2031 Convertible Notes to be redeemed, plus accrued and unpaid interest.

The 2031 Convertible Notes can be settled in either shares of common stock, cash or a combination of cash and shares of common stock based on the conversion rate in effect on the date of conversion. The initial conversion rate for the 2031 Convertible Notes is 555.5556 shares per \$1,000 principal amount of the 2031 Convertible Notes (equivalent to an initial conversion price of \$1.80 per share of common stock), subject to certain adjustments.

If a holder of the 2031 Convertible Notes converts upon a make-whole fundamental change or Company redemption, the holder may be eligible to receive a make-whole premium through an increase to the conversion rate.

The 19,444,444 shares of common stock issuable upon the conversion, at the option of the holder, of the 2031 Convertible Notes, are registered for resale pursuant to a registration statement filed with and declared effective by the SEC in September 2025.

At a special meeting of stockholders held on October 13, 2025, the Company's stockholders approved, pursuant to Nasdaq Listing Rule 5635(d), the issuance of shares of common stock in connection with the conversion of the 2031 Convertible Notes, which could, under certain circumstances that may occur in the future, exceed 19.99% of the number of shares of the common stock issued and outstanding prior to such issuance.

The 2031 Convertible Notes were accounted for in accordance with ASC 470-20 and ASC 815-40. Under ASC 815-40, to qualify for equity classification (or non-bifurcation, if embedded), the instrument (or embedded feature) must be both (1) indexed to the issuer's stock and (2) meet the requirements of the equity classification guidance. Based upon our analysis, it was determined that the 2031 Convertible Notes do contain embedded features indexed to our common stock, but do not meet the requirements for bifurcation, and therefore do not need to be separately accounted for as an equity component. Since the embedded conversion feature meets the equity scope exception from derivative accounting, and, also since the embedded conversion option does not need to be separately accounted for as an equity component under ASC 470-20, the proceeds received from the issuance of the 2031 Convertible Notes were recorded as a liability on the condensed consolidated balance sheets.

We incurred issuance costs related to the 2031 Convertible Notes of \$1.4 million, which we recorded as debt issuance costs and are included as a reduction to the 2031 Convertible Notes on the condensed consolidated balance sheets. We also incurred an original issuance discount of \$1.75 million, which we recorded as a reduction to the 2031 Convertible Notes on the condensed consolidated balance sheets. The debt issuance costs and original issuance discount are being amortized to interest expense using the effective interest rate method over the term of the 2031 Convertible Notes, resulting in an effective interest rate of 7.14%.

For the three months ended June 30, 2026, interest expense related to the 2031 Convertible Notes was \$0.6 million, which included \$0.6 million related to paid-in-kind interest and \$0.03 million related to the accretion of debt issuance costs.

For the six months ended June 30, 2026, interest expense related to the 2031 Convertible Notes was \$1.2 million, which included \$1.3 million related to paid-in-kind interest and \$0.1 million related to the accretion of debt issuance costs.

As of June 30, 2026, the carrying value of the 2031 Convertible Notes was \$33.9 million, which is comprised of the \$35.0 million principal amount of the 2031 Convertible Notes outstanding, \$2.2 million of accumulated paid-in-kind interest, less debt issuance costs of \$3.3 million.

9. Private Placement Equity Offering

On August 8, 2025, we entered into a securities purchase agreement with the purchasers, for a private placement of (i) 13,225,227 shares of common stock at a purchase price of \$1.50 per share and (ii) 524,141 shares of Series A convertible preferred stock, which would automatically convert upon stockholder approval into 5,241,410 shares of common stock, at a conversion price of \$1.50 per share (stated value of \$15.00 per share) for aggregate gross proceeds of \$27.7 million, and which closed on August 12, 2025. In connection with the private placement equity offering, we incurred issuance costs of \$1.5 million. The Series A convertible preferred stock is convertible to common stock at a ratio of ten shares of common stock for each share of Series A convertible preferred stock and has a par value of \$0.01. The Series A convertible preferred stock ranks senior to common stock with respect to dividend rights and rights on the distribution of assets in an event of liquidation. The Series A convertible preferred stockholders have no voting rights and are entitled to receive dividends on an as converted basis in the same form as dividends granted to holders of common stock. Upon a liquidation, the proceeds available for distribution would be paid pari passu among the holders of shares of common stock and Series A convertible preferred stock, pro rata based on the number of shares held by each such holder and on an as converted basis.

The 13,225,227 shares of common stock and 5,241,410 shares of common stock issuable upon automatic conversion of the Series A convertible preferred stock are registered for resale pursuant to a registration statement filed with and declared effective by the SEC in September 2025.

At a special meeting of stockholders held on October 13, 2025, the Company's stockholders approved, pursuant to Nasdaq Listing Rule 5635(d), the issuance of shares of common stock in connection with the conversion of the Series A convertible preferred stock, which could, under certain circumstances that may occur in the future, exceed 19.99% of the number of shares of the common stock issued and outstanding prior to such issuance.

Upon shareholder approval in October 2025, 454,129 shares of Series A convertible preferred stock were converted to common stock, resulting in the issuance of 4,541,290 shares of common stock. The remaining 70,012 shares of Series A convertible preferred stock are subject to beneficial ownership limitations and thus did not convert to common stock as of June 30, 2026.

10. Equity Incentive Plan

Option Plan Activity

The following table summarizes the stock option activity for the six months ended June 30, 2026:

	Shares (in thousands)	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term (Years)
Outstanding at December 31, 2025	28,705	\$ 2.98	7.64
Granted	366	\$ 0.99	
Exercised	—	\$ —	
Expired and forfeited	(808)	\$ 7.30	
Outstanding at June 30, 2026	28,263	\$ 2.83	7.24

We estimated the fair value of each option grant on the grant date using the Black-Scholes option pricing model. The following are the weighted-average assumptions:

	For the Six Months Ended June 30,	
	2026	2025
Risk-free interest rate	3.9%	4.3%
Dividend yield	0.0%	0.0%
Volatility	79.9%	80.1%
Expected life (years)	6 to 10	6 to 10

The following table summarizes the restricted stock unit activity ("RSUs") for the six months ended June 30, 2026:

	Shares (in thousands)	Weighted-Average Grant Date Fair Value
Outstanding at December 31, 2025	3,799	\$ 1.91
Granted	8,051	\$ 1.31
Released	(1,084)	\$ 1.73
Expired and forfeited	(187)	\$ 1.51
Outstanding at June 30, 2026	10,579	\$ 1.49

The fair value of RSUs is estimated based on the closing market price of our common stock on the date of the grant. RSUs generally vest quarterly over a four-year period.

We estimated the fair value of each purchase right granted under our 1997 Employee Stock Purchase Plan, as amended, at the beginning of each new offering period using the Black-Scholes option pricing model. The following are the weighted average assumptions:

	For the Six Months Ended June 30,	
	2026	2025
Risk-free interest rate	3.8%	4.2%
Dividend yield	0.0%	0.0%
Volatility	67.7%	79.1%
Expected life (months)	6	6

Stock-Based Compensation

The following table summarizes stock-based compensation expense related to stock-based payment awards granted pursuant to all of our equity compensation arrangements (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2026	2025	2026	2025
Research and development	\$ 278	\$ 276	\$ 532	\$ 521
General and administrative	1,979	1,825	3,833	3,396
Sales and marketing	921	696	1,789	1,391
Total stock-based compensation expense	<u>\$ 3,178</u>	<u>\$ 2,797</u>	<u>\$ 6,154</u>	<u>\$ 5,308</u>

As of June 30, 2026, there was \$26.2 million of total unrecognized compensation cost related to non-vested, stock-based payment awards granted under all of our equity compensation plans and all non-plan option grants. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures. We expect to recognize this compensation cost over a weighted-average period of two years.

11. Income Taxes

Deferred income tax assets and liabilities are recognized for temporary differences between financial statements and income tax carrying values using tax rates in effect for the years such differences are expected to reverse. Due to uncertainties surrounding our ability to generate future taxable income and consequently realize such deferred income tax assets, a full valuation allowance has been established. We continue to maintain a full valuation allowance against our deferred tax assets as of June 30, 2026.

The impact of an uncertain income tax position on the income tax return must be recognized at the largest amount that is more likely than not to be sustained upon audit by the relevant tax authority. An uncertain income tax position will be recognized when it is more likely than not of being sustained. The disclosures regarding uncertain tax positions included in our 2025 Annual Report, continue to be accurate for the three and six months ended June 30, 2026.

12. Other Events

On June 25, 2026, we received a letter from Nasdaq, notifying us that, for the previous 30 consecutive business day period prior to the date of the letter, the closing bid price of our common stock was below \$1.00 and that we did not meet the minimum bid price required for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2). The letter has no immediate effect on the listing or trading of our common stock on Nasdaq. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have been provided an initial period of 180 calendar days, or until December 22, 2026, to regain compliance with Nasdaq's bid price requirement.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read together with our condensed consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and the audited consolidated financial statements and related notes included in our 2025 Annual Report. Some information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business, include forward-looking statements that involve risks and uncertainties. You should review the sections entitled "Forward-Looking Statements" and "Risk Factors" in our 2025 Annual Report, Quarterly Reports on Form 10-Q and other reports for a discussion of important factors that could cause our actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Introduction

Management's discussion and analysis of financial condition and results of operations is provided as a supplement to the consolidated financial statements and notes, included in this Quarterly Report on Form 10-Q to help provide an understanding of our financial condition, the changes in our financial condition and our results of operations. Our discussion is organized as follows:

- *Overview.* This section provides a general description of our business and operating expenses, as well as other matters that we believe are important to understanding our results of operations and financial condition and in anticipating future trends.
- *Critical Accounting Estimates.* This section contains a discussion of the accounting estimates that require a significant level of estimation uncertainty, and changes in which are reasonably likely to have a material effect on our financial condition or results of operations. In addition, all of our significant accounting policies are summarized in Note 3—Accounting Policies to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.
- *Results of Operations.* This section provides an analysis of our results of operations presented in the accompanying condensed consolidated statements of operations and comprehensive loss by comparing the results for the three and six months ended June 30, 2026 and 2025.
- *Liquidity and Capital Resources.* This section provides a discussion of our financial condition and liquidity, an analysis of our cash flows for the six months ended June 30, 2026 and 2025, and a discussion of our outstanding commitments and contingencies that existed as of June 30, 2026.

Overview

We are a commercial-stage biotechnology company focused on improving the lives of patients by developing and commercializing therapeutic innovations that improve medical care. Our advanced science, patented technologies, and innovative approach to drug discovery and development have allowed us to create and commercialize a portfolio of products that aim to advance the standard of care for acute care and oncology patients.

Acute Care Product Portfolio

ZYNRELEF

ZYNRELEF is a dual-acting local anesthetic that delivers a fixed-dose combination of the local anesthetic bupivacaine and a low dose of the nonsteroidal anti-inflammatory drug meloxicam. ZYNRELEF is the first and only modified-release local anesthetic to be classified by the FDA as an extended-release product because ZYNRELEF demonstrated in Phase 3 studies significantly reduced pain and significantly increased proportion of patients requiring no opioids through the first 72 hours following surgery compared to bupivacaine solution, the current standard-of-care local anesthetic for postoperative pain control.

ZYNRELEF was initially approved by the FDA in May 2021, and we commenced commercial sales in the U.S. in July 2021. In each of December 2021 and January 2024, the FDA approved an expansion of ZYNRELEF's indication. ZYNRELEF is approved for use in adults for postsurgical analgesia for up to 72 hours after soft tissue and orthopedic surgical procedures including foot and ankle, and other orthopedic surgical procedures in which direct exposure to articular cartilage is avoided. In September 2024, the FDA approved the prior approval supplement ("PAS") application for ZYNRELEF Vial Access Needle ("VAN"), which is replacing the current vented vial spike.

Through March 31, 2025, ZYNRELEF was reimbursed outside of the surgical bundle payment in the Hospital Outpatient Department ("HOPD") setting of care through pass-through status granted by the Centers for Medicare and Medicaid Services ("CMS").

Effective April 1, 2025, ZYNRELEF is reimbursed through inclusion in the Non-Opioids Prevent Addiction in the Nation ("NOPAIN") Act, which directs CMS to provide separate Medicare reimbursement for non-opioid treatments that are used to manage pain during surgeries conducted in hospital outpatient departments or in ambulatory surgical centers. To qualify, the non-opioid treatment must demonstrate the ability to replace, reduce, or avoid intraoperative or postoperative opioid use or the quantity of opioids prescribed in a clinical trial or through data published in a peer-reviewed journal. The hospital outpatient prospective payment system and ambulatory surgical center proposed rule for calendar year 2025 includes ZYNRELEF as a qualifying non-opioid requiring CMS to provide separate Medicare reimbursement in both the hospital outpatient department and ambulatory surgical center settings through December 31, 2027.

Effective October 1, 2025, CMS has approved a new permanent Healthcare Common Procedure Coding System J-code for ZYNRELEF. ZYNRELEF will continue to qualify under the Non-Opioid Policy for Pain Relief with the J-code and will be reimbursed outside the surgical supply package for Medicare, aligning with the policy goals to remove financial barriers to qualifying non-opioid pain management options.

APONVIE

APONVIE is the first and only intravenous formulation of aprepitant, a substance P/neurokinin-1 ("NK1") receptor antagonist indicated for postoperative nausea and vomiting ("PONV") in adults. Delivered via a single 30-second intravenous ("IV") injection, APONVIE has demonstrated rapid achievement of therapeutic drug levels ideally suited for the surgical setting.

APONVIE was approved by the FDA in September 2022 and became commercially available in the U.S. in March 2023. APONVIE is indicated for the prevention of PONV in adults. CMS granted pass-through payment status for APONVIE, effective April 1, 2023, which expired March 31, 2026. Effective April 1, 2026, CMS has approved a new permanent Healthcare Common Procedure Coding System J-code for APONVIE.

In 2025, APONVIE was included in the Fifth Consensus Guidelines for the Management of Postoperative Nausea and Vomiting as published in *Anesthesia and Analgesia*.

Oncology Care Product Portfolio

CINVANTI

CINVANTI is an IV formulation of aprepitant, a substance NK1 receptor antagonist. CINVANTI is the first IV formulation to directly deliver aprepitant, the active ingredient in EMEND® capsules. Aprepitant (including its prodrug, fosaprepitant) is a single-agent NK1 receptor antagonist to significantly reduce nausea and vomiting in both the acute phase (0–24 hours after chemotherapy) and the delayed phase (24–120 hours after chemotherapy). CINVANTI is the first IV formulation of an NK1 receptor antagonist indicated for the prevention of acute and delayed nausea and vomiting associated with Highly Emetogenic Cancer ("HEC") and nausea and vomiting associated with Moderately Emetogenic Cancer ("MEC") that is free of synthetic surfactants, including polysorbate 80.

CINVANTI, in combination with other antiemetic agents, is indicated in adults for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of HEC including high-dose cisplatin as a single-dose regimen, delayed nausea and vomiting associated with initial and repeat courses of MEC as a single-dose regimen, and nausea and vomiting associated with initial and repeat courses of MEC as a 3-day regimen.

NK1 receptor antagonists are typically used in combination with 5-hydroxytryptamine ("5-HT3") receptor antagonists. The only other injectable NK1 receptor antagonist currently approved in the U.S. for both acute and delayed chemotherapy induced nausea and vomiting ("CINV"), EMEND® IV (fosaprepitant), contains polysorbate 80, a synthetic surfactant, which has been linked to hypersensitivity reactions, including anaphylaxis, and infusion site reactions. The CINVANTI formulation does not contain polysorbate 80 or any other synthetic surfactant. Our CINVANTI data has demonstrated the bioequivalence of CINVANTI to EMEND IV, supporting its efficacy for the prevention of both acute and delayed nausea and vomiting associated with HEC and nausea and vomiting associated with MEC. Results also showed CINVANTI was better tolerated in healthy volunteers than EMEND IV, with significantly fewer adverse events reported with CINVANTI.

CINVANTI was approved by the FDA in November 2017, and we commenced commercial sales in the U.S. in January 2018.

On June 1, 2026, the U.S. District Court for the District of Delaware issued a decision in the patent litigation between the Company and Azurity Pharmaceuticals, Inc., Azurity Pharmaceuticals India LLP f/k/a Slayback Pharma India LLP, and Slayback Pharma LLC ("Azurity"), with respect to CINVANTI, holding that the asserted claims of Company's U.S. Patent Nos. 12,115,255 and 12,290,520 are invalid under 35 U.S.C. § 112. The Court also entered a final judgment declaring that the asserted claims of U.S. Patent Nos. 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; and 11,744,800 are not infringed. This decision has no impact on any prior settlement agreement related to CINVANTI or APONVIE.

SUSTOL

SUSTOL is the first extended-release 5-HT₃ receptor antagonist approved for the prevention of acute and delayed nausea and vomiting associated with both MEC and anthracycline and cyclophosphamide ("AC") combination chemotherapy regimens. A standard of care in the treatment of breast cancer and other cancer types, AC regimens are among the most commonly prescribed HEC regimens, as defined by both the National Comprehensive Cancer Network ("NCCN") and the American Society of Clinical Oncology ("ASCO").

SUSTOL is indicated in combination with other antiemetics in adults for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of MEC or AC combination chemotherapy regimens. SUSTOL is an extended-release, injectable 5-HT₃ receptor antagonist that utilizes our Biochronomer Technology to maintain therapeutic levels of granisetron for ≥ 5 days. The SUSTOL global Phase 3 development program was comprised of two, large, guideline-based clinical studies that evaluated SUSTOL's efficacy and safety in more than 2,000 patients with cancer. SUSTOL's efficacy in preventing nausea and vomiting was evaluated in both the acute phase (0–24 hours following chemotherapy) and the delayed phase (24–120 hours following chemotherapy).

SUSTOL was approved by the FDA in August 2016, and we commenced commercial sales in the U.S. in October 2016.

On June 15, 2026, we submitted a notification to the FDA that SUSTOL will no longer be available for sale as of September 30, 2026. If we decide to recommence commercial marketing and sale of SUSTOL, we will notify the FDA before the anticipated launch date.

Biochronomer Technology

Our proprietary Biochronomer Technology is designed to deliver therapeutic levels of a wide range of otherwise short-acting pharmacological agents over a period from days to weeks with a single administration. Our Biochronomer Technology consists of polymers that have been the subject of comprehensive animal and human toxicology studies that have shown evidence of the safety of the polymer. When administered, the polymers undergo controlled hydrolysis, resulting in a controlled, sustained release of the pharmacological agent encapsulated within the Biochronomer-based composition. Furthermore, our Biochronomer Technology is designed to permit more than one pharmacological agent to be incorporated, such that multimodal therapy can be delivered with a single administration.

Recent Events

There are no other material recent events during the three or six months ended June 30, 2026.

Material Trends and Developments

There are no other material changes to our material trends and developments disclosures included in our 2025 Annual Report during the three or six months ended June 30, 2026.

Contractual Obligations and Commitments

Purchase Obligations

Framework Agreement

On August 6, 2025, we entered into a Framework Agreement (the "Framework Agreement") with Patheon Austria GmbH & Co KG ("Patheon") and Thermo Fisher Scientific Inc. (solely for purposes as specified therein). Under the Framework Agreement, Patheon will manufacture and supply specific quantities of certain products, continue to perform certain ongoing stability studies related to such products and provide warehousing services, subject to the terms of a manufacturing and supply agreement previously entered into by us and Patheon, as amended by the amendments set forth in the Framework Agreement. We are required to purchase certain quantities of such products through December 31, 2026, but our monthly payment for such products may be reduced for unreleased products or non-conforming products if the products are not released by specified release dates. On November 13, 2025, we entered into Amendment No. 1 to Framework Agreement, pursuant to which certain payment terms were amended. On July 20, 2026, we entered into Amendment No. 2 to Framework Agreement (the "Amendment No. 2 to Framework Agreement"), pursuant to which certain scheduled payments were deferred. The Framework Agreement was effective on August 6, 2025 and will be in effect through and terminate automatically on December 31, 2026, other than with respect to any ongoing project addendums for stability studies entered into prior to December 31, 2026 and the payment of the scheduled payments deferred pursuant to Amendment No. 2 to Framework Agreement.

Lease Obligations

We have entered into two operating leases for laboratory and office space. Our laboratory and office space in San Diego, California, a portion of which had been subleased to a third party, had a lease term that expired on December 31, 2025. The lease for office space in Cary, North Carolina has commenced on May 1, 2026 and expires 111 months from the lease commencement date, with the option to extend for one additional period of 84 months upon written notice.

Other Obligations and Contingencies

We, from time-to-time, are subject to claims and litigation in the normal course of the business. We may also incur costs related to maintaining, defending, and enforcing patent claims, including litigation costs and the outcome of such litigation. We have not reserved any amounts for contingencies related to such litigation because they are both not probable and reasonably estimable based on information currently available. See "Part II. Item 1. Legal Proceedings" in this Quarterly Report on Form 10-Q for further discussion of pending legal proceedings.

Critical Accounting Estimates

The discussion and analysis of our financial condition and results of operations are based on our condensed consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We evaluate our estimates on an ongoing basis, including those related to revenue recognition, investments, inventory and the related reserves, accrued clinical and manufacturing liabilities, income taxes, stock-based compensation and accounting for debt and equity transactions. We base our estimates on historical experience and on assumptions that we believe to be reasonable under the circumstances, the results of which form the basis of making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions.

Our critical accounting estimates include: revenue recognition, investments, inventory and the related reserves, accrued clinical and manufacturing liabilities, income taxes, stock-based compensation and accounting for debt and equity transactions. There are no material changes to our critical accounting estimates disclosures included in our 2025 Annual Report, during the three or six months ended June 30, 2026.

Recent Accounting Pronouncements

See Note 3 - Accounting Policies - Recent Accounting Pronouncements to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

Results of Operations for the Three and Six Months Ended June 30, 2026 and 2025

The following table summarizes the results of our operations for the three and six months ended June 30, 2026 and 2025 (in thousands):

(\$ in thousands)	Three Months Ended June 30,				Six Months Ended June 30,			
	2026	% of Sales	2025	% of Sales	2026	% of Sales	2025	% of Sales
Net product sales	\$ 37,666		\$ 37,200		\$ 72,377		\$ 76,103	
Cost of product sales	11,572	30.7%	9,857	26.5%	22,210	30.7%	18,314	24.1%
Gross profit	26,094		27,343		50,167		57,789	
Operating expenses:								
Research and development	2,702	7.2%	2,934	7.9%	5,087	7.0%	5,213	6.8%
General and administrative	11,276	29.9%	14,471	38.9%	23,421	32.4%	27,173	35.7%
Sales and marketing	14,160	37.6%	11,575	31.1%	28,468	39.3%	23,886	31.4%
(Loss) income from operations	<u>\$ (2,044)</u>	<u>(5.4%)</u>	<u>\$ (1,637)</u>	<u>(4.4%)</u>	<u>\$ (6,809)</u>	<u>(9.4%)</u>	<u>\$ 1,517</u>	<u>2.0%</u>

Net Product Sales

	Three Months Ended June 30,		Six Months Ended June 30,	
	2026	2025	2026	2025
Acute Care Net Product Sales	\$ 15,333	\$ 10,653	\$ 28,961	\$ 20,954
Oncology Net Product Sales	22,333	26,547	43,416	55,149
Total Net Product Sales	\$ 37,666	\$ 37,200	\$ 72,377	\$ 76,103

Total acute care net product sales increased by \$4.7 million or 43.9% during the three months ended June 30, 2026, as compared to the three months ended June 30, 2025. The increase was primarily attributable to an increase in the units sold as a result of an increase in market share and new customers for both ZYNRELEF and APONVIE.

Total acute care net product sales increased by \$8.0 million or 38.2% during the six months ended June 30, 2026, as compared to the six months ended June 30, 2025. The increase was primarily attributable to an increase in the units sold as a result of an increase in market share and new customers for both ZYNRELEF and APONVIE.

Total oncology net product sales decreased by \$4.2 million or 15.9% during the three months ended June 30, 2026, as compared to the three months ended June 30, 2025. The decrease was primarily attributed to a decrease in units sold as a result of continued competitive pressure.

Total oncology net product sales decreased by \$11.7 million or 21.3% during the six months ended June 30, 2026, as compared to the six months ended June 30, 2025. The decrease was primarily attributed to a decrease in units sold as a result of continued competitive pressure.

Cost of Product Sales and Gross Profit

Cost of product sales increased by \$1.7 million or 17.4% during the three months ended June 30, 2026, as compared to the three months ended June 30, 2025 and as a percentage of sales increased 4.2% during the same period.

Cost of product sales increased by \$3.9 million or 21.3% during the six months ended June 30, 2026, as compared to the six months ended June 30, 2025 and as a percentage of sales increased 6.6% during the same period.

Gross profit for the three months ended June 30, 2026 was 69.3%, compared to 73.5% during the three months ended June 30, 2025.

Gross profit for the six months ended June 30, 2026 was 69.3%, compared to 75.9% during the six months ended June 30, 2025.

The increase in cost of product sales for the three months ended June 30, 2026, as compared to the same period in 2025, is primarily attributable to an increase of \$0.5 million of inventory reserves and write-offs recorded and an increase of \$1.2 million in the cost of units sold, primarily due to the increase in number of units sold and supplier mix.

The increase in cost of product sales for the six months ended June 30, 2026, as compared to the same period in 2025, is primarily attributable to an increase of \$0.8 million of inventory reserves and write-offs recorded and an increase of \$3.1 million in the cost of units sold, primarily due the increase in number of units sold and supplier mix.

Research and Development Expense

Research and development expense consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2026	2025	2026	2025
ZYNRELEF-related costs	1,1			
	\$ 91	\$ 1,099	\$ 2,157	\$ 1,917
SUSTOL-related costs	—	75	—	75
CINVANTI-related costs	69	302	224	302
APONVIE-related costs	163	1	163	1
Personnel costs and other expenses	1,0			
	01	1,181	2,011	2,397
Stock-based compensation expense	278	276	532	521
Total research and development expense	2,7			
	\$ 02	\$ 2,934	\$ 5,087	\$ 5,213

Research and development expense decreased by \$0.2 million or 7.9%, during the three months ended June 30, 2026 compared to the three months ended June 30, 2025. The decrease is primarily attributable to a decrease in personnel expense of \$0.2 million as a result of reduction in headcount.

Research and development expense decreased by \$0.1 million or 2.4%, during the six months ended June 30, 2026 compared to the six months ended June 30, 2025. The decrease is primarily attributable to a decrease in personnel expense of \$0.3 million as a result of reduction in headcount and a decrease in asset write-offs of \$0.1 million recorded in 2025 for which there was no similar expense in 2026, offset by an increase in expense with vendors of \$0.2 million, due to timing.

General and Administrative Expense

General and administrative expense decreased by \$3.2 million or 22.1%, during the three months ended June 30, 2026 compared to the three months ended June 30, 2025. The decrease is primarily attributable to a decrease in legal fees of \$2.6 million due to timing of litigation, a decrease in rent expense of \$0.9 million due to the San Diego, California lease termination, and a decrease in expense with vendors of \$0.3 million, due to less services provided by outside vendors. These decreases were offset by an increase in personnel expense of \$0.6 million due to an increase in headcount.

General and administrative expense decreased by \$3.8 million or 13.8%, during the six months ended June 30, 2026 compared to the six months ended June 30, 2025. The decrease is primarily attributable to a decrease in legal fees of \$3.5 million due to timing of litigation and a decrease in rent expense of \$1.9 million due to the San Diego, California lease termination. These decreases were offset by an increase in personnel expense of \$1.8 million due to an increase in headcount.

Sales and Marketing Expense

Sales and marketing expense increased by \$2.6 million or 22.3%, during the three months ended June 30, 2026 compared to the three months ended June 30, 2025. The increase is primarily attributable to an increase in personnel expense of \$1.9 million related to an increase in headcount and an increase in marketing spend, primarily related to ZYNRELEF, of \$0.7 million.

Sales and marketing expense increased by \$4.6 million or 19.2%, during the six months ended June 30, 2026 compared to the six months ended June 30, 2025. The increase is primarily attributable to an increase in personnel expense of \$2.6 million related to an increase in headcount and an increase in marketing spend, primarily related to ZYNRELEF, of \$2.0 million.

Other Expense, Net

For the three months ended June 30, 2026, other expense, net was \$3.4 million, compared to \$0.7 million, for the three months ended June 30, 2025. The increase in expense is primarily attributable to an increase in interest expense of \$2.3 million as a result of the debt refinancing completed in 2025 and the loss of sublease income of \$0.3 million due to the San Diego, California lease termination.

For the six months ended June 30, 2026, other expense, net was \$6.8 million, compared to \$1.3 million, for the six months ended June 30, 2025. The increase in expense is primarily attributable to an increase in interest expense of \$4.6 million as a result of the debt refinancing completed in 2025 and the loss of sublease income of \$0.7 million due to the San Diego, California lease termination.

Liquidity and Capital Resources

Sources of Liquidity

As of June 30, 2026, we had cash, cash equivalents and short-term investments of \$42.7 million. Our net loss for the three months ended June 30, 2026 was \$5.5 million, or loss per share of \$0.03, compared to net loss of \$2.4 million, or loss per share of \$0.02, for the same period in 2025. Our net loss for the six months ended June 30, 2026 was \$13.6 million, or loss per share of \$0.07, compared to net income of \$0.3 million, or nil earnings per share, for the same period in 2025. We have incurred significant operating losses and negative cash flows from operations and had an accumulated deficit of \$1.9 billion as of June 30, 2026. From our inception through June 30, 2026, we have financed our operations, including technology and product research and development, primarily through the issuance of common stock, convertible notes and warrants, product sales and debt financings.

Subsequent to the receipt of the Fourth Amendment to the Working Capital Facility Agreement (described further below) and based on our current operating plan and projections, management believes that the Company's cash, cash equivalents and short-term investments will be sufficient to meet the Company's anticipated cash requirements for a period of at least one year from the issuance of the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect, which would have a material impact on our operations.

Future Funding Requirements

We continuously evaluate our liquidity and capital resources, including access to external capital, in light of current economic and market conditions and our operational performance. Our future cash requirements and the adequacy of our available funds will depend on many factors, primarily including our ability to generate revenue and the scope and costs of our commercial and research and development activities.

Our Working Capital Facility Agreement contains a minimum cash covenant, a minimum revenue covenant and a minimum EBITDA covenant. In the event of a default under the Working Capital Facility Agreement or any future debt agreement, our lenders could declare all outstanding principal, together with accrued and unpaid interest, to be immediately due and payable. If the payment of the debt is accelerated, cash flows from our operations may be insufficient to repay such debt in full. On August 7, 2026, we entered into a Waiver, Consent, and Fourth Amendment to the Working Capital Facility Agreement (the "Fourth Amendment to the Working Capital Facility Agreement") to the Initial Working Capital Facility Agreement, as amended by the First Amendment to the Working Capital Facility Agreement, the Second Amendment to the Working Capital Facility Agreement and the Third Amendment to the Working Capital Facility Agreement. The Fourth Amendment to the Working Capital Facility Agreement, among other things, (a) waives the minimum revenue and minimum EBITDA financial covenants for the fiscal quarter ended June 30, 2026 and (b) amends the Working Capital Facility Agreement to (i) require a prepayment by the Company of \$17,500,000 in principal amount outstanding under the Working Capital Facility Agreement (the "Prepayment"), consisting of a \$13,500,000 prepayment made upon effectiveness of the Fourth Amendment to the Working Capital Facility Agreement and a second prepayment of up to \$4,000,000 due on or before September 15, 2026 (which second prepayment may be reduced, including to zero, if certain conditions set forth therein are met), together with End of Term Fees of \$661,500 and up to \$196,000, respectively, plus accrued PIK Interest (as defined under the Fourth Amendment to the Working Capital Facility Agreement) due on such Prepayment with any fees associated with the Prepayment to be waived, (ii) eliminate the future availability of \$20.0 million through December 15, 2026 ("tranche 2") and \$20.0 million through September 30, 2027 ("tranche 3"), (iii) revises the minimum revenue covenant, the minimum EBITDA covenant and the minimum cash covenant effective as of the reporting period ending August 31, 2026, (iv) permits the Company to enter into an agreement for certain products, subject to the lenders' approval of the final terms, and (v) includes certain other covenants regarding other potential strategic transactions. A failure to comply with the covenants under our Working Capital Facility Agreement in future periods could result in an event of default unless further waivers or amendments are obtained, of which there is no assurance.

Cash Flows

The net change in cash and cash equivalents consisted of the following:

Our net cash used in operating activities for the six months ended June 30, 2026 and 2025 was \$3.8 million and \$19.7 million, respectively. The decrease in net cash used in operating activities of \$15.9 million or 81.0%, was primarily attributable to variability in payments for operating assets and liabilities including, inventory, prepaid expenses and other assets, accounts payable and accrued clinical and manufacturing liabilities, offset by the net loss of \$13.6 million for the six months ended June 30, 2026 compared to net income of \$0.3 million for the six months ended June 30, 2025.

Our net cash used in investing activities for the six months ended June 30, 2026 was \$4.2 million compared to net cash provided by investing activities for the six months ended June 30, 2025, which was \$9.6 million. The change in net cash used in investing activities of \$13.8 million, was primarily attributable to net purchases of short-term investments of \$3.7 million for the six months ended June 30, 2026 compared to net maturities of short-term investments of \$9.9 million for the six months ended June 30, 2025.

Our net cash used in financing activities for the six months ended June 30, 2026 was \$0.03 million, compared to net cash provided by financing activities for the six months ended June 30, 2025, which was \$0.9 million.

Material Cash Requirements

There are no material changes to our material cash requirements disclosures included in our 2025 Annual Report during the three and six months ended June 30, 2026.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Quantitative and qualitative disclosures about market risk are included in "Management's Discussion and Analysis of Financial Condition and Results of Operations - Quantitative and Qualitative Disclosures about Market Risk" in our 2025 Annual Report. There are no material changes to the quantitative and qualitative disclosures included in our 2025 Annual Report during the three and six months ended June 30, 2026.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our management, with the participation of our principal executive and principal financial officers, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 ("Exchange Act")) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our principal executive and principal financial officers concluded that our disclosure controls and procedures were effective as of such time.

Limitations on Effectiveness of Controls

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports, filed or submitted under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed in such reports is accumulated and communicated to our management, including our principal executive officer, principal financial officer, and principal accounting officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable and not absolute assurance of achieving the desired control objectives. In reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, a control may become inadequate because of changes in conditions or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter covered by this Quarterly Report on Form 10-Q that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Except as discussed below, there are no material changes from the legal proceedings previously disclosed in our 2025 Annual Report during the three and six months ended June 30, 2026.

On June 14, 2022, the Company received a Paragraph IV notice of certification (the “Fresenius Kabi Notice”) from Fresenius Kabi advising that Fresenius Kabi had submitted an abbreviated new drug application (“ANDA”) to the U.S. Food and Drug Administration (“FDA”) seeking approval to manufacture, use or sell a generic version of CINVANTI in the U.S. prior to the expiration of U.S. Patent Nos.: 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; and 11,173,118 (the “CINVANTI Patents”), which are listed in the FDA’s Approved Drug Products with Therapeutic Equivalence Evaluations (the “Orange Book”). The Fresenius Kabi Notice alleges that the CINVANTI Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Fresenius Kabi’s ANDA.

On July 27, 2022, the Company filed a complaint for patent infringement of the CINVANTI Patents against Fresenius Kabi and a related entity in the U.S. District Court for the District of Delaware (the “Court”) in response to Fresenius Kabi’s ANDA filing. The complaint seeks, among other relief, equitable relief enjoining Fresenius Kabi from infringing the CINVANTI Patents. On May 15, 2024, the Court granted partial summary judgment of infringement for the Company and found no indefiniteness of U.S. Patent Nos. 9,561,229 and 9,974,794. On June 24, 2024, the parties commenced a four-day bench trial centered on Fresenius Kabi’s defense of obviousness of claims from U.S. Patent Nos. 9,561,229 and 9,974,794 that cover CINVANTI. Oral argument was held on August 29, 2024.

On December 3, 2024, the Court issued a ruling in the Company’s favor. The Court found that the Company’s U.S. Patent Nos. 9,561,229 and 9,974,794, which expire in 2035, are valid and would be infringed by Fresenius Kabi’s proposed generic product. In view of the decision, the Court ordered that the effective date of any final approval by the FDA of Fresenius Kabi’s ANDA shall not be a date earlier than September 18, 2035, the expiration date of each of U.S. Patent Nos. 9,561,229 and 9,974,794. On January 8, 2025, Fresenius Kabi filed notice of appeal to the U.S. Court of Appeals for the Federal Circuit. On September 24, 2025, the briefing was completed. On July 21, 2026, the Company received notice that oral argument at the Federal Circuit is scheduled for September 10, 2026. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI.

On August 4, 2023, the Company received a Notice Letter (the “Mylan August Notice”) from Mylan Pharmaceuticals Inc. (“Mylan”) advising that Mylan had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of CINVANTI (“Mylan’s ANDA for a generic version of CINVANTI”) in the U.S. prior to the expiration of the CINVANTI Patents, which are listed in the Orange Book. On September 15, 2023, the Company filed a complaint for patent infringement of the CINVANTI Patents against Mylan in the U.S. District Court for the District of Delaware in response to the filing of Mylan’s ANDA for a generic version of CINVANTI. On May 6, 2025, the Company announced that it entered into a settlement agreement with Mylan to resolve the ongoing patent litigation in the U.S. District Court for the District of Delaware related to Mylan’s ANDA for a generic version of CINVANTI. Pursuant to the terms of the settlement agreement, the Company has granted Mylan a license under the Orange Book-listed patents for CINVANTI to market a generic version of CINVANTI in the United States beginning June 1, 2032, or earlier under certain customary circumstances. In connection with the settlement, on May 6, 2025, the Court granted the Stipulation and Order of Dismissal with the U.S. District Court for the District of Delaware requesting that the Court dismiss the pending litigation between the parties.

On December 16, 2023, the Company received a Notice Letter (the “Mylan December Notice”) from Mylan advising that Mylan had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of APONVIE in the U.S. (“Mylan’s ANDA for a generic version of APONVIE”) prior to the expiration of U.S. Patent Nos.: 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; and 11,744,800 (the “APONVIE Patents”), which are listed in the Orange Book. On January 11, 2024, the Company filed a complaint for patent infringement of the APONVIE Patents against Mylan in the U.S. District Court for the District of Delaware in response to Mylan filing its ANDA for a generic version of APONVIE. On May 6, 2025, the Company announced that it entered into a settlement agreement with Mylan to resolve the ongoing patent litigation in the U.S. District Court for the District of Delaware related to Mylan’s ANDA for a generic version of APONVIE. Pursuant to the terms of the settlement agreement, the Company has granted Mylan a license under the Orange Book-listed patents for APONVIE to market a generic version of APONVIE in the United States beginning June 1, 2032, or earlier under certain customary circumstances. In connection with the settlement, on May 6, 2025, the Court granted the Stipulation and Order of Dismissal with the U.S. District Court for the District of Delaware requesting that the Court dismiss the pending litigation between the parties.

On December 11, 2023, the Company received a Paragraph IV notice of certification (the “Slayback Notice”) from Slayback Pharma LLC (“Slayback”) (now owned by Azurity Pharmaceuticals, Inc. (“Azurity”)) advising that Slayback had submitted a new drug application (“NDA”) under Section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act to the FDA seeking approval to manufacture, use or sell a generic version of CINVANTI in the U.S. (“Slayback’s NDA”) prior to the expiration of the patents listed in the Orange Book. The Slayback Notice alleges that the CINVANTI Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Slayback’s NDA. On January 24, 2024, the Company filed a complaint for patent infringement of the CINVANTI Patents against Slayback and a related entity in the U.S. District Court for the District of New Jersey in response to Slayback’s NDA filing. The complaint seeks, among other relief, equitable relief enjoining Slayback from infringing those patents. On July 2, 2024, the U.S. District Court for the District of New Jersey granted Slayback’s motion to transfer this matter to the U.S. District Court for the District of Delaware. On December 12, 2024, the Company filed a complaint against Slayback, Azurity, and related entities in the U.S. District Court for District of Delaware for patent infringement of U.S. Patent Nos. 12,115,254 and 12,115,255. On May 23, 2025, the Company filed an amended complaint against Slayback, Azurity and related entities adding an allegation of patent infringement of U.S. Patent No. 12,290,520. On September 16, 2025, the parties entered into a stipulation (Case No. 24-1363, D.I. 119) limiting the issues for trial. On November 17, 2025, the parties commenced a two-day bench trial centered on Azurity’s §112 defenses of claims from U.S. Patent Nos. 12,115,255 and 12,290,520 that cover CINVANTI. On February 6, 2026, the post-trial briefing was completed, and, on March 24, 2026, the Court held closing arguments. On June 1, 2026, the Court issued a ruling holding that the asserted claims of the ‘255 Patent and the ‘520 Patent are invalid under 35 U.S.C. § 112. The Court also entered a final judgment declaring that the asserted claims of U.S. Patent Nos. 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; and 11,744,800 are not infringed. On June 30, 2026, the Company appealed both final judgments to the U.S. Court of Appeals for the Federal Circuit. On July 31, 2026, the appeals were consolidated. The consolidated appeal is in its early stages, and the parties have not yet submitted any briefing. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI.

On February 28, 2025, Azurity, Azurity Pharma India LLP, and Slayback requested Post-Grant Review (“PGR”) of U.S. Patent Nos. 12,115,254 and 12,115,255 in PGR2025-00035 and PGR2025-00036, respectively. On April 14, 2025, the Petitions were accorded a filing date. On June 16, 2025, the Company filed a brief requesting discretionary denial of the Petitions in PGR2025-00035 and PGR2025-00036. On July 14, 2025, the Company filed its Patent Owner Preliminary Response. On August 14, 2025, the Patent Trial and Appeal Board discretionarily denied institution of Azurity’s PGRs.

On February 7, 2025, the Company received a Notice Letter (the “Qilu Notice”) from Qilu Pharmaceutical (Hainan) Co., Ltd and Qilu Pharma, Inc. (“Qilu”) advising that Qilu had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of APONVIE in the U.S. (“Qilu’s ANDA for a generic version of APONVIE”) prior to the expiration of U.S. Patent Nos.: 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; 11,744,800, 11,878,074, 12,115,254, and 12,115,255 (the “Noticed APONVIE Patents”), which are listed in the Orange Book. On March 21, 2025, the Company filed a complaint for patent infringement of the Noticed APONVIE Patents against Qilu in the U.S. District Court for the District of Delaware in response to Qilu’s ANDA for a generic version of APONVIE.

On June 11, 2025, the Company received a Notice Letter (the “Qilu CINVANTI Notice”) from Qilu advising that Qilu had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of CINVANTI in the U.S. (“Qilu’s ANDA for a generic version of CINVANTI”) prior to the expiration of U.S. Patent Nos.: 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; 11,744,800; 12,115,254; 12,115,255; and 12,290,520 (the “Noticed CINVANTI Patents”), which are listed in the Orange Book for CINVANTI. On July 3, 2025, the Company filed a complaint for patent infringement of the Noticed CINVANTI Patents against Qilu in the U.S. District Court for the District of Delaware in response to Qilu’s ANDA for a generic version of CINVANTI.

On July 15, 2025, the Qilu CINVANTI and APONVIE litigations were consolidated. The Company entered into a settlement agreement with Qilu to resolve the ongoing patent litigation in the U.S. District Court for the District of Delaware related to Qilu’s ANDAs for generic versions of CINVANTI and APONVIE. In connection with the settlement, on November 6, 2025, the Court granted the Stipulation and Order of Dismissal with the U.S. District Court for the District of Delaware requesting that the Court dismiss the pending litigation between the parties.

On November 19, 2025, the Company received a Paragraph IV notice of certification (the “Baxter Notice”) from Baxter Healthcare Corporation (“Baxter”) advising that Baxter had submitted an ANDA to the FDA seeking approval to manufacture, use or sell a generic version of CINVANTI (“Baxter’s ANDA for a generic version of CINVANTI”) in the U.S. prior to the expiration of the

Noticed CINVANTI Patents, which are listed in the Orange Book. On December 23, 2025, the Company filed a complaint for patent infringement of the Noticed CINVANTI Patents against Baxter and a related entity in the U.S. District Court for the District of Delaware in response to the filing of Baxter's ANDA for a generic version of CINVANTI. The Company entered into a settlement agreement with Baxter to resolve the ongoing patent litigation in the U.S. District Court for the District of Delaware related to Baxter's ANDA for a generic version of CINVANTI. In connection with the settlement, on April 28, 2026, the Court granted the Stipulation and Order of Dismissal with the U.S. District Court for the District of Delaware requesting that the Court dismiss the pending litigation between the parties.

On June 26, 2026, the Company received a Paragraph IV notice of certification (the "Long Grove Notice") from Long Grove Pharmaceuticals, LLC ("Long Grove") advising that Long Grove had submitted an application seeking approval to manufacture, use, or sell a generic version of CINVANTI in the U.S. ("Long Grove's NDA") prior to the expiration of the Noticed CINVANTI Patents, which are listed in the Orange Book for CINVANTI. The Long Grove Notice alleges that the Noticed CINVANTI Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the Long Grove NDA product. On August 7, 2026, the Company filed a complaint for patent infringement of the Noticed CINVANTI Patents against Long Grove and a related entity in the U.S. District Court for the District of Delaware in response to Long Grove's NDA filing. The complaint seeks, among other relief, equitable relief enjoining Long Grove from infringing the Noticed CINVANTI Patents. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI.

ITEM 1A. RISK FACTORS

Investing in our common stock involves risks. We operate in a rapidly changing environment that involves a number of risks that could materially affect our business, financial condition or future results, some of which are beyond our control. The risks and uncertainties that we believe are most important for you to consider are discussed in Part I, Item 1A. "Risk Factors" in our 2025 Annual Report, Quarterly Reports on Form 10-Q, and other reports, including our financial statements and the related notes thereto, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the information contained in the section entitled "Forward-Looking Statements." The occurrence of any of the events or developments described below could adversely affect our business, financial condition, results of operations and prospects. In such an event, the market price of our common stock could decline and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. Other than the factors described below, there are no material changes to the risk factors described in our 2025 Annual Report.

Our Products may face competition from lower-cost generic products offered by our competitors, which may limit our ability to sell our Products or require us to reduce our pricing.

Pricing for therapeutics can be extremely competitive, and strict formulary guidelines enforced by payors may create significant challenges in the acceptance and profitability of branded products. The market for generic products can be very lucrative, and it is dominated by companies that may have much larger distribution capabilities than we may have in the future. It can be very difficult to predict the timing of the launch of generic products given the commonality of litigation with manufacturers over anticipated patent expiration. Our inability to accurately foresee and plan for generic product launches that may compete with our Products may significantly impact our potential revenues from such Products. On the expiration or loss of patent protection for a branded product, or on the "at-risk" launch (despite pending patent infringement litigation against the generic product) by a manufacturer of a generic version of a drug that may compete with one of our products, we could quickly lose a significant portion of our sales of that Product. The inability for a branded Product we may sell to successfully compete against generic products could negatively impact sales of our Product, reduce our ability to grow our business and significantly harm our business prospects.

We face competition from newly developed generic products as the Hatch-Waxman Act seeks to stimulate competition by providing incentives to generic pharmaceutical manufacturers to introduce non-infringing forms of patented pharmaceutical products and to challenge patents on branded pharmaceutical products. For example, we filed a complaint for patent infringement of certain CINVANTI patents against Fresenius Kabi USA, LLC ("Fresenius Kabi") in connection with its Abbreviated New Drug Application ("ANDA"), which seeks approval to manufacture, use or sell a generic version of CINVANTI in the U.S. prior to expiration of certain CINVANTI patents. While in December 2024, the District Court found that the Company's '229 Patent and '794 Patent are valid and would be infringed by Fresenius Kabi's proposed generic product, this decision is currently pending appeal and there is no guarantee that other similar or future litigation will be resolved in our favor. In addition, we filed a complaint for patent infringement of certain CINVANTI patents against Azurity Pharmaceuticals, Inc., Azurity Pharmaceuticals India LLP f/k/a Slayback Pharma India LLP, and Slayback Pharma LLC (collectively, "Azurity") in connection with its new drug application ("NDA") submission to the FDA under

Section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (the “FDCA”). On June 1, 2026, the District Court issued a decision holding that the Company’s asserted claims of Azurity’s infringement of the ’255 Patent and the ’520 Patent are invalid under 35 U.S.C. § 112. The Court also entered a final judgment declaring that the asserted claims of U.S. Patent Nos. 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; and 11,744,800 are not infringed. On June 30, 2026, the Company appealed both final judgments to the U.S. Court of Appeals for the Federal Circuit. On July 31, 2026, the appeals were consolidated. The consolidated appeal is in its early stages, and the parties have not yet submitted any briefing. While the Company intends to vigorously enforce its intellectual property rights relating to CINVANTI, there can be no assurance that this matter will be resolved in the Company’s favor. An adverse outcome could have a material effect on the Company’s business, results of operations and financial position. In addition, the Company has entered into settlement agreements in connection with patent infringement litigations related to ANDA filings from (i) Mylan with respect to CINVANTI and APONVIE, (ii) Qilu with respect to CINVANTI and APONVIE and (iii) Baxter with respect to CINVANTI, and such settlements are not impacted by the U.S. District Court for the District of Delaware’s June 1, 2026 decision on the Company’s patent infringement litigation against Azurity with respect to certain CINVANTI patents. For more information about the Company’s patent litigations, see “Part I. Item 3. Legal Proceedings” in our 2025 Annual Report and “Part II. Item 1. Legal Proceedings” in subsequent Quarterly Reports on Form 10-Q.

If the Company is unsuccessful in demonstrating infringement of its patents by an ANDA or 505(b)(2) product, or the validity of the Company’s patents is successfully challenged, lower-cost generic versions of our Products may be launched commercially and may compete with our Products, as they may be favored by insurers and third-party payors, which would significantly harm our business.

If we are unable to adequately protect or enforce our intellectual property rights, we may lose valuable assets or incur costly litigation to protect our rights.

Our policy is to actively seek patent protection in the U.S. and selected foreign countries, to obtain coverage for novel technologies and compositions of matter that may be commercially important to the development of our business. Granted patents include claims covering the product composition, methods of use and methods of preparation. Our existing patents may not cover future products, additional patents may not be issued and current patents, or patents issued in the future, may not provide meaningful protection or prove to be of commercial benefit.

The patent positions of pharmaceutical companies, including ours, are uncertain and involve complex legal and factual questions. In addition, the coverage claimed in a patent application can be significantly changed or reduced before the patent is issued. Consequently, our patent applications may not issue into patents, and any issued patents may not provide sufficient protection for our product candidates or provide sufficient protection to afford us a commercial advantage against competitive technologies or may be held invalid if challenged or circumvented. Patent applications in the U.S. are maintained in confidence by the U.S. Patent and Trademark Office for at least 18 months after their filing. Consequently, we cannot be certain that the patent applications we are pursuing will lead to the issuance of any patent or that the claimed inventions will be free from infringement or other claims from other parties. Our competitors may also independently develop products similar to ours or design around or otherwise circumvent patents issued to us or controlled (e.g., licensed) by us. In addition, the laws of some foreign countries may not protect our proprietary rights to the same extent as U.S. laws.

We may have to enforce and defend our intellectual property rights against third parties who infringe our patents and other intellectual property or who challenge our patents or trademarks. For example, in the U.S., manufacturers of putative generics of innovator drug products (including products in which the innovation comprises a new drug delivery method for an existing product, such as the drug delivery market occupied by us) may file Abbreviated New Drug Applications (“ANDA”) (or New Drug Applications pursuant to Section 505(b)(2) of the FDCA) and, in doing so, certify that their products either do not infringe the innovator’s patents and/or that the innovator’s patents are invalid. Under the Hatch-Waxman Act, the owners of patents listed in the FDA’s publication “Approved Drug Products With Therapeutic Equivalence Evaluations (“Orange Book”) and referenced by an ANDA applicant (or a 505(b)(2) applicant) may bring patent infringement suit, commonly known as “Paragraph IV Litigation,” against the applicant after receipt of the applicant’s notice of paragraph IV certification. Paragraph IV litigations, of which there are often multiple in process by several applicants covering similar patents, could result in new or additional generic competition to any of our products and our product candidates and a potential reduction in product revenue.

For example, on July 27, 2022, we filed a complaint for patent infringement of certain CINVANTI patents against Fresenius Kabi and a related entity in the District of Delaware in response to Fresenius Kabi’s ANDA application seeking FDA approval to manufacture, use or sell a generic version of CINVANTI in the U.S. prior to expiration of the CINVANTI patents, including U.S.

Patent Nos. 9,561,229 (the "'229 Patent") and 9,974,794 (the "'794 Patent"). While in December 2024, the District Court found that the Company's '229 Patent and '794 Patent are valid and would be infringed by Fresenius Kabi's proposed generic product, this decision is currently pending appeal and there is no guarantee that other similar or future litigation will be resolved in our favor. Similarly, on January 24, 2024, we filed a complaint for patent infringement of certain CINVANTI patents, U.S. Patent Nos. 12,115,255 (the "'255 Patent") and 12,290,520 (the "'520 Patent"), against Azurity in the District of Delaware in response to Azurity's New Drug Application ("NDA") submission to the FDA under Section 505(b)(2) of the FDCA. On June 1, 2026, the District Court issued a decision holding that the Company's asserted claims of Azurity's infringement of the '255 Patent and the '520 Patent are invalid under 35 U.S.C. § 112. The Court also entered a final judgment declaring that the asserted claims of U.S. Patent Nos. 9,561,229; 9,808,465; 9,974,742; 9,974,793; 9,974,794; 10,500,208; 10,624,850; 10,953,018; 11,173,118; and 11,744,800 are not infringed. On June 30, 2026, the Company appealed both final judgments to the U.S. Court of Appeals for the Federal Circuit. On July 31, 2026, the appeals were consolidated. The consolidated appeal is in its early stages, and the parties have not yet submitted any briefing. While the Company intends to vigorously enforce its intellectual property rights relating to CINVANTI, there can be no assurance that this matter will be resolved in the Company's favor. An adverse outcome could have a material effect on the Company's business, results of operations and financial position. In addition, the Company has entered into settlement agreements in connection with patent infringement litigations related to ANDA filings from (i) Mylan with respect to CINVANTI and APONVIE, (ii) Qilu with respect to CINVANTI and APONVIE and (iii) Baxter with respect to CINVANTI, and such settlements are not impacted by the District Court's June 1, 2026 decision with respect to certain CINVANTI patents. For more information about the Company's patent litigations, see "Part I. Item 3. Legal Proceedings" in our 2025 Annual Report and "Part II. Item 1. Legal Proceedings" in subsequent Quarterly Reports on Form 10-Q.

We may enter into collaborative agreements that may subject us to obligations that must be fulfilled and require us to manage complex relationships with third parties. In the future, if we are unable to meet our obligations or manage our relationships with our collaborators under these agreements our revenue may decrease. The loss or diminution of our intellectual property rights could result in a decision by our third-party collaborators to terminate their agreements with us. In addition, these agreements are generally complex and contain provisions that could give rise to legal disputes, including potential disputes concerning ownership of intellectual property and data under collaborations. Such disputes can lead to lengthy, expensive litigation or arbitration, requiring us to divert management time and resources to such dispute.

Because the patent positions of pharmaceutical and biotechnology companies involve complex legal and factual questions, enforceability of patents cannot be predicted with certainty. The ultimate degree of patent protection that will be afforded to products and processes, including ours, remains uncertain and is dependent on the scope of protection decided on by the patent offices, courts and lawmakers in the U.S. and other countries in which we seek patent protection. The America Invents Act, which was enacted in 2011 and reformed certain patent laws in the U.S., may create additional uncertainty. Patents, if issued, may be challenged, invalidated or circumvented. As more products are commercialized using our proprietary product platforms, or as any product achieves greater commercial success, our patents become more likely to be subject to challenge by potential competitors.

We also rely on trade secrets, technical know-how and continuing technological innovation to develop and maintain our competitive position. We require our employees, consultants, advisors and collaborators to execute appropriate confidentiality and assignment-of-inventions agreements with us. These agreements typically provide that all materials and confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances, and that all inventions arising out of the individual's relationship with us shall be our exclusive property. These agreements may be breached, and in some instances, we may not have an appropriate remedy available for such breach. Furthermore, our competitors may independently develop substantially equivalent proprietary information and techniques, reverse engineer our information and techniques, or otherwise gain access to our proprietary technology. We may be unable to meaningfully protect our rights in trade secrets, technical know-how and other non-patented technology. We may have to resort to litigation to protect our intellectual property rights, or to determine their scope, validity or enforceability. In addition, interference proceedings declared by the U.S. Patent and Trademark Office may be necessary to determine the priority of inventions with respect to our patent applications. Enforcing or defending our proprietary rights is expensive, could cause diversion of our resources and may not prove successful. In addition, courts outside the U.S. may be less willing to protect trade secrets. Costly and time-consuming litigation could be necessary to seek to enforce and determine the scope of our proprietary rights. Any failure to enforce or protect our rights could cause us to lose the ability to exclude others from using our technology to develop or sell competing products.

We may be subject to claims that we have infringed on the intellectual property rights of others, and any litigation could force us to stop developing or selling potential products and could be costly, divert management attention and harm our business.

We must be able to develop products without infringing the proprietary rights of other parties. Because the markets in which we operate involve established competitors with significant patent portfolios, including patents relating to the composition of a variety of polymers, specific products, product groups and processing technology, it could be difficult for us to use our technologies or develop products without infringing the proprietary rights of others. Therefore, there is risk that third parties may make claims of infringement against our products, our product candidates or our technologies. We may not be able to design around the patented technologies or inventions of others, and we may not be able to obtain licenses to use patented technologies on acceptable terms, or at all. If we cannot operate without infringing the proprietary rights of others, we will not be able to develop or commercialize some or all of our product candidates, and consequently will not be able to earn product revenue.

There is considerable uncertainty within the pharmaceutical industry about the validity, scope and enforceability of many issued patents in the U.S. and elsewhere in the world. We cannot currently determine the ultimate scope and validity of patents that may be granted to third parties in the future or which patents might be asserted to be infringed by any future manufacture, use or sale of our products and our product candidates. In part, and as a result of this uncertainty, there has been, and we expect that there may continue to be, significant litigation in the pharmaceutical industry regarding patents and other intellectual property rights.

If we are required to defend ourselves in a patent-infringement lawsuit, we could incur substantial costs, and the lawsuit could divert management attention, regardless of the lawsuit's merit or outcome. These legal actions could seek damages and seek to enjoin testing, manufacturing and marketing of the accused product or process. In addition to potential liability for significant damages, we could be required to redesign affected products or obtain a license to continue to manufacture or market the accused product or process and any license required under any such patent may not be made available to us on acceptable terms, if at all. Competitors may sue us as a way of delaying the introduction of our products and our product candidates into the market. Any litigation, including any interference or derivation proceedings to determine priority of inventions, oppositions or other post-grant review proceedings to patents in the U.S. or in countries outside the U.S., or litigation against our partners may be costly and time-consuming and could harm our business. We expect that litigation may be necessary in some instances to determine the validity and scope of certain of our proprietary rights. Litigation may be necessary in other instances to determine the validity, scope and/or non-infringement of certain patent rights claimed by third parties to be pertinent to the manufacture, use or sale of our products and our product candidates. For more information about the Company's patent litigations, see "Part I. Item 3. Legal Proceedings" in our 2025 Annual Report and "Part II. Item 1. Legal Proceedings" in subsequent Quarterly Reports on Form 10-Q. Ultimately, the outcome of such litigation could adversely affect the validity and scope of our patent or other proprietary rights or hinder our ability to manufacture and market our Products and our product candidates.

Periodically, we review publicly available information regarding the development efforts of others to determine whether these efforts may violate our proprietary rights. We occasionally determine that litigation is necessary to enforce our proprietary rights against others. Such litigation can result in substantial expense, regardless of its outcome, and may not be resolved in our favor.

Our business strategy may include acquisitions or dispositions of businesses, products or product licenses or entering into other strategic transactions. We may not be able to successfully manage such activities.

We may engage in strategic transactions that could cause us to incur contingent liabilities, commitments or significant expense. In the course of pursuing strategic opportunities, we may evaluate potential acquisitions, dispositions, licenses or investments in strategic technologies, products or businesses or enter into other strategic transactions. Future acquisitions, dispositions, licenses, investments or other strategic transactions could subject us to a number of risks, including, but not limited to:

- our inability to appropriately evaluate and take into consideration the potential uncertainties associated with the other party to such a transaction, including, but not limited to, the prospects of that party and their existing products or product candidates and regulatory approvals;
- difficulties associated with realizing the perceived potential for commercial success with respect to any acquired or licensed technology, product or business or strategic transaction;
- our ability to effectively integrate any new technology, product and/or business including personnel, intellectual property or business relationships into our Company;
- our inability to generate revenues from acquired or licensed technology and/or products sufficient to meet our objectives in undertaking the acquisition or license or even to offset the costs associated with any strategic transaction and/or assumption of

liabilities; and

- the distraction of our management from our existing product development programs and initiatives in pursuing an acquisition, disposition, license or other strategic transaction.

As disclosed in the Company's press release dated August 10, 2026, the Company is considering strategic alternatives as it continues to execute on its current business plan. This process is ongoing with no set timetable and there can be no assurance that the process will result in the consummation of any transaction, or that any transaction that may be completed will be on terms favorable to our stockholders, or at all. This strategic review process may also adversely affect our relationship with employees, customers, lenders, business partners and other stakeholders, our ability to retain and motivate personnel, or our ability to execute our operational initiatives. The uncertainty of the outcome of the strategic review process, including the possibility that no transaction will be completed, may also contribute to increased volatility in the market price of our common stock. Further, the availability, timing and valuation of any strategic alternative may be adversely affected by our operating performance, liquidity, litigation and regulatory exposure and other risks as described in this Quarterly Report on Form 10-Q and in our most recent Annual Report on Form 10-K, any of which could limit perceived strategic options or reduce potential transaction value.

Moreover, in connection with any acquisition, disposition, license or strategic transaction, we must estimate the value of the transaction by making certain assumptions that may prove to be incorrect, which could cause us to fail to realize the anticipated benefits of a transaction. Any strategic transaction we may pursue may not result in the benefits we initially anticipate, may result in costs that end up outweighing the benefits and may adversely impact our financial condition and be detrimental to our future business prospects.

Provisions contained in our debt instruments may have a negative impact on our business.

Our Working Capital Facility Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, and dividends and other distributions, subject to certain exceptions. Our 2031 Convertible Notes also contain provisions that trigger events of default for incurring certain additional indebtedness or any default of our obligations under certain material agreements we may enter into. As a result, we may not be able to raise funds through the issuance of additional debt in the future, which could impair our ability to finance our business obligations or pursue business expansion initiatives. In addition, our Working Capital Facility Agreement contains a minimum cash covenant, a minimum revenue covenant and a minimum EBITDA covenant. On August 7, 2026, we entered into a Waiver, Consent, and Fourth Amendment to the Working Capital Facility Agreement (the "Fourth Amendment to the Working Capital Facility Agreement") to the Initial Working Capital Facility Agreement, as amended by the First Amendment to the Working Capital Facility Agreement, the Second Amendment to the Working Capital Facility Agreement and the Third Amendment to the Working Capital Facility Agreement. The Fourth Amendment to the Working Capital Facility Agreement, among other things waives the minimum revenue and minimum EBITDA financial covenants for the fiscal quarter ended June 30, 2026 and revises the minimum revenue covenant, the minimum EBITDA covenant and the minimum cash covenant effective as of the reporting period ending August 31, 2026.

Our ability to comply with these restrictions and covenants, including meeting any financial ratios and tests, may be affected by events beyond our control. We cannot provide any assurances that we will be able to maintain compliance with such restrictions and covenants in the future or that we will be able to obtain waivers or amendments of such covenants. In the event of a default under the Working Capital Facility Agreement or any future debt agreement, our lenders could declare all outstanding principal, together with accrued and unpaid interest, to be immediately due and payable. If the payment of the debt is accelerated, cash flows from our operations may be insufficient to repay such debt in full.

We may not be able to satisfy the continued listing requirements of Nasdaq to maintain a listing of our common stock.

As a company listed on the Nasdaq Capital Market, we must meet certain financial and liquidity criteria to maintain such listing. On June 25, 2026, we received a letter from Nasdaq, notifying us that, for the previous 30 consecutive business days prior to the date of the letter, the closing bid price of our common stock was below \$1.00 and that we did not meet the minimum bid price required for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2). In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have been provided an initial period of 180 calendar days, or until December 22, 2026, to regain compliance with Nasdaq's bid price requirement. If, at any time before December 22, 2026, the bid price for our common stock closes at \$1.00 or more for a minimum of 10 consecutive business days, we will regain compliance with the bid price requirement. If we are unable to regain compliance during this initial 180-calendar day compliance period, we may be eligible for an additional 180-calendar day

compliance period, subject to meeting other continued listing standards and providing written notice to Nasdaq of our intent to cure the deficiency.

While the Company intends to monitor the closing bid price of its common stock and is considering its options to regain compliance on or before December 22, 2026, there are no assurances that the Company will be able to regain compliance with the minimum bid price requirement or that it would continue to meet other requirements for continued listing on Nasdaq. If we are unable to satisfy the Nasdaq criteria for continued listing, our common stock would be subject to delisting. Any perception that we may not regain compliance or a delisting of our common stock could negatively impact us by, among other things, reducing the liquidity and market price of our common stock; reducing the number of investors willing to hold or acquire our common stock, which could negatively impact our ability to raise equity financing; decreasing the amount of news and analyst coverage of us; and limiting our ability to issue additional securities or obtain additional financing in the future. In addition, delisting from Nasdaq may negatively impact our reputation and, consequently, our business.

Present and future healthcare legislative and regulatory reimbursement reform measures may have a material adverse effect on our business and results of operations.

On October 31, 2025, the Centers for Medicare and Medicaid Services (“CMS”) issued its final rule for the 2026 calendar-year Physician Fee Schedule (“BFSF Certification Final Rule”), which requires manufacturers to obtain certifications from their third-party vendors confirming that Bona Fide Service Fees (“BFSFs”) associated with Part B drug sales are not passed through, in whole or in part, to any client or customer, regardless of whether that entity takes title to the drug. Initially, manufacturers were required to comply with the BFSF Certification Final Rule beginning January 1, 2026, but the requirement for compliance was later delayed to April 1, 2026. In addition to submitting these certifications to CMS, manufacturers must maintain detailed documentation supporting the reasonable assumptions used to calculate Average Sales Price (“ASP”), including the methodologies used to classify BFSFs for each applicable contract. These new requirements may increase the risk that certain fees could be reclassified as price concessions, which would negatively affect a product’s ASP. Any such reclassification could reduce future reimbursement for our product(s) under Medicare Part B, which may materially and adversely impact our revenue.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION*Rule 10b5-1 Trading Plans*

During the three months ended June 30, 2026, no new Rule 10b5-1 trading arrangements (as defined in Item 408(a)(1)(i) of Regulation S-K) and non-Rule 10b5-1 trading arrangements (as defined in Item 408(c) of Regulation S-K) intended to satisfy the affirmative defense of Rule 10b5-1(c) of the Exchange Act were adopted or terminated by our directors and/or executive officers (as defined in Section 16 of the Exchange Act).

During the three months ended June 30, 2026, the Company did not adopt or terminate a Rule 10b5-1 trading arrangement (as defined in Item 408(a)(1)(i) of Regulation S-K).

ITEM 6. EXHIBITS

The exhibits listed on the Exhibit Index hereto are filed or furnished (as stated therein) as part of this Quarterly Report on Form 10-Q.

Exhibit Number	Description
31.1+	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2+	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1++	Certifications of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
10.1+*	Amendment No. 1 to Framework Agreement, dated November 13, 2025, by and between Heron Therapeutics, Inc. and Patheon Austria GmbH & Co KG
10.2+*	Amendment No. 2 to Framework Agreement, dated July 20, 2026, by and between Heron Therapeutics, Inc. and Patheon Austria GmbH & Co KG
10.3+*	Waiver, Consent, and Fourth Amendment to the Working Capital Facility Agreement, dated August 7, 2026, by and between Heron Therapeutics, Inc. and Hercules Capital, Inc., as administrative agent, collateral agent, and lender
101.INS	XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document included as Exhibit 101)

+ Filed herewith

++ Furnished herewith

* Certain information has been omitted from the exhibit in compliance with Item 601(b)(10) of Regulation S-K. The omitted information is not material and would likely cause competitive harm to the Company if publicly disclosed.

† Management contract or compensatory plan, contract or arrangement.

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 thereunto duly authorized.

Heron Therapeutics, Inc.

Date: August 10, 2026

By: /s/ Craig Collard

Craig Collard
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Ira Duarte

Ira Duarte
Executive Vice President, Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

[*] INDICATES THAT INFORMATION HAS BEEN REDACTED.**

**AMENDMENT NO. 1 TO
FRAMEWORK AGREEMENT**

This Amendment No. 1 to the Framework Agreement (this “***Amendment***”) is made effective on the last date of mutual signature below (the “***Amendment Effective Date***”), by and between Heron Therapeutics, Inc., a Delaware corporation (“***Heron***”) and Patheon Austria GmbH & Co KG (“***Patheon***”). Patheon and Heron are each sometimes referred to herein as a “***Party***” and collectively as the “***Parties***”.

WHEREAS, the Parties entered into that certain Framework Agreement, with an effective date of August 6, 2025 (the “***Agreement***”); and

WHEREAS, the Parties now desire to amend the Agreement accordingly, but only in strict accordance with, and as more particularly described in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, the Parties mutually agree as follows:

1. **Section 7.1(c) and Exhibit A.** Provided Patheon receives cleared funds of [***] from Heron in calendar year 2025, in accordance with the payment schedule in Exhibit A of the Agreement,

(a) the definition of “[***] Purchase Price” in Section 7.1(c) of the Agreement will, as of the Amendment Effective Date, be amended as follows, and

*7.1(c) “[***] Purchase Price” means (i) [***], less (ii) the aggregate of any adjustments to the Monthly Payments as set forth in Section 2.4.*

(b) **Exhibit A** of the Agreement shall, as of the Amendment Effective Date, be hereby deleted in its entirety and replaced with new **Exhibit A** as attached hereto and incorporated herein.

2. **Entire Agreement; Amendment.** Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement. This Amendment taken together with the Agreement constitutes the full and complete agreement and understanding between the Parties and shall supersede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the subject matter contained in this Amendment and the Agreement, as so amended. No provision of the Agreement as so amended may be modified, amended, waived or discharged, in whole or in part, except by a written instrument executed by the Parties. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions shall continue in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Effective Date.

PATHEON:

PATHEON AUSTRIA GMBH & CO KG.

By: Gerald Reiter
Title: _____
Signature: /S/ Gerald Reiter
Date: _____

By: Klaus Hilber
Title: _____
Signature: /s/ Klaus Hilber
Date: _____

HERON:

HERON THERAPEUTICS, INC.

By: Craig Collard
Title: _____
Signature: /s/ Craig Collard
Date: _____

EXHIBIT A SETTLEMENT AMOUNT

[**]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

[***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

**AMENDMENT NO. 2
TO THE FRAMEWORK AGREEMENT**

This Amendment No. 2 to the Framework Agreement (this “**Amendment**”) is made effective on the last date of mutual signature below (the “**Amendment Effective Date**”), by and between Heron Therapeutics, Inc., a Delaware corporation (“**Heron**”) and Patheon Austria GmbH & Co KG (“**Patheon**”). Patheon and Heron are each sometimes referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, the Parties entered into that certain Framework Agreement, with an effective date of August 6, 2025, as amended by Amendment No. 1 effective November 13, 2025 (the “**Agreement**”); and

WHEREAS, the Parties now desire to amend the Agreement accordingly, but only in strict accordance with, and as more particularly described in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, the Parties mutually agree as follows:

1. Deferral Option.

- (a) Heron may elect to defer the [***] Monthly Payment, amounting to [***] (the “[***] **Monthly Payment**”), and the [***] Monthly Payment, amounting to [***] (the “[***] **Monthly Payment**”) (each referred to as a “**Deferred Monthly Payment**”), payable under the Agreement by providing written notice to Patheon on or before [***] (the “**Deferral Notice**”).
 - (b) If Heron timely delivers the Deferral Notice, with effect from the date of the Deferral Notice:
 - (i) the [***] Monthly Payment will instead be due in [***] and the [***] Monthly Payment will instead be due in [***] (referred to as the “[***] **Monthly Payment**”);
 - (ii) Heron will pay the Deferral Fee set out in Table 1 below. The Deferral Fee is separate from and in addition to the Settlement Amount and constitutes consideration payable by Heron in connection with the deferral option provided hereunder. The respective portion of the Deferral Fee associated with the applicable Deferred Monthly Payment in Table 1 herein will be due and payable together with the applicable Deferred Monthly Payment;
-

- (iii) the provisions of the Agreement identified in Table 2 below will be interpreted and applied as set out therein; and
- (iv) the table titled [***] in **Exhibit B** of the Agreement will be deleted in its entirety and replaced with the following [***] table:

[***]

- (v) the table of Monthly Payments in **Exhibit A** of the Agreement will be deleted and replaced with the table of Monthly Payments in **Exhibit A** as attached hereto.
- (c) If Heron does not timely deliver the Deferral Notice, this Amendment shall be null and void and thus the [***] Monthly Payment and the [***] Monthly Payment remain due and payable in accordance with the Agreement without giving effect to this Section 1, and no Deferral Fee will be payable.
- (d) Notwithstanding Heron's timely delivery of the Deferral Notice, all references in the Agreement relating to storage fees and warehousing charges remain unchanged and in full force and effect; thus, storage fees will accrue from [***] in accordance with the Agreement and the Warehousing Services Agreement.

Table 1: Deferral Fee

[***]

Table 2: Effect of the Deferral Notice on Certain Provisions of the Agreement

[***]

2. Entire Agreement; Amendment. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement. This Amendment taken together with the Agreement constitutes the full and complete agreement and understanding between the Parties and shall supersede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the subject matter contained in this Amendment and the Agreement, as so amended. No provision of the Agreement as so amended may be modified, amended, waived or discharged, in whole or in part, except by a written instrument executed by the Parties. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions shall continue in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Effective Date.

PATHEON:

PATHEON AUSTRIA GMBH & CO KG.

By: Gerald Reiter
Title: _____
Signature: /s/ Gerald Reiter
Date: _____

By: Klaus Hilber
Title: _____
Signature: /s/ Klaus Hilber
Date: _____

HERON:

HERON THERAPEUTICS, INC.

By: Craig Collard
Title: _____
Signature: /s/ Craig Collard
Date: _____

EXHIBIT A

[***]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.

*** INDICATES THAT INFORMATION HAS BEEN REDACTED.

Execution Version

WAIVER, CONSENT, AND FOURTH AMENDMENT TO WORKING CAPITAL FACILITY AGREEMENT

THIS WAIVER, CONSENT AND FOURTH AMENDMENT TO WORKING CAPITAL FACILITY AGREEMENT (this “**Amendment**”), dated as of August 7, 2026 (the “**Fourth Amendment Execution Date**”), is made among HERON THERAPEUTICS, INC., a Delaware corporation (the “**Borrower**”), HERCULES CAPITAL, INC. (“**Hercules**”), in its capacity as administrative agent and collateral agent for itself and Lenders (in such capacity, together with its successors and assigns, the “**Agent**”) and the financial institutions or entities from time to time party hereto, including Hercules in its capacity as a Lender (each a “**Lender**” and collectively, the “**Lenders**”).

A. Borrower, Lenders and Agent are parties to that certain Working Capital Facility Agreement, dated as of August 9, 2023 (the “**Existing Agreement**”); and the Existing Agreement, as amended by that certain First Amendment to Working Capital Facility, dated February 13, 2025, as further amended by that certain Second Amendment to Working Capital Facility, dated August 8, 2025, as further amended by that certain Third Amendment to Working Capital Facility Agreement, dated January 30, 2026, and as further amended by this Amendment and as further amended, restated, supplemented or otherwise modified from time to time, the “**Agreement**”).

B. At the request of Borrower, and on a one-time basis only, Agent and Lenders have agreed to waive compliance by Borrower with the following covenants: (i) Section 7.21(b) (Minimum Revenue) of the Existing Agreement and (ii) Section 7.21(c) (Minimum EBITDA) of the Existing Agreement, in each case solely with respect to the test date occurring on June 30, 2026 (collectively, the “**Specified Covenants**”).

C. Borrower desires to enter into the *** Agreement (as defined herein), pursuant to which Borrower will acquire an *** of the *** in respect of the Initial Product (as defined herein). Section 7.6 of the Existing Agreement, together with the definitions of “Permitted Investment” and “Permitted Acquisition”, require Borrower to obtain the consent of Agent in order for Borrower to enter into the *** Agreement, and Borrower has requested that Agent and the Required Lenders provide such consent, subject to, and in accordance with, the terms and conditions set forth herein, and in reliance upon the representations and warranties set forth herein.

D. Borrower, Lenders and Agent desire to modify the terms of the Existing Agreement as set forth in this Amendment.

SECTION 1 Definitions; Interpretation.

(a) **Terms Defined in Agreement.** All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

(b) **Rules of Construction.** The rules of construction that appear in the last paragraph of Section 1.1 of the Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

SECTION 2 Waiver. Subject to the terms and conditions hereof, including the conditions precedent set forth in Section 5 below, Agent and the Lenders hereby waive the requirement for Borrower to comply with the Specified Covenants, and no Default or Event of Default shall be deemed to have arisen or to exist solely as a result of Borrower’s failure to comply with the Specified Covenants. The waiver set forth in this Section 2 is a one-time waiver limited to the Specified Covenants, shall not constitute a waiver of any other covenant or of any other Default or Event of Default, whether now existing or hereafter arising and whether or not arising from the same or similar facts or circumstances, and shall not be deemed to be a continuing waiver or a waiver of any

failure to comply with Section 7.21 of the Agreement with respect to any other test date. The waiver set forth in this Section 2 does not constitute, and shall not be construed as, an amendment, modification, suspension or novation of Section 7.21 or any other provision of the Agreement, each of which remains in full force and effect in accordance with its terms.

SECTION 3Consent. Subject to the terms and conditions hereof, including the conditions precedent set forth in Section 5 below and the post-closing requirements set forth in Section 8 below, Agent and the Lenders hereby consent to Borrower's execution, delivery and performance of the [***] Agreement and to the transactions contemplated thereby, notwithstanding Section 7.6 of the Agreement and the definitions of "Permitted Investment" and "Permitted Acquisitions", and agree that the acquisition of the [***] pursuant to the [***] Agreement shall constitute a Permitted Acquisition and a Permitted Investment for all purposes of the Agreement. The consent set forth in this Section 3 (a) shall not become effective unless and until Agent has delivered to Borrower its written approval of the final definitive [***] Agreement and the other deliverables required by Section 8(b), which approval Agent and the Required Lenders may grant or withhold in their sole discretion, (b) is limited to the specific transaction described herein and shall not be deemed to be a consent to any other Acquisition, Investment, Transfer or license and (c) shall not be deemed to be a consent to any amendment, restatement, supplement or other modification of the [***] Agreement.

SECTION 4Amendments to the Agreement.

(a) Upon satisfaction of the conditions set forth in Section 5 hereof, the Existing Agreement will be amended as follows:

(i) Exhibit A attached hereto sets forth a clean copy of the Agreement as amended hereby;

(ii) In Exhibit B hereto, deletions of the text in the Existing Agreement (including, to the extent included in such Exhibit B, each Schedule or Exhibit to the Existing Agreement) are indicated by ~~struck-through text~~, and insertions of text are indicated by **bold, double-underlined text**.

(b) **References Within Existing Agreement.** Each reference in the Existing Agreement to "this Agreement" and the words "hereof," "herein," "hereunder," or words of like import, shall mean and be a reference to the Existing Agreement as amended by this Amendment. This Amendment shall be a Loan Document.

SECTION 5Conditions of Effectiveness. The effectiveness of Sections 2, 3 and 4 of this Amendment (the date on which such conditions are satisfied, the "Fourth Amendment Effective Date") shall be subject to the satisfaction of each of the following conditions precedent:

(a) Agent's receipt of:

(i) this Amendment, executed by Agent, Lenders and Borrower;

(ii) certified copy of resolutions of Borrower's board of directors or managers, as applicable evidencing approval of this Amendment and other transactions evidenced hereby;

(iii) a certificate of good standing for Borrower from its state of incorporation and similar certificates from all other jurisdictions in which it does business and where the failure to be qualified could reasonably be expected to have a Material Adverse Effect;

(iv) evidence satisfactory to Agent that Borrower has enrolled in Plaid automatic bank connection via Lumonic with respect to each of its Deposit Accounts and accounts holding Investment Property or, to the extent Borrower is unable to so enroll any such account, that Agent has been granted view-only access to each such account;

(b) Borrower shall have paid (i) all invoiced reasonable out-of-pocket costs and expenses then due in accordance with Section 7(e), and (ii) all other invoiced reasonable out-of-pocket fees, costs and expenses, if any, due and payable as of the Fourth Amendment Effective Date under the Agreement;

(c) Borrower shall have paid the Fourth Amendment Voluntary Paydown in accordance with Section 2.5(f) of the Agreement; and

(d) On the Fourth Amendment Effective Date, after giving effect to the waiver, consent and amendment of the Existing Agreement contemplated hereby:

(i) The representations and warranties contained in Section 6 shall be true and correct on and as of the Fourth Amendment Effective Date as though made on and as of such date; and

(ii) After giving effect to the waiver of compliance with the Specified Covenants, there exist no Events of Default or events that with the passage of time would result in an Event of Default.

SECTION 6 Representations and Warranties. To induce Agent and Lenders to enter into this Amendment, Borrower hereby confirms, as of the date hereof, (a) that the representations and warranties made by it in Section 5 of the Agreement and in the other Loan Documents are true and correct in all material respects; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; *provided, further*, that to the extent such representations and warranties by their terms expressly relate only to a prior date such representations and warranties shall be true and correct as of such prior date, and that, after giving effect to the waiver of compliance with the Specified Covenants, no Event of Default has occurred and is continuing; (b) that there does not exist a Material Adverse Effect; (c) Lenders have and shall continue to have valid, enforceable and perfected first-priority liens, subject only to Permitted Liens, on and security interests in the Collateral pursuant to the Loan Documents; (d) the agreements and obligations of Borrower contained in the Loan Documents and in this Amendment constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by the application of general principles of equity; (e) the execution, delivery and performance of this Amendment by Borrower will not violate any law, rule, regulation, order, contractual obligation or organizational document of Borrower and will not result in, or require, the creation or imposition of any lien, claim or encumbrance of any kind on any of its properties or revenues; and (f) the [***] Agreement delivered to Agent pursuant to Section 5 is a true, correct and complete copy thereof, and the aggregate consideration payable by Borrower thereunder does not exceed the amounts set forth in the definition of "[***] Agreement". For the purposes of this Section 6, each reference in Section 5 of the Agreement to "this Agreement," and the words "hereof," "herein," "hereunder," or words of like import in such Section, shall mean and be a reference to the Agreement as amended by this Amendment.

SECTION 7 Miscellaneous.

(a) Loan Documents Otherwise Not Affected; Reaffirmation; Grant of Security Interest; No Novation.

(i) Except as expressly amended pursuant hereto or referenced herein, the Agreement and the other Loan Documents shall remain unchanged and in full force and effect and are hereby ratified and confirmed in all respects. The Lenders' and Agent's execution and delivery of, or acceptance of, this Amendment shall not be deemed to create a course of dealing or otherwise create any express or implied duty by any of them to provide any other or further amendments, consents or waivers in the future.

(ii) Borrower hereby expressly (1) reaffirms, ratifies and confirms its Secured Obligations under the Agreement and the other Loan Documents, (2) reaffirms, ratifies and confirms the grant of security under Section 3.1 of the Agreement, Section 2 of the Pledge Agreement and Section 1 of the Intellectual Property Security Agreement, (3) reaffirms that such grant of security in the Collateral secures all Secured Obligations under the Agreement, including without limitation any Term Loans funded on or after the Fourth Amendment Execution Date and the Fourth Amendment Effective Date, as of the date hereof, and with effect from (and including) the Fourth Amendment Execution Date and the Fourth Amendment Effective Date, such grant of security in the Collateral: (x) remains in full force and effect notwithstanding the amendments expressly referenced herein; and (y) secures all Secured Obligations under the Agreement, as amended by this Amendment, and the other Loan Documents, (4) agrees that this Amendment shall be a "Loan Document" under the Agreement and (5) agrees that the Agreement and each other Loan Document shall remain in full force and effect following any action contemplated in connection herewith.

(iii) As security for the prompt and complete payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, Borrower grants to Agent a security interest in all of such Borrower's right, title, and interest in, to and under all Collateral, whether now owned or hereafter acquired.

(iv) This Amendment is not a novation and the terms and conditions of this Amendment shall be in addition to and supplemental to all terms and conditions set forth in the Loan Documents. Nothing in this Amendment is intended, or shall be construed, to constitute an accord and satisfaction of Borrower's Secured Obligations under or in connection with the Agreement and any other Loan Document or to modify, affect or impair the perfection or continuity of Agent's security interest in, (on behalf of itself and the Lenders) security titles to or other liens on any Collateral for the Obligations.

(b) **Conditions.** For purposes of determining compliance with the conditions specified in Section 5, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Agent shall have received notice from such Lender prior to the Fourth Amendment Effective Date specifying its objection thereto.

(c) **Release.** In consideration of the agreements of Agent and each Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, on behalf of itself and its successors, assigns, and other legal representatives, hereby fully, absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and each Lender, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, Lenders and all such other persons being hereinafter referred to collectively as the "**Releasees**" and individually as a "**Releasee**"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which Borrower, or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment, including, without limitation, for or on account of, or in relation to, or in any way in connection with the Agreement, or any of the other Loan Documents or transactions thereunder or related thereto. Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above. Borrower waives the provisions of California Civil Code Section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The provisions of this section shall survive payment in full of the Secured Obligations, full performance of all the terms of this Amendment and the other Loan Documents.

(d) **No Reliance.** Borrower hereby acknowledges and confirms to Agent and Lenders that Borrower is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or on behalf of any other Person.

(e) **Costs and Expenses.** Borrower agrees to pay to Agent within ten (10) days of its receipt of an invoice (or on the Fourth Amendment Effective Date to the extent invoiced on or prior to the Fourth Amendment Effective Date), the reasonable out-of-pocket costs and expenses of Agent and Lenders party hereto, and the reasonable fees and disbursements of counsel to Agent and Lenders party hereto (including allocated costs of internal counsel), in connection with the negotiation, preparation, execution and delivery of this Amendment and any other documents to be delivered in connection herewith on the date hereof, the Fourth Amendment Effective Date or after such date.

(f) **Binding Effect.** This Amendment binds and is for the benefit of the successors and permitted assigns of each party.

(g) **GOVERNING LAW.** THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS HAVE BEEN NEGOTIATED AND DELIVERED TO AGENT AND LENDERS IN THE STATE OF CALIFORNIA, AND SHALL HAVE BEEN ACCEPTED BY AGENT AND LENDERS IN THE STATE OF CALIFORNIA. PAYMENT TO AGENT AND LENDERS BY BORROWER OF THE SECURED OBLIGATIONS IS DUE IN THE STATE OF CALIFORNIA. THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN THE WARRANT) SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA, EXCLUDING CONFLICT OF LAWS PRINCIPLES THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY OTHER JURISDICTION.

(h) **Complete Agreement; Amendments.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

(i) **Severability of Provisions.** Each provision of this Amendment is severable from every other provision in determining the enforceability of any provision.

(j) **Counterparts.** This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Amendment. Delivery of an executed counterpart of a signature page of this Amendment by facsimile, portable document format (.pdf) or other electronic transmission will be as effective as delivery of a manually executed counterpart hereof.

(k) **Loan Documents.** This Amendment and the documents related thereto shall constitute Loan Documents.

(l) **Electronic Execution of Certain Other Documents.** The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(m) **Fourth Amendment Voluntary Paydown.** The parties agree that the Fourth Amendment Voluntary Paydown is made solely in consideration of the consents set forth in Section 3 of this Amendment and is not a result of any default or Event of Default.

SECTION 8 Post-Closing Obligations.

(a) Within three (3) Business Days of the Fourth Amendment Effective Date (or such later date as may be agreed by the Agent in its sole discretion), Borrower shall deliver to Agent a duly executed updated Perfection Certificate and each exhibit and addendum thereto.

(b) Within [***] days of the Fourth Amendment Effective Date (or such later date as may be agreed by the Agent in its sole discretion), Borrower shall deliver to Agent (i) a final definitive copy of the [***] Agreement, together with all material agreements entered into in connection therewith, and (ii) written confirmation, in form and substance satisfactory to Agent, that the [***] Agreement does not constitute a [***] and does not prohibit or otherwise restrict (A) the grant by Borrower of a security interest in, or the collateral assignment of, Borrower's rights and interests under the [***] Agreement (including the [***]) or (B) the exercise by Agent or the Lenders of any of their rights or remedies in respect thereof, including any sale, assignment, transfer or [***] of the [***]. Notwithstanding anything to the contrary herein, the consent set forth in Section 3 shall not become effective unless and until Agent has delivered to Borrower its written approval of the deliverables described in this Section 8(b), and if Borrower fails to deliver such items within the period required above, or if

Agent does not deliver such written approval, the consent set forth in Section 3 shall not become effective and shall be of no further force or effect.

(c) Within thirty (30) days of the Fourth Amendment Effective Date (or such later date as may be agreed by the Agent in its sole discretion), Borrower shall deliver to Agent a supplement to the Intellectual Property Security Agreement, in form and substance satisfactory to Agent, duly executed by Borrower.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BORROWER:

HERON THERAPEUTICS, INC.

Signature: /s/ Ira Duarte
Print Name: Ira Duarte
Title: Executive Vice President,
Chief Financial Officer

[SIGNATURES CONTINUE ON THE NEXT PAGE]

[Signature Page to Waiver, Consent and Fourth Amendment to Working Capital Facility Agreement]

AGENT:

HERCULES CAPITAL, INC.

By: /s/ Seth Myers
Name: Seth Meyer
Title: President

LENDERS:

HERCULES CAPITAL, INC.

Signature: /s/ Seth Myers
Name: Seth Meyer
Title: President

HERCULES CAPITAL IV, L.P.,

By: Hercules Technology SBIC
Management, LLC, its General Partner

By: Hercules Capital, Inc., its Manager

Signature: /s/ Seth Myers
Name: Seth Meyer
Title: President

HERCULES PRIVATE CREDIT FUND 1 L.P.

By: Hercules Private Global Venture Growth Fund GP I LLC, its General Partner

Signature: /s/ Seth Myers
Name: Seth Meyer
Title: Authorized Signatory

HERCULES PRIVATE GLOBAL VENTURE GROWTH FUND I L.P.

By Hercules Private Global Venture Growth Fund GP I LLC, its General Partner

Signature: /s/ Seth Myers
Name: Seth Meyer
Title: Authorized Signatory

HERCULES GROWTH LENDING FUND IV LP

By: Hercules Growth Lending Fund GP LLC, its General Partner

Signature: /s/ Seth Myers

Name: Seth Meyer

Title: Authorized Signatory

[Signature Page to Waiver, Consent and Fourth Amendment to Working Capital Facility Agreement]

EXHIBIT A

(See Attached)

WORKING CAPITAL FACILITY AGREEMENT

THIS WORKING CAPITAL FACILITY AGREEMENT is made and dated as of August 9, 2023 and is entered into by and among HERON THERAPEUTICS, INC., a Delaware corporation (“Company”), and each of its Qualified Subsidiaries from time to time party hereto (together with Company, individually or collectively, as the context may require, “Borrower”), the several banks and other financial institutions or entities from time to time party hereto (each, a “Lender”, and collectively “Lenders”) and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and Lenders (in such capacity, including any successors or assigns, “Agent”).

RECITALS

A. Borrower has requested Lenders make available to Borrower up to three (3) tranches of term loans in an aggregate principal amount of up to One Hundred Fifty Million Dollars (\$150,000,000) *plus* the Second Amendment Capitalized PIK Interest Amount (collectively, the “Term Loans”); and

B. Lenders are willing to make the Term Loans on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, Borrower, Agent and Lenders agree as follows:

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Unless otherwise defined herein, the following capitalized terms shall have the following meanings:

“Account Control Agreement(s)” means any agreement entered into by and among Agent, Borrower and a third-party bank or other institution (including a Securities Intermediary) in which Borrower maintains a Deposit Account or an account holding Investment Property and which perfects Agent’s first priority security interest in the subject account or accounts.

“ACH Authorization” means the ACH Debit Authorization Agreement in substantially the form of Exhibit H, which account numbers shall be redacted for security purposes if and when filed publicly by Borrower.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, line of business or division or other unit of operation of a Person, (b) the acquisition of fifty percent (50%) or more of the Equity Interests of any Person, whether or not involving a merger, consolidation or similar transaction with such other Person, or otherwise causing any Person to become a Subsidiary of Borrower, or (c) the acquisition of, or the right to use, develop or sell (in each case, including through licensing (other than “off-the-shelf” licenses)), any product, product line or intellectual property of or from any other Person.

“Adjusted EBITDA” means for any period of determination for Borrower and its Subsidiaries and determined on an consolidated basis and in accordance with GAAP, an amount equal to net income for such period plus (a) the following to the extent deducted in calculating net income: (i) interest expense for such period, (ii) the provision for federal, state, local and foreign income taxes

payable by Borrower and its Subsidiaries for such period, (iii) depreciation and amortization expense, (iv) all non-cash expenses, losses or charges for such period (including any non-cash expense related to stock-based compensation deducted to arrive at net income); (v) fees, costs and expenses incurred in such period in connection with the transactions permitted under the Loan Documents or any Permitted Acquisitions; (vi) fees, costs and expenses incurred in such period in connection with the negotiation, execution and delivery of any amendments or modifications to the Loan Documents and (vii) any non-recurring expenses, losses or charges for such period; provided, that, the aggregate amount of all such expenses, losses and charges that may be added back pursuant to this clause (a)(vii) for any period plus, without duplication, any other inventory write downs, asset impairments or severance included in Adjusted EBITDA for such period shall not exceed \$[***]; minus (b) the following to the extent included in calculating such net income: (i) interest income, (ii) extraordinary or non-recurring non-cash income or gains, (iii) federal, state, local and foreign income tax credits of Borrower and its Subsidiaries for such period, and (iv) all non-cash items increasing net income for such period, minus (c) capitalized expenses in such period.

“Advance(s)” means a Term Loan Advance.

“Advance Date” means the funding date of any Advance.

“Advance Request” means a request for an Advance submitted by Borrower to Agent in substantially the form of Exhibit A, which account numbers shall be redacted for security purposes if and when filed publicly by Borrower.

“Affiliate” means (a) any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question, (b) any Person directly or indirectly owning, controlling or holding with power to vote twenty percent (20%) or more of the outstanding voting securities of another Person, or (c) any Person twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held by another Person with power to vote such securities. As used in this definition, 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.

“Agreement” means this Working Capital Facility Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption, including without limitation the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010 and other similar legislation in any other jurisdictions.

“Anti-Terrorism Laws” means any laws, rules, regulations or orders relating to terrorism or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

[***].

“Bankruptcy Code” means the federal bankruptcy law of the United States as from time to time in effect, currently as Title 11 of the United States Code. Section references to current sections of the Bankruptcy Code shall refer to comparable sections of any revised version thereof if section numbering is changed.

“Blocked Person” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of,

Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“Board of Directors” means, with respect to any Person that is a corporation, its board of directors, with respect to any Person that is a limited liability company, its board of managers, board of members or similar governing body, and with respect to any other Person that is another form of a legal entity, such Person’s governing body in accordance with its Organizational Documents.

“Borrower Products” means all products, software, service offerings, technical data or technology that are currently being designed, developed, tested, manufactured, marketed, advertised, licensed, distributed, promoted or sold by Borrower or any of its Subsidiaries or which Borrower or any of its Subsidiaries intends to designed, develop, test, manufacture, market, advertise, promote, sell, license, or distribute in the future.

“Borrower’s Books” means Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, state, local and foreign tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Business Day” means any day other than Saturday, Sunday and any other day on which banking institutions in the State of California are closed for business.

“Capitalized PIK Interest” means, with respect to any Term Loan Advance, paid-in-kind interest thereon that has been capitalized and added to the principal of such Term Loan Advance pursuant to Section 2.2(d)(ii).

“Cash” means all cash, cash equivalents and liquid funds, in each case, excluding any Digital Assets.

“CFC” means a “controlled foreign corporation” within the meaning of section 957(a) of the Code.

“Change in Control” means (a) at any time, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of Securities Exchange Act of 1934, as amended), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under Securities Exchange Act of 1934, as amended), directly or indirectly, of more than thirty-five percent (35.0%) of the ordinary voting power for the election of directors, partners, managers and members, as applicable, of Company (determined on a fully diluted basis); (b) at any time, Company shall cease to own and control, of record and beneficially, directly or indirectly, free and clear of all Liens (other than Permitted Liens), one hundred percent (100.0%) of the Equity Interests of each Subsidiary of Company (other than as a result of a Permitted Transfer or a transaction permitted under Section 7.9); or (c) the occurrence of a “change of control”, “fundamental change”, “make-whole fundamental change” or any comparable term under and as defined in any Permitted Convertible Debt Document.

“Charter” means, with respect to any Person, such Person’s incorporation, formation or equivalent documents, as in effect from time to time.

[***].

“Closing Date” means the date of this Agreement.

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

“Collateral Claim” means any and all present and future “claims” (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of a Lender now or hereafter arising or existing under or relating to this Agreement and related Loan Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys’ fees and costs, and any prepayment or termination premiums.

“Common Stock” means the Common Stock, \$0.01 par value per share, of Company.

“Compliance Certificate” means a certificate in the form attached hereto as Exhibit E.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any Indebtedness, lease (excluding operating leases of real property), dividend, letter of credit or other obligation of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed, without duplication of the primary obligation, to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement. Notwithstanding the foregoing, no obligation in respect of a Permitted Bond Hedge Transaction or a Permitted Warrant Transaction shall be deemed to be a Contingent Obligation.

“Copyright License” means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

“Copyrights” means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States of America, any State thereof, or of any other country.

“Default” means any event, circumstance or condition that has occurred or exists, that would, with the passage of time or the requirement that notice be given or both, become an Event of Default.

“Deposit Accounts” means any “deposit accounts”, as such term is defined in the UCC, and includes any checking account, savings account, or certificate of deposit.

“Digital Assets” means all cryptocurrencies, virtual currencies, coins, tokens and other digital assets.

“Disqualified Equity Interests” means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests) pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Secured Obligations), (b) are redeemable at the option (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Secured Obligations) of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provide for scheduled payments of dividends in Cash, or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is one hundred eighty (180) days after the Term Loan Maturity Date.

“Division” means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including, without limitation, as contemplated under Section 18-217 of the Delaware Limited Liability Company Act for limited liability companies formed under Delaware law, Section 17-220 of the Delaware Revised Uniform Limited Partnership Act for limited partnerships formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States of America, any State thereof, the District of Columbia, or any other jurisdiction within the United States of America.

“Due Diligence Fee” means a fee in an amount equal to [***] Dollars (\$[***]), which fee has been paid to Agent and received by Agent prior to the Closing Date and shall be deemed fully earned on such date regardless of the early termination of this Agreement.

“Enforcement Action” means, with respect to any Lender and with respect to any Collateral Claim of such Lender or any item of Collateral in which such Lender has or claims a security interest lien or right of offset, any action, whether judicial or nonjudicial, to repossess, collect, accelerate, offset, recoup, give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Collateral Claim or Collateral. The filing, or the joining in the filing, by any Lender of an involuntary bankruptcy or Insolvency Proceeding against Borrower also is an Enforcement Action.

“Equity Interests” means, with respect to any Person, the capital stock, partnership or limited liability company interest, or other equity securities or equity ownership interests of such Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Excluded Accounts” means any of the following Deposit Accounts which are designated as such in writing to Agent as of the Closing Date or, with respect to any Deposit Account opened after the Closing Date, in the next Compliance Certificate delivered after such Deposit Account is opened: (i) Deposit Accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of employees of Borrower or any Subsidiary holding an aggregate amount across all such accounts of not more than amounts needed for the then-next two (2)

payroll cycles, (b) any Deposit Account which is a zero-balance disbursement account so long as the proceeds therein are swept on a daily basis into one or more accounts that are not Excluded Accounts, (c) any Deposit Account which is solely used for disbursements and payments of withheld income taxes, payroll taxes and/or federal, state or local employee taxes, (d) any Deposit Account which is solely used as a trust account, escrow account, or other fiduciary account (including those accounts holding funds representing deferred compensation for directors and employees of Borrower or its Subsidiaries) or (e) any Deposit Account with a balance less than \$[***]; provided that the aggregate balance of all such Deposit Accounts excluded pursuant to this clause (e) shall at no time exceed \$[***].

“Facility Charge” means, with respect to any Advance, a fee in an amount equal to [***]% of the aggregate principal amount of such Advance, which Facility Charge is payable to Lenders pursuant to Section 4.1(i) or 4.2(f), as the case may be.

“FDA” means the U.S. Food and Drug Administration or any successor thereto.

“Foreign Subsidiary” means a Subsidiary other than any Domestic Subsidiary.

“Fourth Amendment” means that certain Waiver, Consent, and Fourth Amendment to Working Capital Facility Agreement, dated as of the Fourth Amendment Effective Date, by and among Borrower, Agent and the Lenders party thereto.

“Fourth Amendment Effective Date” means August 7, 2026.

“Fourth Amendment Voluntary Paydown” has the meaning set forth in Section 2.5(f).

“FSHCO” shall mean any Subsidiary substantially all of the assets of which (directly or through one or more disregarded entities for U.S. federal income tax purposes) consist of Indebtedness and/or Equity Interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof (including the FDA) or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state or locality of the United States, the United States, or a foreign government.

“Guarantor” means any Subsidiary of Borrower that enters into a Guaranty.

“Guaranty” means a guaranty with respect to the Secured Obligations, in form and substance reasonably satisfactory to Agent that may be entered into from time to time, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“Healthcare Laws” means all health care laws applicable to Borrower or any Subsidiary and to the ownership, testing, development, sale, marketing, manufacture, packaging, processing, use, distribution, storage, import, export or disposal of Borrower’s or any Subsidiary’s products or product candidates, including but not limited to, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), the Public Health Service Act (42 U.S.C. Section 201 et seq.), the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), all criminal laws

relating to health care fraud and abuse, including but not limited to 18 U.S.C. §§ 286, 287, 1035, 1347, 1349 and the health care fraud criminal provisions under HIPAA (42 U.S.C. Section 1320d et seq.), the exclusion laws (42 U.S.C. § 1320a-7), HIPAA and similar state and foreign privacy and data security laws such as the European Union General Data Protection Regulation, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), any other health care law governing or pertaining to a government healthcare program, including the collection and reporting requirements, and the processing of any applicable rebate, chargeback or adjustment, under applicable rules and regulations relating to the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8) and any state supplemental rebate program, Medicare average sales price reporting (42 U.S.C. § 1395w-3a), the Public Health Service Act (42 U.S.C. § 256b), the VA Federal Supply Schedule (38 U.S.C. § 8126) or under any state pharmaceutical assistance program or U.S. Department of Veterans Affairs agreement, and any successor government programs, and any and all other comparable state, local, federal or foreign health care laws and the regulations promulgated pursuant to such laws, each as amended from time to time.

“HIPAA” means the U.S. Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 17921 et seq.), and all regulations promulgated thereunder.

“Immaterial Subsidiary” means, as of any date of determination, any Subsidiary if and for so long as such Subsidiary (a) does not have (i) individually, (x) trailing twelve months’ revenue exceeding two and one-half percent (2.5%) of the trailing twelve months’ revenue of Borrower and its Subsidiaries (determined on a consolidated basis and in accordance with GAAP) or (y) total assets exceeding a book value of two and one-half percent (2.5%) of the consolidated total assets of Borrower and its Subsidiaries (determined on a consolidated basis and in accordance with GAAP, excluding any intercompany items in the ordinary course of business) and (ii) together with all other Immaterial Subsidiaries in the aggregate, (x) trailing twelve months’ revenue exceeding five percent (5%) of the trailing twelve months’ revenue of the Borrower and its Subsidiaries (determined on a consolidated basis and in accordance with GAAP, excluding any intercompany items in the ordinary course of business) or (y) total assets exceeding a book value of five percent (5%) of the consolidated total assets of the Borrower and its Subsidiaries (determined on a consolidated basis and in accordance with GAAP) and (b) does not own any Intellectual Property material to the business of Borrower and its Subsidiaries; provided, that any Subsidiary would be a Material Subsidiary to the extent the above required terms are not satisfied; provided, further, that the Borrower may designate any Immaterial Subsidiary as a Material Subsidiary in order to cause the above required terms to be satisfied.

“Indebtedness” means indebtedness of any kind, including (a) all indebtedness for borrowed money or the deferred purchase price of property or services (excluding trade credit entered into in the ordinary course of business and not past ninety (90) days due), including reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, (d) all equity securities of any Person subject to repurchase or redemption other than at the sole option of such Person, (e) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature arising out of purchase and sale contracts, (f) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements (other than those arising in the ordinary course of business), (g) non-contingent obligations to reimburse any bank or Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, and (h) all Contingent Obligations. Notwithstanding the foregoing, no obligation in respect of a Permitted Bond Hedge Transaction or a Permitted Warrant Transaction shall be deemed to be Indebtedness.

“Initial Facility Charge” means the Facility Charge on the Closing Date, which, for the avoidance of doubt, was in an amount equal to [***] Dollars (\$[***]) and payable to Lenders pursuant to Section 4.1(i).

“Initial Product” means the product designated as the “Initial Product” under, and [***] to Borrower pursuant to, the [***] Agreement.

“Insolvency Proceeding” means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy, liquidation, moratorium, receivership, or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, administration, arrangement, receivership or other similar relief proceedings in the applicable jurisdiction from time to time in effect and affecting the rights of creditors generally.

“Intellectual Property” means all of Borrower’s Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; Borrower’s applications therefor and reissues, extensions, or renewals thereof; and Borrower’s goodwill associated with any of the foregoing, together with Borrower’s rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

“Intellectual Property Security Agreement” means the Intellectual Property Security Agreement dated as of the Closing Date between Borrower and Agent, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“Investment” means (a) any beneficial ownership (including stock, partnership interests, limited liability company interests, or other equity securities or ownership interests) of or in any Person, (b) any loan, advance or capital contribution to any Person, (c) any Acquisition, or (d) other transfers on behalf of or in connection with any equity ownership or similar transfers.

“IRS” means the U.S. Internal Revenue Service.

“Joinder Agreements” means for each Subsidiary required to join as a Borrower or as a Guarantor pursuant to Section 7.13, a completed and executed Joinder Agreement in substantially the form attached hereto as Exhibit F.

“License” means any Copyright License, Patent License, Trademark License or other Intellectual Property license of rights or interests.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest.

“Loan” means the Advances made under this Agreement.

“Loan Documents” means this Agreement, the promissory notes (if any), the ACH Authorization, the Account Control Agreements, any Joinder Agreement, all UCC Financing Statements, any Guaranty, any Warrant, the Pledge Agreement, the Intellectual Property Security Agreement and any other documents executed in connection with the Secured Obligations or the transactions contemplated hereby, as the same may from time to time be amended, modified, supplemented or restated.

“Loan Party” means Borrower or any Guarantor.

“[***]” means [***].

“[***] Agreement” means [***].

“Market Capitalization” means, for any given date of determination with respect to Company, an amount equal to (a) the average of the daily volume weighted average price of Company’s Common Stock as reported for each of the five (5) Trading Days preceding such date of determination *multiplied by* (b) the total number of issued and outstanding shares of Company’s Common Stock that are issued and outstanding on the date of the determination and listed on the Principal Stock Exchange, subject to appropriate adjustment for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

“Market Disruption Event” means any of the following events: (a) any suspension of, or limitation imposed on, trading by the Principal Stock Exchange in shares of Company’s Common Stock during any period or periods aggregating one hour or longer and whether by reason of movements in price exceeding limits permitted by the Principal Stock Exchange or otherwise relating to Company’s Common Stock; or (b) the failure to open of the exchange or quotation system on which Company’s Common Stock are traded or the closure of such exchange or quotation system prior to its respective scheduled closing time for the regular trading session on such day (without regard to after hours or other trading outside the regular trading session hours).

“Material Adverse Effect” means a material adverse effect upon: (i) the business, operations, properties, assets or financial condition of the Loan Parties and their respective Subsidiaries taken as a whole; or (ii) the ability of Borrower to perform or pay the Secured Obligations in accordance with the terms of the Loan Documents, or the ability of Agent or Lenders to enforce any of its rights or remedies with respect to the Secured Obligations; or (iii) the Collateral or Agent’s Liens on the Collateral or the priority of such Liens.

“Material Agreement” means (i) any license, agreement or other contractual arrangement involving the receipt or payment of amounts in the aggregate exceeding [***] Dollars (\$[**]) per fiscal year, (ii) any Permitted Convertible Debt Document, (iii) any “material agreement”, “material contract” or any comparable term under and as defined in any Permitted Convertible Debt Document and (iv) the [***] Agreement.

“Material Subsidiary” means any Subsidiary that is not an Immaterial Subsidiary.

“Maximum Term Loan Amount” means One Hundred Ten Million Dollars (\$110,000,000) *plus* the Second Amendment Capitalized PIK Interest Amount.

“Net Product Revenue” means, as of a period of determination, product revenue (determined in accordance with GAAP) with respect to sale of ZYNRELEF, APONVIE, CINVANTI and SUSTOL, in each case (i) determined in a manner consistent with the financial statements delivered to Agent on or prior to the Effective Date and (ii) excluding any one-time royalty payment or upfront fees, collaboration fees and other similar fees.

“Non-Disclosure Agreement” means that certain Non-Disclosure Agreement/Confidentiality Agreement by and between Borrower and Agent dated as of March 31, 2023.

“OFAC” means the U.S. Department of Treasury Office of Foreign Assets Control.

“OFAC Lists” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“Organizational Documents” means with respect to any Person, such Person’s Charter, and (a) if such Person is a corporation, its bylaws, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its

partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“Patent License” means any written agreement granting any right with respect to any invention on which a Patent is in existence or a Patent application is pending, in which agreement Borrower now holds or hereafter acquires any interest.

“Patents” means all letters patent of, or rights corresponding thereto, in the United States of America or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States of America or any other country.

“Perfection Certificate” means a completed certificate entitled “Perfection Certificate”, dated as of the Closing Date, delivered by Company to Agent and Lenders, signed by Company (as amended pursuant to the terms of this Agreement).

“Permits” means all certifications, registrations, licenses, permits, franchises, approvals, orders, clearances, exemptions, authorizations or consents of any Governmental Entity, necessary for or used in the conduct or operation Borrower’s or any Subsidiary’s business.

“Permitted Acquisitions” means any Acquisition of a business or Person or product engaged in a line of business similar, related or complementary to that of the Borrower and its Subsidiaries, which Acquisition shall be subject to the consent of, and on terms reasonably acceptable to, Agent.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) relating to the common stock (or other securities or property following a merger event or other change of the common stock) purchased by Company in connection with the issuance of any Permitted Convertible Debt and as may be amended in accordance with its terms; provided that (x) the net purchase price of any such call option transaction less the amount received by Company in respect of any Permitted Warrant Transaction in connection with such issuance of Permitted Convertible Debt shall not exceed 20 % of the gross proceeds to Company from such issuance of Permitted Convertible Debt and (y) the terms, conditions and covenants of each such call option transaction are customary for agreements of such type, as determined in good faith by Company’s Board of Directors.

“Permitted Convertible Debt” means (x) prior to the Second Amendment Closing Date, Indebtedness of Company in respect of the Senior Unsecured Convertible Notes and (y) any other Indebtedness of Company that is convertible into a fixed number (subject to customary anti-dilution adjustments, “make-whole” increases and other customary changes thereto) of shares of Common Stock (or other securities or property following a merger event or other change of the Common Stock), cash or any combination thereof (with the amount of such cash or such combination determined by reference to the market price of such Common Stock or such other securities); provided, that, with respect to any Indebtedness described in the foregoing clause (y), (i) such Indebtedness shall (a) have no scheduled amortization or principal payments, mandatory redemptions or other required payments of principal prior to the date that is one hundred eighty (180) days after the Term Loan Maturity Date, other than customary payments upon a “change of control”, “fundamental change” or any comparable term under and as defined in the Permitted Convertible Debt Document applicable thereto (it being understood that a holder’s option to convert any such Indebtedness into Common Stock (and Cash in lieu of fractional shares) shall not be considered a required mandatory redemption or payment of principal), (b) be unsecured and/or subordinated to the Secured Obligations, (c) not be guaranteed by any Subsidiary of Company that is not a Borrower or a Guarantor, (d) shall not contain any terms that are unusual or not customary for underwritten offerings of senior convertible notes as determined in good faith by the Company’s Board of Directors and (e) be Indebtedness of Company and not of any Subsidiary thereof, (ii) the incurrence of such Indebtedness shall be subject to the absence of any Default or Event of Default

immediately before and immediately after giving effect thereto and (iii) any cross-default or cross-acceleration event of default (each howsoever defined) provision contained therein that relates to indebtedness or other payment obligations of a Loan Party (any such indebtedness or other payment obligations, a "Cross-Default Reference Obligation") contains a cure period of at least thirty (30) calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under such Cross-Default Reference Obligation results in an event of default under such cross-default or cross-acceleration provision.

"Permitted Convertible Debt Documents" means, (x) with respect to the Senior Unsecured Convertible Notes, the Senior Unsecured Convertible Notes Purchase Agreement and (y) with respect to any other Permitted Convertible Debt, the indenture or other definitive document(s) governing such Permitted Convertible Debt, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Permitted Indebtedness" means:

- (i) Indebtedness of Borrower in favor of any Lender or Agent arising under this Agreement or any other Loan Document;
- (ii) Indebtedness existing on the Closing Date which is disclosed in Schedule 1A;
- (iii) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred to finance the acquisition, repair, improvement or construction of fixed or capital assets of Borrower; provided that the aggregate outstanding principal amount of all other such Indebtedness does not exceed [***] Dollars (\$[***]) at any time; provided, further that no Default or Event of Default exists and is continuing at the time any such Indebtedness is incurred;
- (iv) unsecured Indebtedness to trade creditors incurred in the ordinary course of business (due within one hundred twenty (120) days);
- (v) Indebtedness in connection with security deposits or letters of credit relating to real property leases incurred in the ordinary course of business; provided that the aggregate outstanding principal amount of all such Indebtedness does not exceed [***] Dollars (\$[***]) at any time;
- (vi) intercompany Indebtedness to the extent permitted pursuant to clause (ix) of the definition of Permitted Investment;
- (vii) Indebtedness incurred in the ordinary course of business owed to any Person providing property, casualty, liability, or other insurance to Borrower or any of its Subsidiaries, including to finance insurance premiums, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the policy year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such policy year;
- (viii) Permitted Convertible Debt not to exceed [***] Dollars (\$[***]) in aggregate principal amount at any time outstanding;
- (ix) advances or deposits received in the ordinary course of business from customers or vendors;

(x)Indebtedness with respect to performance bonds, appeal bonds, surety bonds and other similar obligations in the ordinary course of business;

(xi)Subordinated Indebtedness; and

(ii)extensions, refinancings and renewals of any of the foregoing items of Permitted Indebtedness, provided that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon Borrower or its Subsidiary, as the case may be, and subject to any limitations on the aggregate amount of such Indebtedness and solely in the case of a refinancing of (a) any Permitted Convertible Debt, subject to the terms and conditions set forth in clause (y) of the definition thereof or (b) any Subordinated Indebtedness, subject to the terms and conditions set forth in the definition thereof.

“Permitted Investment” means:

(i)Investments existing on the Closing Date which are disclosed in Schedule 1B;

(ii)(x) (a) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof currently having a rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (b) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (c) certificates of deposit issued by any bank with assets of at least [***] Dollars (\$[***]) maturing no more than one year from the date of investment therein, and (d) money market accounts and (y) in the case of such Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, (a) investments of the type and maturity described in clause (ii)(x) above of foreign obligors, which investments or obligors (or the parents or such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (b) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous, and of comparable quality, to the types of investments described in the foregoing clause (ii)(x) and clause (ii)(y)(a);

(iii)repurchases of stock of Borrower from former employees, directors, or consultants of Borrower under the terms of applicable repurchase agreements at the original issuance price of such securities in an aggregate amount not to exceed [***] Dollars (\$[***]) in any fiscal year, provided that no Event of Default has occurred, is continuing or could exist after giving effect to the repurchases;

(iv)Investments accepted in connection with Permitted Transfers;

(v)Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower’s business;

(vi)Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, provided that this subsection (vi) shall not apply to Investments of any Loan Party in any Subsidiary of a Loan Party;

(vii)Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors

relating to the purchase of capital stock of Company pursuant to employee stock purchase plans or other similar agreements approved by Company's Board of Directors;

(viii) Investments consisting of (A) travel advances and employee relocation loans in the ordinary course of business, and (B) loans to employees, officers, managers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors or similar governing body, not to exceed [***] Dollars (\$[***]) in the aggregate for (A) and (B), collectively, during the term of this Agreement;

(ix) Investments (A) among the Loan Parties, (B) by a Loan Party in Subsidiaries that are not Loan Parties in an aggregate amount not to exceed \$[***] or as otherwise approved in advance in writing by Agent and (C) Investments among Subsidiaries that are not Loan Parties;

(x) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash Investments by a Loan Party do not exceed [***] Dollars (\$[***]) in the aggregate in any fiscal year;

(xi) additional Investments that do not exceed [***] Dollars (\$[***]) in the aggregate;

(xii) Permitted Acquisitions; and

(xiii) Investments in connection with, and performance of obligations under (including, for the avoidance of doubt, the entry into, payment of any premium with respect to, and the settlement of), any Permitted Bond Hedge Transactions or any Permitted Warrant Transactions, in each case in accordance with its terms.

"Permitted Liens" means:

(i) Liens in favor of Agent or Lenders;

(ii) Liens existing on the Closing Date which are disclosed in Schedule 1C;

(iii) Liens for taxes, fees, assessments or other governmental charges or levies that are not delinquent;

(iv) bankers Liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business;

(v) the claims of materialmen, mechanics, carriers, warehousemen, processors or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business;

(vi) deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation, or to secure the performance of bids, trade contracts, statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(vii) Liens arising from judgments, decrees or attachments in circumstances which do not constitute an Event of Default hereunder, or securing appeal or other surety bonds relating to such judgments;

(viii) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any non-exclusive license or lease agreement entered into in the ordinary course of business which do not secure any Indebtedness;

(ix) Liens arising from precautionary UCC financing statements or similar filings made in respect of operating leases entered into by Borrower or any of its Subsidiaries so long as such Liens encumber only those assets subject to such operating leases;

(x) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not materially interfere with the ordinary conduct of the business of the applicable Borrower or any of its Subsidiaries;

(xi) Liens of sellers of goods to the Borrower and any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(xii) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums permitted under clause (vii) of the definition of Permitted Indebtedness;

(xiii) Liens consisting of Cash collateral securing, and not to exceed the aggregate principal amount of, Indebtedness permitted under clause (v) of the definition of Permitted Indebtedness;

(xiv) Liens securing Indebtedness permitted under clause (iii) of the definition of Permitted Indebtedness; provided that (a) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (such Indebtedness, "Primary Indebtedness") or other property financed by such other Indebtedness permitted under clause (iii) of the definition of Permitted Indebtedness (such other Indebtedness, "Cross-Collateralized Indebtedness") to the extent that the lender in respect of such Primary Indebtedness and Cross-Collateralized Indebtedness is the same Person and (b) the Indebtedness secured thereby does not exceed, at the time of incurrence thereof, the lesser of the cost or fair market value of the property secured by such Lien;

(xv) Licenses that qualify as Permitted Transfers;

(xvi) statutory Liens of landlords; and

(xvii) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described 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 (as may have been reduced by any payment thereon) does not increase.

"Permitted Transfers" means:

(i) sales of Inventory in the ordinary course of business;

(ii) licenses and similar arrangements for the use of Intellectual Property in the ordinary course of business on an arms' length basis, including in connection with business development transactions, co-development or co-promotion transactions, collaborations, licensing, partnering or similar transactions with third parties and that are entered into with commercially reasonable terms, that are not exclusive or could not result in a legal transfer of

title of the licensed property that may be exclusive in respects other than territory or may be exclusive as to territory but only as to discrete geographical areas outside of the United States of America in the ordinary course of business;

(iii) transfers by and among the Loan Parties;

(iv) transfers constituting the making of Permitted Investments, the granting of Permitted Liens or as permitted under Section 7.7;

(v) dispositions of worn-out, obsolete or surplus Equipment at fair market value in the ordinary course of business;

(vi) the use of Cash subject to the restrictions and limitations set forth in the Loan Documents;

(vii) retirement of abandoned or expired Intellectual Property not material to Borrower's business (as determined by Borrower in its reasonable business judgment);

(viii) dispositions of non-core assets acquired in connection with any Acquisition constituting a Permitted Investment; and

(ix) Transfers of assets having a fair market value of not more than [***] Dollars (\$[***]) in the aggregate in any fiscal year.

"Permitted Warrant Transactions" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to common stock (or other securities or property following a merger event or other change of the common stock) and/or cash (in an amount determined by reference to the price of such common stock) sold by Company substantially concurrently with any purchase by Company of a related Permitted Bond Hedge Transaction and as may be amended in accordance with its terms; provided that the terms, conditions and covenants of each such call option transaction are customary for agreements of such type, as determined in good faith by Borrower's Board of Directors.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, other entity or government.

"Pledge Agreement" means the Pledge Agreement dated as of the Closing Date between Borrower and Agent, as the same may from time to time be amended, restated, modified or otherwise supplemented.

"Principal Stock Exchange" means the NASDAQ or, if Company's Common Stock are not listed on the NASDAQ, the principal national securities exchange or public quotation system on which Company's Common Stock are then listed for trading or quoted.

"Prior Term Loan" means the Twenty-Five Million Dollars (\$25,000,000) in original principal (excluding any Capitalized PIK Interest Amount) term loans advanced to Borrower on or after the Closing Date and prior to the Second Amendment Closing Date.

"Qualified Cash" means an amount equal to (a) the amount of Borrower's Cash held in accounts subject to an Account Control Agreement in favor of Agent, minus (b) the Qualified Cash A/P Amount.

"Qualified Cash A/P Amount" means the amount of Borrower's accounts payable under GAAP not paid after the 90th day following the invoice for such account payable.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Qualified Subsidiary” means any Material Subsidiary.

“Qualifying Sale Agreement” means a definitive asset purchase agreement or stock purchase agreement providing for a Sale Transaction, in form and substance acceptable to Agent, duly executed by the parties thereto and in full force and effect.

“Receivables” means (i) all of Borrower’s Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, letters of credit, proceeds of any letter of credit, and Letter of Credit Rights, and (ii) all customer lists, software, and business records related thereto.

“Redemption Conditions” means, with respect to any redemption or other cash principal payment by Borrower of any Permitted Convertible Debt, satisfaction of each of the following events: (a) no Default or Event of Default shall exist or result therefrom, and (b) both immediately before and at all times after such redemption, Borrower’s Qualified Cash shall be no less than 150% of the Secured Obligations.

“Required Lenders” means at any time, the holders of more than fifty percent (50%) of the sum of the aggregate unpaid principal amount of the Term Loans then outstanding.

“Restricted License” means any material License or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such License or agreement or any other property, or (b) for which a default under or termination of could interfere with Agent’s right to sell any Collateral.

“[***]” means [***].

“Sale Transaction” means (a) a sale of all of the Equity Interests of Company, (b) a merger or consolidation of Company with or into another Person or (c) a sale, transfer or other disposition of all or any combination of the assets of Borrower and its Subsidiaries, in each case pursuant to which the proceeds thereof are sufficient to, and are applied to, repay in full all of the Secured Obligations (including all outstanding principal, all accrued and unpaid interest, all applicable Prepayment Charges and all applicable End of Term Charges) upon the closing of such transaction, or on such other terms as are acceptable to Agent.

“Sanctioned Country” means, at any time, a country or territory which is the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or His Majesty’s Treasury of the United Kingdom.

“SBA Funding Date” means each date on which a Lender which is an SBIC funds any portion of the Term Loans.

“SEC” means the U.S. Securities and Exchange Commission.

“Second Amendment Closing Date” means the “Second Amendment Effective Date” as defined in that certain Second Amendment to Working Capital Facility Agreement dated as of August 8, 2025, among the Borrower, Agent and the Lenders.

“Second Paydown” has the meaning set forth in Section 2.5(g).

“Secured Obligations” means Borrower’s obligations under this Agreement and any Loan Document (other than the Warrant), including any obligation to pay any amount now owing or later arising.

“Senior Unsecured Convertible Notes” means the 1.5% Convertible Senior Notes due May 24, 2026 issued by Borrower under the Senior Unsecured Convertible Note Purchase Agreement.

“Senior Unsecured Convertible Note Purchase Agreement” means that certain Note Purchase Agreement, dated as of May 24, 2021, by and among Company, the purchasers from time to time party thereto and [***], as agent for the purchasers, as amended, restated, supplemented or otherwise modified and in effect on the Closing Date and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Subordinated Indebtedness” means Indebtedness subordinated to the Secured Obligations in amounts and on terms and conditions satisfactory to Agent in its sole discretion and subject to a subordination agreement in form and substance satisfactory to Agent in its sole discretion.

“Subsequent Financing” means the next consummation of the issuance and sale, after the Second Amendment Closing Date, of any equity securities (including any securities convertible into equity securities) of Borrower in an equity offering broadly marketed to multiple investors.

“Subsidiary” means an entity, whether a corporation, partnership, limited liability company, joint venture or otherwise, in which Company owns or controls, either directly or indirectly, fifty percent (50%) or more of the outstanding voting securities, including each entity listed on Schedule 1.

“T3M Adjusted EBITDA” means, as of a date of determination, Adjusted EBITDA for the immediately preceding three calendar month period.

“T3M Net Product Revenue” means, as of a date of determination, Net Product Revenue for the immediately preceding three calendar month period.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Commitment” means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading “Term Commitment” opposite such Lender’s name on Schedule 1.1.

“Term Loan” means any Term Loan Advance made under this Agreement.

“Term Loan Advance” means the Prior Term Loan, the Tranche 1 Advance and any other funds advanced under Section 2.2(a).

“Term Loan Cash Interest Rate” means, for any day, a floating per annum rate of interest equal to the greater of (a) [***]% and (b) the sum of (i) [***]% plus (ii) the prime rate as reported in The Wall Street Journal.

“Term Loan Maturity Date” means the earlier of (x) September 1, 2030 and (y) the date that is one hundred eighty (180) days prior to the maturity date of any convertible Indebtedness; provided, that, in each case of the foregoing clauses (x) and (y), if such day is not a Business Day, the Term Loan Maturity Date shall be the immediately preceding Business Day.

“Term Loan PIK Interest Rate” means per annum rate of interest equal to [***]%.

“Trademark License” means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

“Trademarks” means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States of America, any State thereof or any other country or any political subdivision thereof.

“Trading Day” means any day on which (a) there is no Market Disruption Event and (b) the Principal Stock Exchange is open for trading; provided that a “Trading Day” only includes those days that have a scheduled closing time of 4:00 p.m. (Eastern time) or the then standard closing time for regular trading on the relevant exchange or trading system.

“Tranche” means the Tranche 1 Advance.

“Tranche 1 Commitment” means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 1 Commitment opposite such Lender’s name on Schedule 1.1. The aggregate amount of the Lenders’ Tranche 1 Commitments as of the Second Amendment Closing Date is One Hundred Ten Million Dollars (\$110,000,000) *plus* the Second Amendment Capitalized PIK Interest Amount.

“UCC” means the Uniform Commercial Code as the same is, from time to time, in effect in the State of California; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as the same is, from time to time, in effect in a jurisdiction other than the State of California, then the term “UCC” shall mean the Uniform Commercial Code as in effect, from time to time, in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“[***]” means [***].

“Warrant” means any warrant entered into in connection with the Loan, as may be amended, restated or modified from time to time.

1.2 The following terms are defined in the Sections or subsections referenced opposite such terms:

Defined Term	Section
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1940 Act	5.6(b)
Affected Lender	Addendum 3
Agent	Preamble
Assignee	11.14
Borrower	Preamble
Claims	11.11(a)
Collateral	3.1
Company	Preamble
Confidential Information	11.13
End of Term Charge	2.6(b)
Event of Default	9
Financial Statements	7.1
Indemnified Person	6.3
Lenders	Preamble
Liabilities	6.3
Maximum Rate	2.3
Participant Register	11.8
Payment Date	2.2(e)
Prepayment Charge	2.5
Publicity Materials	11.19
Register	11.7
SBA	7.16
SBIC	7.16
SBIC Act	7.16
Second Amendment Capitalized PIK Interest Amount	2.2(a)(i)
Original End of Term Charge	2.6(a)
Rights to Payment	3.1
Second Amendment End of Term Charge	2.6(b)
Tranche 1 Advance	2.2(a)(ii)
Transfer	7.8

1.3 Unless otherwise specified, all references in this Agreement or any Annex or Schedule hereto to a “Section,” “subsection,” “Exhibit,” “Annex,” or “Schedule” shall refer to the corresponding Section, subsection, Exhibit, Annex, or Schedule in or to this Agreement. Unless otherwise specifically provided herein, any accounting term used in this Agreement or the other Loan Documents shall have the meaning customarily given such term in accordance with GAAP as in effect on the date hereof, and all financial computations hereunder shall be computed in accordance with GAAP as in effect on the date hereof, consistently applied. Unless otherwise defined herein or in the other Loan Documents, terms that are used herein or in the other Loan Documents and defined in the UCC shall have the meanings given to them in the UCC. Permitted Convertible Debt shall at all times be valued at the outstanding principal amount thereof and shall not include any reduction or appreciation in value of the shares deliverable upon conversion thereof.

1.4 If at any time any change in GAAP would affect the computation of any financial requirement set forth in any Loan Document, and either Borrower or the Required Lenders shall so

request, Agent, Lenders and Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, such requirement shall continue to be computed in accordance with GAAP prior to such change.

1.5 Any reference in any Loan Document to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a Division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a limited liability company shall constitute a separate Person under the Loan Documents (and each Division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity) on the first date of its existence. In connection with any Division, if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then such asset shall be deemed to have been transferred from the original Person to the subsequent Person. For all purposes under the Loan Documents, in connection with any Division or plan of Division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 2. THE LOAN

2.1 [Reserved]

2.2 Term Loan Advances.

(a) Advances.

(i) Agent, Lender and Borrower acknowledge that prior to the Second Amendment Closing Date, Borrower has drawn the Prior Term Loan and that as of the Second Amendment Effective Date, the Capitalized PIK Interest equals an amount as determined by Agent in good faith (the "Second Amendment Capitalized PIK Interest Amount").

(ii) Subject to the terms and conditions of this Agreement, on the Second Amendment Closing Date, Lender will severally (and not jointly) make in an amount not to exceed its respective Tranche 1 Commitment, and Borrower agrees to draw, such Term Loan Advance in an aggregate principal amount equal to One Hundred Ten Million Dollars (\$110,000,000) *plus* the Second Amendment Capitalized PIK Interest Amount (such Term Loan Advance, the "Tranche 1 Advance"), which amount shall be applied to (A) refinance in full the Prior Term Loan, (B) pay a portion of the obligations under the Senior Unsecured Convertible Notes and (C) pay in full the Second Amendment Capitalized PIK Interest Amount, with the remaining amount applied in accordance with Section 7.17. Lender agrees that any Prepayment Charge otherwise due in connection with the repayment of the Prior Term Loan or the Second Amendment Capitalized PIK Interest Amount shall be waived.

(iii) [Reserved].

(iv) [Reserved].

(b) Maximum Term Loan Amount; Reborrowings.

(i) The aggregate outstanding Term Loan Advances shall not exceed the Maximum Term Loan Amount plus, for the avoidance of doubt, the aggregate amount of Capitalized PIK Interest with respect thereto. Each Term Loan Advance of each Lender shall not exceed its respective Term Commitment plus, for the avoidance of doubt, the aggregate amount of Capitalized PIK Interest with respect thereto.

(ii) After repayment, no Term Loan Advance (or any portion thereof) may be reborrowed. For avoidance of doubt, (x) no Lender shall be obligated to make any such reborrowings of a Term Loan Advance without its consent and (y) no such reborrowings may be made. For the avoidance of doubt, from and after the Fourth Amendment Effective Date no Lender shall have any obligation to make any further Term Loan Advance.

(c) Advance Request. To obtain a Term Loan Advance, Borrower shall complete, sign and deliver an Advance Request at least one (1) Business Day before the Closing Date and at least five (5) Business Days before each Advance Date other than the Closing Date to Agent. Lenders shall fund the Term Loan Advance in the manner requested by the Advance Request provided that each of the conditions precedent set forth in Section 4 and applicable to such Term Loan Advance is satisfied as of the requested Advance Date. The proceeds of any Term Loan Advance shall be deposited into an account that is subject to an Account Control Agreement.

(d) Interest.

(i) Term Loan Cash Interest Rate. In addition to interest accrued pursuant to the Term Loan PIK Interest Rate, the principal balance (including, for the avoidance of doubt, any Capitalized PIK Interest thereon) of each Term Loan Advance shall bear interest thereon from such Advance Date at the Term Loan Cash Interest Rate based on a year consisting of three hundred sixty (360) days, with interest computed daily based on the actual number of days elapsed. The Term Loan Cash Interest Rate will float and change on the day the Prime Rate changes from time to time

(ii) Term Loan PIK Interest Rate. In addition to interest accrued pursuant to the Term Loan Cash Interest Rate, the principal balance (including, for the avoidance of doubt, any Capitalized PIK Interest thereon) of each Term Loan Advance shall bear interest thereon from such Advance Date at the Term Loan PIK Interest Rate based on a year consisting of three hundred sixty (360) days, with interest computed daily based on the actual number of days elapsed, which amount shall be added to the outstanding principal balance so as to increase the outstanding principal balance of such Term Loan Advance on each Payment Date for such Advance, which principal amount shall accrue interest payable as provided in Section 2.2(d)(i) and this Section 2.2(d)(ii), and which accrued and unpaid amount shall be payable when the principal amount of the Advance is payable in accordance with Section 2.2(e).

(e) Payment. Borrower will pay accrued but unpaid interest on each Term Loan Advance on the first Business Day of each month (each such date, a "Payment Date"), beginning the month after the Advance Date. The entire principal balance of the Term Loan Advances and all accrued but unpaid interest hereunder, shall be due and payable on the Term Loan Maturity Date. Borrower shall make all payments under this Agreement without setoff, recoupment or deduction and regardless of any counterclaim or defense. If a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately preceding Business Day. Agent or Lenders will initiate debit entries to Borrower's account as authorized on the ACH Authorization (i) on each Payment Date of all periodic obligations payable to Lenders under each Term Loan Advance and (ii) out-of-pocket legal fees and costs incurred by Agent or Lenders in connection with Section 11.12; provided

that, with respect to clause (i) above, in the event that Lenders or Agent informs Borrower that Lenders will not initiate a debit entry to Borrower's account for a certain amount of the periodic obligations due on a specific Payment Date, Borrower shall pay to Lenders, such amount of periodic obligations in full in immediately available funds on such Payment Date; provided, further, that, with respect to clause (i) above, if Lenders or Agent informs Borrower that Lenders will not initiate a debit entry as described above later than the date that is three (3) Business Days prior to such Payment Date, Borrower shall pay to Lenders such amount of periodic obligations in full in immediately available funds on the date that is three (3) Business Days after the date on which Lenders or Agent notifies Borrower of such; provided, further, that, with respect to clause (ii) above, in the event that Lenders or Agent informs Borrower that Lenders will not initiate a debit entry to Borrower's account for specified out-of-pocket legal fees and costs incurred by Agent or Lenders, Borrower shall pay to Lenders such amount in full in immediately available funds within three (3) Business Days.

2.3Maximum Interest. Notwithstanding any provision in this Agreement or any other Loan Document, it is the parties' intent not to contract for, charge or receive interest at a rate that is greater than the maximum rate permissible by law that a court of competent jurisdiction shall deem applicable hereto (which under the laws of the State of California shall be deemed to be the laws relating to permissible rates of interest on commercial loans) (the "Maximum Rate"). If a court of competent jurisdiction shall finally determine that Borrower has actually paid to Lenders an amount of interest in excess of the amount that would have been payable if all of the Secured Obligations had at all times borne interest at the Maximum Rate, then such excess interest actually paid by Borrower shall be applied as follows: first, to the payment of the Secured Obligations consisting of the outstanding principal; second, after all principal is repaid, to the payment of Lenders' accrued interest, costs, expenses, professional fees and any other Secured Obligations; and third, after all Secured Obligations are repaid, the excess (if any) shall be refunded to Borrower.

2.4Default Interest. In the event any payment is not paid on the scheduled payment date, an amount equal to [***] percent ([***]%) of such past due amount shall be payable on demand. In addition, upon the occurrence and during the continuation of an Event of Default hereunder, all outstanding Secured Obligations, including principal, interest, compounded interest, and professional fees, shall bear interest at a rate per annum equal to the rate set forth in Section 2.2(d) plus [***] ([***]%) per annum. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded at the rate set forth in Section 2.2(d) or 2.4, as applicable.

2.5Prepayment.

(a) **Voluntary Prepayment.** At its option, Borrower may prepay all or a portion of the outstanding Advances by paying the entire principal balance (or such portion thereof) of all accrued and unpaid interest thereon, all unpaid Lender's fees and expenses due hereunder accrued to the date of the repayment, together with the applicable Prepayment Charge and End of Term Charge.

(b) **[Reserved]**.

(c) **Prepayment Charge.** In the event all or any portion of any Advance (including, for the avoidance of doubt, any Capitalized PIK Interest) is repaid, prepaid (including any voluntary prepayment under Section 2.5(a)), or accelerated for any reason, including as a result of any Event of Default, the commencement of any proceeding against Borrower under the U.S. Bankruptcy Code or any other debtor relief law, the foreclosure and sale of, or collection of, the Collateral, or the restructuring, reorganization or compromise of the Advances and other Secured Obligations by the confirmation of a plan of reorganization or any other plan of compromise, restructure or arrangement (it being understood and agreed that the prepayment

charge set forth in this Section 2.5(c) (I) will be due and payable as though such Advances were voluntarily prepaid as of the date of acceleration and (II) shall constitute part of the Secured Obligations), such repayment, prepayment, or acceleration will be subject to a prepayment premium equal to (i) [***]% of the principal amount so repaid, prepaid or accelerated if such repayment, prepayment or acceleration occurs at any time on or prior to the first anniversary of the Second Amendment Closing Date, (ii) [***]% of the principal amount so repaid, prepaid or accelerated if such repayment, prepayment or acceleration occurs after the first anniversary of the Second Amendment Closing Date, but on or prior to the second anniversary of the Second Amendment Closing Date and (iii) [***]% of the principal amount so repaid, prepaid or accelerated if such repayment, prepayment or acceleration occurs at any time thereafter (the "Prepayment Charge"), which Prepayment Charge shall be due and payable on such date of repayment, prepayment or acceleration and shall be in addition to the principal balance of such Advance (or portion thereof) and any accrued and unpaid interests and any other amounts then due and payable hereunder.

(d) Borrower agrees that the Prepayment Charge is a reasonable calculation of Lenders' lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the Term Loan Advances. Borrower shall prepay the outstanding amount of all principal and accrued interest through the prepayment date and the Prepayment Charge upon the occurrence of a Change in Control or any other prepayment hereunder. Notwithstanding the foregoing, Agent and Lenders agree to waive (i) 50% of the then-applicable Prepayment Charge if the Secured Obligations are paid in full pursuant to Section 2.5(c) in connection with a Change of Control resulting from the acquisition of 100% of the Equity Interests of Borrower by a non-Affiliated third party in a single transaction and no Event of Default has occurred and is continuing at the time of such prepayment and (ii) 100% of the Prepayment Charge if Agent and Lenders (in their sole and absolute discretion) agree in writing to refinance the Advances prior to the Term Loan Maturity Date.

(e) Any amounts paid under this Section 2.5 shall be applied by Agent to the then unpaid amount of any outstanding Secured Obligations (including principal and interest) in such order and priority as Agent may choose in its sole discretion.

(f) Fourth Amendment Voluntary Paydown. Notwithstanding Sections 2.5(a) and 2.5(c), on the Fourth Amendment Effective Date Borrower shall prepay a portion of the Term Loan Advances, payable to each Lender in a pro rata amount according to the Tranche 1 Commitments of the relevant Lender, in an amount (such amount, the "Fourth Amendment Voluntary Paydown") equal to the sum of (1) Thirteen Million Five Hundred Thousand Dollars (\$13,500,000) of outstanding principal of such Term Loan Advances (excluding, for the avoidance of doubt, any Capitalized PIK Interest), (2) all accrued and unpaid interest on the principal amount being prepaid through the date of such prepayment, including interest accrued at the Term Loan PIK Interest Rate and not yet capitalized as of such date, and (3) Six Hundred Sixty-One Thousand Five Hundred Dollars (\$661,500), being [***]% of the principal amount being prepaid, in respect of the applicable portion of the Second Amendment End of Term Charge due in connection with the Term Loan Advances being prepaid. Agent and the Lenders hereby waive the Prepayment Charge that would otherwise be due under Section 2.5(c) solely in connection with the Fourth Amendment Voluntary Paydown. For the avoidance of doubt, (x) no portion of the Original End of Term Charge shall be deemed satisfied by, or become due and payable as a result of, the Fourth Amendment Voluntary Paydown and (y) all other accrued and unpaid interest, Capitalized PIK Interest, End of Term Charges, amendment fees and any other fees payable under the Loan Documents shall remain due and payable in accordance with the terms of the Loan Documents.

(g) Second Paydown. Notwithstanding Sections 2.5(a) and 2.5(c), on or before September 15, 2026, Borrower shall prepay a portion of the Term Loan Advances, payable to

each Lender in a pro rata amount according to the Tranche 1 Commitments of the relevant Lender, in an amount (such amount, the “Second Paydown”) equal to the sum of (1) Four Million Dollars (\$4,000,000) of outstanding principal of such Term Loan Advances (excluding, for the avoidance of doubt, any Capitalized PIK Interest), (2) all accrued and unpaid interest on the principal amount being prepaid through the date of such prepayment, including interest accrued at the Term Loan PIK Interest Rate and not yet capitalized as of such date, and (3) One Hundred Ninety-Six Thousand Dollars (\$196,000), being [***]% of the principal amount being prepaid, in respect of the applicable portion of the Second Amendment End of Term Charge due in connection with the Term Loan Advances being prepaid. Agent and the Lenders hereby waive the Prepayment Charge that would otherwise be due under Section 2.5(c) solely in connection with the Second Paydown. For the avoidance of doubt, (x) no portion of the Original End of Term Charge shall be deemed satisfied by, or become due and payable as a result of, the Second Paydown and (y) all other accrued and unpaid interest, Capitalized PIK Interest, End of Term Charges, amendment fees and any other fees payable under the Loan Documents shall remain due and payable in accordance with the terms of the Loan Documents.

(h) [***]. [***].

2.6 End of Term Charge.

(a) *Original End of Term Charge*. On the earliest to occur of (i) September 1, 2027, (ii) the date that Borrower prepays all or any portion of the outstanding Secured Obligations (other than any inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) (including, for the avoidance of doubt, any prepayment required under Section 2.5, but excluding the Fourth Amendment Voluntary Paydown, the Second Paydown and [***]) or (iii) the date that the outstanding Secured Obligations become due and payable, Borrower shall pay Lenders a charge equal to [***] Dollars (\$[***]) (the “Original End of Term Charge”).

(b) *Second Amendment End of Term Charge*. On the earliest to occur of (i) the Term Loan Maturity Date, (ii) the date that Borrower prepays all or any portion of the outstanding Secured Obligations (other than any inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) (including, for the avoidance of doubt, any prepayment required under Section 2.5) or (iii) the date that the outstanding Secured Obligations become due and payable, Borrower shall pay Lenders a charge equal to (x) [***]% of the principal amount subject to such payment, prepayment or repayment if such repayment, prepayment or acceleration occurs at any time on or prior to the date that is eighteen (18) months following the Second Amendment Closing Date, (y) [***]% of the principal amount subject to such payment, prepayment or repayment if such repayment, prepayment or acceleration occurs after the date that is eighteen (18) months following the Second Amendment Closing Date, but on or prior to the date that is thirty-six (36) months following the Second Amendment Closing Date and (z) [***]% of the principal amount subject to such payment, prepayment or repayment if such repayment, prepayment or acceleration occurs at any time thereafter (the “Second Amendment End of Term Charge” and, collectively with the Original End of Term Charge, the “End of Term Charge”).

(c) Notwithstanding the required payment date of any such End of Term Charge, the applicable pro rata portion of such End of Term Charge shall be deemed fully earned by Lenders as of each date that an applicable Term Loan Advance is made. For the avoidance of doubt, no End of Term Charge shall be earned or be payable with respect to any amounts constituting Capitalized PIK Interest.

2.7Pro Rata Treatment. Each payment (including prepayment) on account of any fee and any reduction of the Term Loan Advances shall be made pro rata according to the Term Commitments of the relevant Lender.

2.8Taxes; Increased Costs. Borrower, Agent and Lenders each hereby agree to the terms and conditions set forth on Addendum 1 attached hereto.

2.9Treatment of Prepayment Charge and End of Term Charge. Borrower agrees that any Prepayment Charge and any End of Term Charge payable shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, and Borrower agrees that it is reasonable under the circumstances currently existing and existing as of the Closing Date and the Second Amendment Closing Date. The Prepayment Charge and the End of Term Charge shall also be payable in the event the Secured Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure, or by any other means. Each Loan Party expressly waives (to the fullest extent it may lawfully do so) the provisions of any present or future statute or law that prohibits or may prohibit the collection of the foregoing Prepayment Charge and End of Term Charge in connection with any such acceleration. Borrower agrees (to the fullest extent that each may lawfully do so): (a) each of the Prepayment Charge and the End of Term Charge is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (b) each of the Prepayment Charge and the End of Term Charge shall be payable notwithstanding the then prevailing market rates at the time payment is made; (c) there has been a course of conduct between Lenders and Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Charge and the End of Term Charge as a charge (and not interest) in the event of prepayment or acceleration; and (d) Borrower shall be estopped from claiming differently than as agreed to in this Section. Borrower expressly acknowledges that its agreement to pay each of the Prepayment Charge and the End of Term Charge to Lenders as herein described was on the Closing Date and the Second Amendment Closing Date and continues to be a material inducement to Lenders to provide the Term Loan Advances.

SECTION 3. SECURITY INTEREST

3.1Grant of Security Interest. As security for the prompt and complete payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, Borrower grants to Agent a security interest in all of such Borrower's right, title, and interest in, to and under all of such Borrower's personal property and other assets including without limitation the following (except as set forth herein) whether now owned or hereafter acquired (collectively, the "Collateral"): (a) Receivables; (b) Equipment; (c) Fixtures; (d) General Intangibles; (e) Inventory; (f) Investment Property; (g) Deposit Accounts; (h) Cash; (i) Goods; (j) Chattel Paper; (k) Documents; (l) Instruments; (m) Letter of Credit Rights; (n) Commercial Tort Claims described on Schedule 5.17 from time to time; (o) Intellectual Property; (p) all other tangible and intangible personal property of such Borrower whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Borrower and wherever located, and any of such Borrower's property in the possession or under the control of Agent; and (q) to the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing; provided, however, that the Collateral shall include all Accounts and General Intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the Intellectual Property (the "Rights to Payment"). Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of the date of this Agreement, include the Intellectual Property to the extent necessary to permit perfection of Agent's security interest in the Rights to Payment.

3.2 Notwithstanding the broad grant of the security interest set forth in Section 3.1, above, the Collateral shall not include (a) any “intent to use” trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, provided, that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use of an intent-to-use trademark application pursuant to 15 U.S.C. Section 1060(a) (or any successor provision) such intent-to-use application shall constitute Collateral, (b) nonassignable licenses or contracts, which by their terms require the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, Sections 9406, 9407 and 9408 of the UCC), (c) any Excluded Account, (d) with respect to Equity Interests in Foreign Subsidiaries and FSHCOs held directly by Borrower, in each case, that is an Immaterial Subsidiary, more than 65% of the voting Equity Interests of any such Foreign Subsidiary or FSHCO, (e) any assets owned directly or indirectly by any Foreign Subsidiary that is both a CFC and an Immaterial Subsidiary, and (f) any Equity Interests in any CFC, which CFC is an Immaterial Subsidiary, not held directly by Borrower.

SECTION 4. CONDITIONS PRECEDENT TO LOAN

The obligations of Lenders to make the Loan hereunder are subject to the satisfaction by Borrower of the following conditions:

4.1 Initial Advance. On or prior to the Closing Date, Borrower shall have delivered to Agent the following:

- (a) duly executed copies of the Loan Documents (other than the Warrant, which shall be an original), and all other documents and instruments reasonably required by Agent to effectuate the transactions contemplated hereby or to create and perfect the Liens of Agent with respect to all Collateral, in all cases in form and substance reasonably acceptable to Agent;
 - (b) subject to Section 7.24 hereof, duly executed Account Control Agreement(s) with respect to each Deposit Account and account holding Investment Property (other than an Excluded Account) maintained by Borrower or any Subsidiary;
 - (c) a legal opinion of Borrower’s counsel in form and substance reasonably acceptable to Agent;
 - (d) copy of resolutions of Borrower’s Board of Directors, certified by an officer of Borrower, (i) evidencing approval of the Loan and other transactions evidenced by the Loan Documents (including the Warrant), (ii) authorizing a specified person or persons to execute the Loan Documents to which it is a party on its behalf, (iii) authorizing a specified person or persons, on its behalf, to sign and/or dispatch all documents and notices (including, if relevant, any Advance Request or other relevant notice) to be signed and/or dispatched by it under or in connection with the Loan Documents to which it is a party, and (iv) acknowledging that the Board of Directors are acting for a proper purpose and that the Loan Documents are in the best interests of that Borrower and for its commercial benefit;
 - (e) certified copies of the Charter of Borrower, certified by the Secretary of State of its jurisdiction of organization and the other Organizational Documents of Borrower, each as amended through the Closing Date;
 - (f) a certificate of good standing for Borrower from its jurisdiction of organization and similar certificates from all other jurisdictions in which it does business and where the failure to be qualified could have a Material Adverse Effect;
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(g) certified copies, dated as of a recent date, of searches for financing statements filed in the central filing office of the State of Delaware, accompanied by written evidence (including any UCC termination statements) that the Liens on any Collateral indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Term Loan Advance, will be terminated or released;

(h) [reserved];

(i) payment of the Due Diligence Fee, Initial Facility Charge and reimbursement of Agent's and Lenders' current expenses reimbursable pursuant to this Agreement, which amounts may be deducted from the initial Advance;

(j) a duly executed copy of the Perfection Certificate and each exhibit and addendum thereto;

(k) all certificates of insurance and copies of each insurance policy and, subject to Section 7.24 hereof, endorsements required hereunder;

(l) subject to Section 7.24 hereof, duly executed landlord consents for its (i) chief executive office or its principal place of business and (ii) offices or business locations, including warehouses, containing in excess of [***] Dollars (\$[***]) of Borrower's assets or property;

(m) subject to Section 7.24 hereof, duly executed bailee agreements for any bailee location holding a portion of Borrower's assets or property valued, individually or in the aggregate, in excess of [***] Dollars (\$[***]);

(n) (i) the certificates representing the Equity Interests required to be pledged pursuant to the Pledge Agreement, together with an undated stock power or similar instrument of transfer for each such certificate endorsed in blank by a duly authorized officer of the pledgor thereof, and (ii) each material debt instrument (if any) endorsed (without recourse) in blank (or accompanied by a transfer form endorsed in blank) by the pledgor thereof required to be pledged to Agent under the Pledge Agreement; and

(o) all reports, declarations and forms required by the SBA, including but not limited to SBA 652, SBA 1031 and SBA 480.

4.2 All Advances. On each Advance Date:

(a) Agent shall have received (i) an Advance Request for the relevant Advance as required by Section 2.2(c), duly executed by Borrower's Chief Executive Officer or Chief Financial Officer and (ii) any other documents Agent may reasonably request;

(b) The representations and warranties set forth in this Agreement shall be true and correct in all material respects on and as of the applicable Advance Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); *provided* that any representation and warranty that is qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects;

(c) Borrower shall be in compliance with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed;

(d) [Reserved]; and

(e) Each Advance Request shall be deemed to constitute a representation and warranty by Borrower on the relevant Advance Date as to the matters specified in Section 4.2(b), 4.2(c), 4.2(d) and Section 4.4 and as to the other matters set forth in the Advance Request.

(f) For any Advance made after the Closing Date, Borrower shall have paid the Facility Charge with respect thereto, the amount of which Facility Charge may be deducted from such Advance.

4.3~~[Reserved.]~~

4.4~~No Default~~. As of the Closing Date and at the time of and immediately after each Advance Date, (i) no fact or condition exists that could (or could, with the passage of time, the giving of notice, or both) constitute an Event of Default and (ii) no event that has had or could reasonably be expected to have a Material Adverse Effect has occurred and is continuing.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower represents and warrants that:

5.1~~Corporate Status; Execution and Delivery; Binding Effect~~. Borrower is a corporation duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation in all jurisdictions in which the nature of its business or location of its properties require such qualifications and where the failure to be qualified could reasonably be expected to have a Material Adverse Effect. Borrower's present name, former names (if any), locations, place of formation, tax identification number, organizational identification number and other information are correctly set forth in Exhibit B, as may be updated by Borrower in a written notice (including any Compliance Certificate) provided to Agent after the Closing Date in accordance with this Agreement. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by the Borrower. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws affecting creditors' rights generally and by general principles of equity.

5.2~~Collateral~~. Borrower owns or otherwise has the rights to use the Collateral, free of all Liens, except for Permitted Liens. Borrower has the power and authority to grant to Agent a Lien in the Collateral as security for the Secured Obligations.

5.3~~Consents~~. Borrower's execution, delivery and performance of this Agreement and all other Loan Documents to which it is a party, and Borrower's execution of the Warrant, (i) have been duly authorized by all necessary action of Borrower in accordance with its Organizational Documents and applicable law, (ii) will not result in the creation or imposition of any Lien upon the Collateral, other than Permitted Liens, (iii) do not violate any provisions of Borrower's Organizational Documents or any, law, regulation, order, injunction, judgment, decree or writ to which Borrower is subject and (iv) except as described on Schedule 5.3, do not violate any contract or agreement or require the consent or approval of any other Person or Governmental Authority which has not already been obtained. The individual or individuals executing the Loan Documents and the Warrant are duly authorized to do so.

5.4~~Material Adverse Effect~~. No event that has had or could reasonably be expected to have a Material Adverse Effect has occurred and is continuing. Borrower is not

aware of any event or circumstance that is likely to occur that is reasonably expected to result in a Material Adverse Effect.

5.5 Actions Before Governmental Authorities. There are no actions, suits, claims, disputes or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of Borrower, threatened against or affecting Borrower or its property, that is reasonably expected to result in a Material Adverse Effect.

5.6 Laws.

(a) Neither Borrower nor any of its Subsidiaries is in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any Governmental Authority to which Borrower or such Subsidiaries are subject, where such violation or default could reasonably be expected to result in a Material Adverse Effect. Borrower is not in default in any manner under any provision of any agreement or instrument evidencing material Indebtedness, or any other Material Agreement to which it is a party or by which it is bound.

(b) Neither Borrower nor any of its Subsidiaries is an “investment company,” a company that would be an “investment company” except for the exclusion from the definition of “investment company” in Section 3(c) of the Investment Company Act of 1940, as amended (the “1940 Act”), or a company “controlled” by an “investment company” under the 1940 Act. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower’s nor any of its Subsidiaries’ properties or assets have been used by Borrower or such Subsidiary or, to Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

(c) None of Borrower, any of its Subsidiaries, or any of Borrower’s or its Subsidiaries’ Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or (to the knowledge of Borrower) any of their Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. None of the funds to be provided under this Agreement will be used, directly or indirectly, (a) for any activities in violation of any applicable anti-money laundering, economic sanctions and anti-bribery laws and regulations or (b) for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.7 Information Correct and Current. No information, report, Advance Request, financial statement, exhibit or schedule furnished, by or on behalf of Borrower to Agent in connection with any Loan Document or included therein or delivered pursuant thereto contained, or, when taken as a whole, contains or will contain any material misstatement of fact or, when taken together with all other such information or documents, omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not materially misleading at the time such statement was made or deemed made. Additionally, any and all financial or business projections provided by Borrower to Agent, whether prior to or after the Closing Date, shall be (i) provided in good faith and based on the most current data and information available to Borrower, and (ii) the most current of such projections provided to Borrower's Board of Directors (it being understood that such projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Borrower, that no assurance is given that any particular projections will be realized, and that actual results may differ).

5.8 Tax Matters. Except as set forth on Schedule 5.8, (a) Borrower and its Subsidiaries have filed all federal and state income Tax returns and other material Tax returns that they are required to file, (b) Borrower and its Subsidiaries have duly paid all federal and state income Taxes and other material Taxes or installments thereof that they are required to pay, except (i) Taxes being contested in good faith by appropriate proceedings and for which Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP and (ii) such Taxes as do not exceed \$50,000 in the aggregate outstanding, and (c) to the best of Borrower's knowledge, no proposed or pending Tax assessments, deficiencies, audits or other proceedings with respect to Borrower or any Subsidiary have had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9 Intellectual Property Claims. Borrower is the sole owner of, or otherwise has the right to use, the Intellectual Property material to Borrower's business. Except as described on Schedule 5.9, (i) each of the material Copyrights, Trademarks and Patents is valid and enforceable, (ii) no material part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and (iii) no claim has been made to Borrower that the ownership of or use of any material part of the Intellectual Property violates the rights of any third party. Exhibit C is a true, correct and complete list of each of Borrower's Patents, registered Trademarks, registered Copyrights, and material agreements under which Borrower licenses Intellectual Property from third parties (other than shrink-wrap software licenses or other than "off-the-shelf" licenses or open-source software), together with application or registration numbers, as applicable, owned by Borrower or any Subsidiary, in each case as of the Closing Date. Borrower is not in material breach of, nor has Borrower failed to perform any material obligations under, any of the foregoing contracts, licenses or agreements and, to Borrower's knowledge, no third party to any such contract, license or agreement is in material breach thereof or has failed to perform any material obligations thereunder.

5.10 Intellectual Property.

(a) Except as described on Schedule 5.10, Borrower has all material rights with respect to intellectual property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower. Without limiting the generality of the foregoing, except for restrictions that are unenforceable under Division 9 of the UCC or otherwise permitted under this Agreement with respect to Licenses, Borrower has the right, to the extent required to operate Borrower's business, to freely transfer, license or assign Intellectual Property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower, without condition, restriction or payment of any kind (other than license payments in the ordinary course of business) to any third party, and Borrower owns or has the right to use, pursuant to valid licenses, all software development tools, library functions, compilers and all other third-party

software and other items that are material in the operation or conduct of Borrower's business and used in the design, development, promotion, sale, license, manufacture, import, export, use or distribution of Borrower Products except customary covenants in inbound license agreements and equipment leases where Borrower is the licensee or lessee. Except as disclosed on Schedule 5.10, Borrower is not a party to, nor is it bound by, any Restricted License.

(b) No material software or other materials used by Borrower or any of its Subsidiaries (or used in any Borrower Products or any Subsidiaries' products) are subject to an open-source or similar license (including but not limited to the General Public License, Lesser General Public License, Mozilla Public License, or Affero License) in a manner that would cause such software or other materials to have to be (i) distributed to third parties at no charge or a minimal charge (royalty-free basis); (ii) licensed to third parties to modify, make derivative works based on, decompile, disassemble, or reverse engineer; or (iii) used in a manner that requires disclosure or distribution in source code form.

(c) There are no material unpaid fees or royalties under any Material Agreements that have become overdue. Each Material Agreement is in full force and effect and is legal, valid, binding, and enforceable in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. Borrower and each Subsidiary, as the case may be, is in compliance with all material terms of the Material Agreements to which it is party, and there has not occurred any breach, violation or default or any event that, with the lapse of time, the giving of notice or the election of any Person, or any combination thereof, would constitute a breach, violation or default by Borrower or any Subsidiary under any such Material Agreement or, to the knowledge of Borrower and each Subsidiary, by any other Person to any such contract except where such breach, violation or default would not have a Material Adverse Effect. Neither Borrower nor any Subsidiary has been notified that any party to any Material Agreement intends to cancel, terminate, not renew or exercise an option under any Material Agreement, whether in connection with the transactions contemplated hereby or otherwise.

5.11 Borrower Products. Except as set forth on Schedule 5.11, no Intellectual Property owned by Borrower or Borrower Product has been or is subject to any actual or, to the knowledge of Borrower, threatened litigation in writing, proceeding (including any proceeding in the United States Patent and Trademark Office or any corresponding foreign office or agency) or outstanding decree, order, judgment, settlement agreement or stipulation that restricts in any manner Borrower's use, transfer or licensing thereof or that may affect the validity, use or enforceability thereof. There is no decree, order, judgment, agreement, stipulation, arbitral award or other provision entered into in connection with any litigation or proceeding that obligates Borrower to grant licenses or ownership interest in any future Intellectual Property related to the operation or conduct of the business of Borrower or Borrower Products. Borrower has not received any written notice or claim, or, to the knowledge of Borrower, oral notice or claim, challenging or questioning Borrower's ownership in any Intellectual Property (or written notice of any claim challenging or questioning the ownership in any licensed Intellectual Property of the owner thereof) or suggesting that any third party has any claim of legal or beneficial ownership with respect thereto nor, to Borrower's knowledge, is there a reasonable basis for any such claim. Neither Borrower's use of its Intellectual Property nor the production and sale of Borrower Products infringes the Intellectual Property or other rights of others.

5.12 Financial Accounts. Exhibit D, as may be updated by Borrower in a written notice provided to Agent after the Closing Date, is a true, correct and complete list of (a) all banks and other financial institutions at which Borrower or any Subsidiary maintains Deposit Accounts and (b) all institutions at which Borrower or any Subsidiary maintains an account holding Investment Property, and such exhibit correctly identifies the name, address and telephone number of each bank or other institution, the name in which the account is held, a

description of the purpose of the account, and the complete account number therefor. None of the Loan Parties or any of their Subsidiaries owns or holds any Digital Assets.

5.13 Employee Loans. Except for loans constituting Permitted Investments or as described on Schedule 5.13, Borrower has no outstanding loans to any employee, officer or director of Borrower nor has Borrower guaranteed the payment of any loan made to an employee, officer or director of Borrower by a third party.

5.14 Capitalization and Subsidiaries. Borrower's capitalization is set forth on Schedule 5.14 annexed hereto. Borrower does not own any stock, partnership interest or other securities of any Person, except for Permitted Investments. Attached as Schedule 5.14, as may be updated by Borrower in a written notice provided after the Closing Date, is a true, correct and complete list of each direct and indirect Subsidiary of Company.

5.15 Solvency. The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower and each of its Subsidiaries are able to pay their debts (including trade debts) as they mature. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

5.16 Regulatory Matters.

(a) Borrower, each Subsidiary, and their respective directors, officers, employees, and to the knowledge of Borrower, agents are, and at all times have been, in compliance with all applicable Healthcare Laws, except where failures to so comply could not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Borrower has not received any written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority or third party alleging that any Borrower Product, operation or activity related to a Borrower Product is in violation of any applicable Health Care Laws or any Permits required under any such applicable Health Care Laws, or has any knowledge that any such Governmental Authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding, nor, to the knowledge of Borrower, has there been any noncompliance with or violation of any applicable Health Care Laws by the Borrower or its Subsidiaries that would reasonably be expected to require the issuance of any such written notice or result in an investigation, corrective action, or enforcement action by the FDA or similar Governmental Authority, except for any of the foregoing as could not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any Subsidiary is a party to or has any ongoing reporting obligations pursuant to or under any order by a Governmental Authority or corporate integrity agreements, deferred or non-prosecution agreements, monitoring agreements, consent decrees, settlement orders, plans of correction or similar agreements with or imposed by any Governmental Authority. Neither Borrower or any Subsidiary, nor any officers, employees or, to the knowledge of Borrower, agents of Borrower or any Subsidiary has been excluded, suspended or debarred from any government healthcare program or convicted of any crime or engaged in any conduct that would reasonably be expected to result in debarment under any applicable Healthcare Law, and, to the knowledge of Borrower, no such Action is currently contemplated, proposed or pending.

(b) Borrower and each Subsidiary has obtained and maintained all Permits, including any Permits required pursuant to any applicable Healthcare Laws, and all of such Permits are in full force and effect, except where failures to possess or maintain the same, could not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Borrower and each Subsidiary has fulfilled and performed all of its obligations

with respect to such Permits, and neither Borrower nor any of its Subsidiaries has received notice of any pending claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from the FDA or any Governmental Authority that, if determined adversely to Borrower or any of its Subsidiaries, could result in the impairment, revocation, suspension or termination of any such Permit, and, to the knowledge of Borrower, no event has occurred which allows, or after notice or lapse of time would allow, revocation, suspension or termination of, or result in any other impairment of the rights of the holder of, any such Permit, except where such revocations, terminations, suspensions or impairments could not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all requests for a Permit from the FDA or other Governmental Authority, or as otherwise required under applicable Health Care Laws relating to Borrower, its business, its Subsidiaries, its Subsidiaries' businesses, and the Borrower Products, when submitted to the FDA or other Governmental Authority were true, complete and correct in all material respects as of the date of submission and/or any necessary or required updates, changes, corrections or modification to such applications, submissions, information and data have been submitted to the FDA or other Governmental Authority.

(c) The manufacture of Borrower Products by or on behalf of Borrower or its Subsidiaries is being conducted in compliance in all material respects with all applicable Laws, including, without limitation, the FDA's current good manufacturing practice regulations for Borrower Products sold in the United States, and the respective counterparts thereof promulgated by Governmental Authorities in countries outside the United States. Neither Borrower, nor any of its Subsidiaries has had any Borrower Product manufacturing site (whether Borrower-owned or, that of a contract manufacturer for Borrower Products) subject to a Governmental Authority (including FDA) shutdown or import or export prohibition, nor received any FDA Form 483 or other Governmental Authority notice of inspectional observations, warning letters, untitled letters or requests or requirements to make changes to Borrower Products that if not complied with could reasonably be expected to result in a Material Adverse Effect. There have been no material recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear doctor" letters, investigator notices, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of any Borrower Products (collectively, "Safety Notices"). To the knowledge of Borrower, there are no facts that would be reasonably likely to result in (i) a material Safety Notice with respect to any Borrower Product, (ii) a materially adverse change in labeling of any Borrower Product; or (iii) a termination or suspension of the manufacturing, development, testing or marketing of any Borrower Product.

(d) All clinical or preclinical studies, tests or trials that have been or are being conducted by or on behalf of, or sponsored by, Borrower or any Subsidiary, or in which any Borrower Products have participated, and which have been or will be submitted to the FDA or other regulatory authorities in connection with applications for Permits, were and, if still pending, are being conducted in compliance in all material respects with all protocols, laws, regulations, rules and policies to which such studies, tests and trials are subject and applicable Healthcare Laws. No investigational new drug application or other allowance or approval to commence a clinical trial filed with or submitted to the FDA or other Governmental Authority by or on behalf of Borrower or any Subsidiary has been terminated or suspended, and neither the FDA nor any applicable Governmental Authority, nor any institutional review board having authority over such studies, tests or trials, has commenced, or to the knowledge of Borrower, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, delay or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by or on behalf of Borrower or any Subsidiary.

(e) Neither Borrower nor any Subsidiary is the subject of any pending or, to the knowledge of Borrower, threatened investigation in respect of the Company or Company Products, by the FDA pursuant to its “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities” Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto. Neither Borrower, its Subsidiaries, nor any of their respective officers, employees or, agents has been convicted of any crime or engaged in any conduct that could result in a material debarment or exclusion (i) under 21 U.S.C. Section 335a, or (ii) any similar law. As of the date hereof, to the no claims, actions, proceedings or investigations that would reasonably be expected to result in such a material debarment or exclusion are pending or, to the knowledge of Borrower, threatened against Borrower, its Subsidiaries, or any of their respective officers, employees or agents.

5.17Commercial Tort Claims. Set forth on Schedule 5.17 annexed hereto, as the same may be updated from time to time, is a list of all Commercial Tort Claims in an amount greater than Five Hundred Thousand Dollars (\$500,000) held by Borrower.

SECTION 6. INSURANCE; INDEMNIFICATION

6.1Coverage. Borrower shall cause to be carried and maintained commercial general liability insurance covering Borrower and its Subsidiaries, on an occurrence form, against risks and in such amounts customarily insured against in Borrower’s line of business. Such risks shall include the risks of bodily injury, including death, property damage, personal injury, advertising injury, and contractual liability per the terms of the indemnification agreement found in Section 6.3. Borrower must maintain a minimum of Four Million Dollars (\$4,000,000) of commercial general liability insurance for each occurrence. Borrower maintains and shall continue to maintain a minimum of Four Million Dollars (\$4,000,000) of directors’ and officers’ insurance for each occurrence and Ten Million Dollars (\$10,000,000) in the aggregate. So long as there are any Secured Obligations outstanding (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement), Borrower shall also cause to be carried and maintained insurance upon the business and assets of Borrower and its Subsidiaries, insuring against all risks of physical loss or damage howsoever caused, in an amount not less than the full replacement cost of the Collateral, provided that such insurance may be subject to standard exceptions and deductibles. If Borrower fails to obtain the insurance called for by this Section 6.1 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Agent may obtain such insurance or make such payment, and all amounts so paid by Agent are immediately due and payable, bearing interest at the then highest rate applicable to the Secured Obligations, and secured by the Collateral. Agent will make reasonable efforts to provide Borrower with notice of Agent obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Agent are deemed an agreement to make similar payments in the future or Agent’s waiver of any Event of Default.

6.2Certificates. Borrower shall deliver to Agent certificates of insurance that evidence Borrower’s compliance with its insurance obligations in Section 6.1 and the obligations contained in this Section 6.2. Borrower’s insurance certificate shall reflect Agent (shown as “Hercules Capital, Inc., as Agent, and its successors and/or assigns”) is an additional insured for commercial general liability, a lenders loss payable for all risk property damage insurance, subject to the insurer’s approval, and a lenders loss payable for property insurance and additional insured for liability insurance for any future insurance that Borrower may acquire from such insurer. Attached to the certificates of insurance will be additional insured endorsements for liability and lender’s loss payable endorsements for all risk property damage insurance. All certificates of insurance will provide for a minimum of thirty (30) days advance written notice to Agent of cancellation (other than cancellation for non-payment of premiums, for which ten (10) days’ advance written notice shall be sufficient) or any other change adverse to Agent’s

interests. Any failure of Agent to scrutinize such insurance certificates for compliance is not a waiver of any of Agent's rights, all of which are reserved. Borrower shall provide Agent with copies of each insurance policy, and upon entering or amending any insurance policy required hereunder, Borrower shall provide Agent with copies of such policies and shall promptly deliver to Agent updated insurance certificates with respect to such policies.

6.3 Indemnity. Borrower agrees to indemnify and hold Agent, Lenders and their officers, directors, employees, agents, in-house attorneys, representatives and shareholders (each, an "Indemnified Person") harmless from and against any and all third-party claims, costs, expenses, damages and liabilities (including such claims, costs, expenses, damages and liabilities based on liability in tort, including strict liability in tort), including reasonable attorneys' fees and disbursements and other costs of investigation or defense (including those incurred upon any appeal) (collectively, "Liabilities"), that may be instituted or asserted against or incurred by such Indemnified Person as the result of credit having been extended, suspended or terminated under this Agreement and the other Loan Documents or the administration of such credit, or in connection with or arising out of the transactions contemplated hereunder and thereunder, or any actions or failures to act in connection therewith, or arising out of the disposition or utilization of the Collateral, excluding in all cases Liabilities to the extent such Liabilities arise solely out of gross negligence or willful misconduct of any Indemnified Person or changes in income tax rates. This Section 6.3 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. In no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). This Section 6.3 shall survive the repayment of indebtedness under, and otherwise shall survive the expiration or other termination of, this Agreement, in each case, subject to the applicable statute of limitations.

SECTION 7. COVENANTS OF BORROWER

Borrower agrees as follows:

7.1 Financial Reports. Borrower shall furnish to Agent the financial statements and reports listed hereinafter (the "Financial Statements"):

(a) as soon as practicable (and in any event within thirty (30) days after the end of each month), unaudited interim and year-to-date financial statements as of the end of such month (prepared on a consolidated basis), including balance sheet and related statements of income and cash flows accompanied by a report detailing any material contingencies (including the commencement of any material litigation by or against Borrower) or any other occurrence that could reasonably be expected to have a Material Adverse Effect, all certified by Borrower's Chief Executive Officer or Chief Financial Officer to the effect that they have been prepared in accordance with GAAP, except (i) for the absence of footnotes, (ii) that they are subject to normal year-end adjustments, and (iii) they do not contain certain non-cash items that are customarily included in quarterly and annual financial statements;

(b) as soon as practicable (and in any event within forty-five (45) days after the end of each calendar quarter), unaudited interim and year-to-date financial statements as of the end of such calendar quarter (prepared on a consolidated basis), including balance sheet and related statements of income and cash flows accompanied by a report detailing any material contingencies (including the commencement of any material litigation by or against Borrower) or any other occurrence that could reasonably be expected to have a Material Adverse Effect, certified by Borrower's Chief Executive Officer or Chief Financial Officer to the effect that they have been prepared in accordance with GAAP, except (i) for the absence of footnotes, and (ii) that they are subject to normal year-end adjustments;

(c) as soon as practicable (and in any event within one hundred eighty (180) days or, if Borrower is subject to SEC reporting rules, ninety (90) days, after the end of each fiscal year), audited financial statements as of the end of such year (prepared on a consolidated basis), including balance sheet and related statements of income and cash flows, and setting forth in comparative form the corresponding figures for the preceding fiscal year, certified without qualification (except that, solely with respect to Borrower's audited financial statements for the fiscal year ending December 31, 2025, a going concern qualification shall be permitted) by a firm of independent certified public accountants selected by Borrower and reasonably acceptable to Agent (it being understood and agreed that WithumSmith+Brown, PC or any of the "Big Four" accounting firms shall be acceptable to Agent), accompanied by any management report from such accountants;

(d) concurrently with the delivery of the financial statements required under clauses (a) and (b) above, a Compliance Certificate in the form of Exhibit E;

(e) as soon as practicable (and in any event within thirty (30) days) after the end of each month, a report showing agings of accounts receivable and accounts payable;

(f) promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements, information or reports that Company has made available to holders of its common stock and copies of any regular, periodic and special reports or registration statements that Company files with the Securities and Exchange Commission or any Governmental Authority that may be substituted therefor, or any national securities exchange;

(g) concurrently with the delivery of each Compliance Certificate, notice of any Commercial Tort Claim or Letter of Credit Rights held by any Loan Party, in each case in an amount greater than Five Hundred Thousand Dollars (\$500,000.00) and of the general details thereof, and unless Agent otherwise consents thereto, an update to Schedule 5.17 hereof in the case of any such Commercial Tort Claims;

(h) within thirty (30) days after each meeting of the Board of Directors, copies of all notices, minutes, consents and other materials that Borrower provides to its directors in connection with such meetings, provided that in all cases Borrower may exclude confidential information, information related to trade secrets, and information subject to attorney-client privilege;

(i) financial and business projections promptly following their approval by Company's Board of Directors, and in any event, within sixty (60) days after the end of Borrower's fiscal year, as well as budgets, operating plans and other financial information reasonably requested by Agent;

(j) promptly (without duplication of any notices, reports and documents otherwise required to be delivered under the Loan Documents) (i) all notices, reports and documents, required to be delivered by Borrower to the holders of any Permitted Convertible Debt (or the agent thereof) under the Permitted Convertible Debt Documents, including, without limitation, all financial compliance certificates delivered pursuant to Permitted Convertible Debt Documents, concurrently with its delivery of each such notice, report and/or document the holders of such Permitted Convertible Debt (or the agent thereof) of such Permitted Convertible Debt, (ii) at the same time as the same is provided to, or promptly after received from the holders of any Permitted Convertible Debt (or the agent thereof), copies of each material notification to Borrower by such holders or agent (including notices pertaining to a default or reservation of rights under any such Permitted Convertible Debt Document or to the exercise of remedies in connection therewith), and (iii) promptly after execution thereof, copies of final

executed versions of any material amendment, supplement, forbearance, waiver or other modification with respect to any Permitted Convertible Debt Document;

(k) insurance renewal statements, annually or otherwise promptly upon renewal of insurance policies required to be maintained in accordance with Section 6.1;

(l) prompt notice of any legal process that is reasonably likely to result in damages, expenses or liabilities in excess of Two Hundred Fifty Thousand Dollars (\$250,000);

(m) prompt (but in any event no more than two (2) Business Days') notice if Borrower or any Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (i) is convicted on, (ii) pleads *nolo contendere* to, (iii) is indicted on, or (iv) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering; and

(n) no later than Wednesday of each calendar week (or such other day as Agent may specify), a cash flow report in respect of the immediately preceding calendar week, in form and substance and in a format acceptable to Agent.

Borrower shall not (without the consent of Agent, such consent not to be unreasonably withheld or delayed), make any change in its (a) accounting policies or reporting practices, except as acceptable under GAAP or (b) fiscal years or fiscal quarters. The fiscal year of Borrower shall end on December 31.

The executed Compliance Certificate, and all Financial Statements required to be delivered hereunder shall be sent per instructions (i) specified on Addendum 4 or (ii) otherwise provided by Agent to Borrower via a written notice from time to time.

Notwithstanding the foregoing, documents required to be delivered under Sections 7.1(a), (b), (c), or (f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower emails a link thereto to Agent; provided that Borrower shall directly provide Agent all Financial Statements required to be delivered pursuant to Section 7.1(b) and (c) hereunder.

7.2 Management Rights. Borrower shall permit any representative that Agent or Lenders authorizes, including its attorneys and accountants, to inspect the Collateral and examine and make copies and abstracts of the books of account and records of Borrower at reasonable times and upon reasonable notice during normal business hours; provided, however, that so long as no Event of Default has occurred and is continuing, such examinations shall be limited to no more often than once per fiscal year. In addition, in connection with such inspections, any such representative shall have the right to meet with management and officers of Borrower to discuss such books of account and records. In addition, Agent or Lenders shall be entitled at reasonable times and intervals to consult with and advise the management and officers of Borrower concerning significant business issues affecting Borrower. Such consultations shall not unreasonably interfere with Borrower's business operations. The parties intend that the rights granted Agent and Lenders shall constitute "management rights" within the meaning of 29 C.F.R. Section 2510.3-101(d)(3)(ii), but that any advice, recommendations or participation by Agent or Lenders with respect to any business issues shall not be deemed to give Agent or Lenders, nor be deemed an exercise by Agent or Lenders of, control over Borrower's management or policies.

7.3 Further Assurances. Borrower shall, and shall cause each other Loan Party to, from time to time execute, deliver and file, alone or with Agent, any financing statements, security agreements, collateral assignments, notices, control agreements, promissory notes or other documents to perfect, give the highest priority to Agent's Lien on the Collateral or otherwise evidence Agent's rights herein. Borrower shall from time to time procure any

instruments or documents as may be reasonably requested by Agent, and take all further action that may be necessary, or that Agent may reasonably request, to perfect and protect the Liens granted hereby or pursuant to applicable Loan Documents. In addition, and for such purposes only, Borrower hereby authorizes Agent to execute and deliver on behalf of Borrower and to file such financing statements (including an indication that the financing statement covers “all assets or all personal property” of Borrower in accordance with Section 9504 of the UCC), collateral assignments, notices, control agreements, security agreements and other documents without the signature of Borrower either in Agent’s name or in the name of Agent as agent and attorney-in-fact for Borrower. Borrower shall protect and defend Borrower’s title to the Collateral and Agent’s Lien thereon against all Persons claiming any interest adverse to Borrower or Agent other than Permitted Liens.

7.4 Indebtedness. Borrower shall not, and shall not permit any Subsidiary to (i) create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness, or (ii) prepay any Indebtedness or take any actions which impose on Borrower or any Subsidiary an obligation to prepay any Indebtedness, except for (a) the conversion of Indebtedness into equity securities and the payment of cash in lieu of fractional shares in connection with such conversion, (b) purchase money Indebtedness pursuant to its then applicable payment schedule, (c) prepayment by any Subsidiary of (i) intercompany Indebtedness owed by such Subsidiary to any Loan Party, or (ii) if such Subsidiary is not a Loan Party, intercompany Indebtedness owed by such Subsidiary to another Subsidiary that is not a Loan Party, (d) payments of trade debt incurred in the ordinary course of business, (e) payments of Subordinated Indebtedness to the extent permitted pursuant to the terms of the subordination agreement applicable thereto, (f) the use of proceeds of a casualty event to prepay a capital lease to the extent required thereby and to the extent such capital lease obligation constitutes Permitted Indebtedness and the Lien securing such capital lease obligation constitutes a Permitted Lien, (g) refinancing of Permitted Indebtedness as permitted under clause (xii) of the definition thereof or (h) as otherwise permitted hereunder or approved in writing by Agent.

Notwithstanding anything to the contrary in the foregoing, the issuance of, performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, payment (including, for the avoidance of doubt, any required repurchase in connection with the payment of Permitted Convertible Debt upon satisfaction of any condition related to the stock price of Borrower’s common stock), settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common stock of Borrower or, following a merger event or other change of the common stock of Borrower, other securities or property), or the satisfaction of any condition that would permit or require any of the foregoing with respect to, any Permitted Convertible Debt, shall not constitute a prepayment of Indebtedness by Borrower for the purposes of this Section 7.4; provided that, to the extent the aggregate amount of cash payable upon conversion or payment of any Permitted Convertible Debt (excluding any required payment of interest with respect to such Permitted Convertible Debt and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) exceeds the sum of (a) the aggregate principal amount thereof and (b) the aggregate amount received by Borrower pursuant to an exercise or early unwind or settlement of a corresponding portion of the Permitted Bond Hedge Transactions relating to such Permitted Convertible Debt (including, for the avoidance of doubt, the case where there is no Permitted Bond Hedge Transaction relating to such Permitted Convertible Debt), the payment of such excess cash shall not be permitted by the preceding sentence; provided further that principal payments in cash (other than cash in lieu of fractional shares) shall only be allowed if the Redemption Conditions are satisfied in respect of such payment and at all times after such payment.

7.5 Collateral. Borrower shall at all times (a) keep the Collateral and all other property and assets used in Borrower’s business or in which Borrower now or hereafter holds any interest free and clear from any legal process or Liens whatsoever (except for Permitted

Liens), and (b) shall give Agent prompt written notice of any legal process adversely affecting the Collateral, such other property and assets, or any Liens thereon, provided however, that the Collateral and such other property or assets may be subject to Permitted Liens. Borrower shall not agree with any Person other than Agent or Lenders not to encumber its property other than in connection with Permitted Liens. Borrower shall not enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Borrower to create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, to secure its obligations under the Loan Documents to which it is a party other than (i) this Agreement and the other Loan Documents, (ii) any agreements governing any purchase money Liens or capital lease obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (iii) customary restrictions on the assignment of leases, licenses and other agreements, (iv) customary restrictions on cash collateral securing Permitted Liens, (v) customary restrictions under asset sale agreements otherwise permitted hereunder and (vi) customary restrictions and conditions contained in agreements governing joint ventures in the ordinary course of business. Borrower shall cause its Subsidiaries to protect and defend such Subsidiary's title to its assets from and against all Persons claiming any interest adverse to such Subsidiary, and Borrower shall cause its Subsidiaries at all times to keep such Subsidiary's property and assets free and clear from any legal process or Liens whatsoever (except for Permitted Liens), and shall give Agent prompt written notice of any legal process affecting such Subsidiary's assets.

7.6Investments. Borrower shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries to do so, other than Permitted Investments. No Loan Party shall directly or indirectly acquire or own, nor make any Investment in Digital Assets, nor permit any of its Subsidiaries so to do.

7.7Distributions. Borrower shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than pursuant to employee, director or consultant repurchase plans or other similar agreements, provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest, or (b) declare or pay any cash dividend or make any other cash distribution on any class of stock or other Equity Interest, except that a Subsidiary may pay dividends or make other distributions to Borrower or any Subsidiary of Borrower, or (c) except for Permitted Investments, lend money to any employees, officers or directors or guarantee the payment of any such loans granted by a third party in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate, or (d) the conversion of any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, or (e) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate.

Notwithstanding the foregoing, Borrower may (a) pay the purchase price of any Permitted Bond Hedge Transaction or (b) settle, unwind or terminate all or any portion of any Permitted Warrant Transaction by (i) set-off against the concurrent settlement, unwind or other termination of all or any portion of any related Permitted Bond Hedge Transaction or (ii) delivery of common stock.

7.8Transfers. Except for Permitted Transfers, Borrower shall not, and shall not permit any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey ("Transfer") any equitable, beneficial or legal interest in any material portion of its assets (including, without limitation, pursuant to a Division); provided, that, in no event shall Borrower or any of its Subsidiaries Transfer any royalty interest in any of its or their respective assets.

7.9Mergers and Consolidations. Borrower shall not, nor will it permit any Subsidiary to, merge, dissolve, liquidate, consolidate with or into another Person, or dispose of

(whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than (x) mergers or consolidations of (a) a Subsidiary which is not a Loan Party into another Subsidiary or into a Loan Party or (b) a Loan Party into another Loan Party (provided that a Borrower may only be merged or consolidated into another Borrower) or (y) dissolutions or liquidations of any Subsidiary; provided that (i) all assets of a Subsidiary which is not a Loan Party are transferred to another Subsidiary or a Loan Party upon such dissolution or liquidation or (ii) all assets of a Loan Party are transferred to another Loan Party upon such dissolution or liquidation (provided that any assets of a Borrower may only be transferred to another Borrower)).

7.10Taxes. Borrower shall, and shall cause each of its Subsidiaries to, pay prior to being delinquent all material Taxes of any nature whatsoever now or hereafter imposed or assessed against Borrower or such Subsidiary or the Collateral or upon Borrower's (or such Subsidiary's) ownership, possession, use, operation or disposition thereof or upon Borrower's (or such Subsidiary's) rents, receipts or earnings arising therefrom. Borrower shall, and shall cause each of its Subsidiaries to, accurately and timely file (taking into account proper extensions) all federal and state income Tax returns and other material Tax returns required to be filed. Notwithstanding the foregoing, Borrower and its Subsidiaries may contest, in good faith and by appropriate proceedings diligently conducted, Taxes for which Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP.

7.11Corporate Changes.

(a) No Loan Party or any Subsidiary shall change its corporate name, legal form or jurisdiction of formation without ten (10) days' prior written notice to Agent.

(b) The Borrower shall not suffer, or permit to be suffered, a Change in Control.

(c) No Loan Party shall relocate its chief executive office or its principal place of business unless: (i) it has provided prior written notice to Agent; and (ii) such relocation shall be within the continental United States of America.

(d) If Borrower intends to add any new offices or business locations, including warehouses, containing any portion of Borrower's assets or property valued, individually or in the aggregate, in excess of [***] Dollars (\$[***]), then Borrower will cause the landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance satisfactory to Agent.

(e) If Borrower intends to deliver any portion of Borrower's assets or property valued, individually or in the aggregate, in excess of [***] Dollars (\$[***]) to a bailee, and Agent and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will cause such bailee to execute and deliver a bailee agreement in form and substance satisfactory to Agent.

(f) The Borrower will not, and will not permit any Subsidiary to, engage to any material extent in any business other than those businesses conducted by the Borrower and its Subsidiaries on the date hereof or any business reasonably related or incidental thereto or representing a reasonable expansion thereof.

7.12Deposit Accounts. No Loan Party shall maintain any Deposit Accounts, any accounts or sub-accounts in connection with an insured cash sweep program or accounts holding Investment Property, except with respect to which Agent has an Account Control Agreement, provided that no Account Control Agreement shall be required for any Excluded

Account. None of the Loan Parties or any of their Subsidiaries shall own or hold any Digital Assets.

7.13Joinder of Subsidiaries. Borrower shall notify Agent of each Subsidiary formed or acquired, or that becomes a Qualified Subsidiary, subsequent to the Closing Date (including any new Subsidiary formed by Division) and, within fifteen (15) days of such formation or acquisition or such Subsidiary becoming a Qualified Subsidiary (or such longer period of time as agreed to by Agent in writing in its sole discretion), shall cause any such Subsidiary that is a Qualified Subsidiary to execute and deliver to Agent a Joinder Agreement and such other documents and instruments as shall be requested by Agent to effectuate the transactions contemplated by such Joinder Agreement (in each case in form and substance acceptable to Agent), or, if requested by Agent, a Guaranty and appropriate collateral security documents to secure the obligations pursuant to such Guaranty (in each case in form and substance acceptable to Agent); it being agreed that if such new Subsidiary is formed by a Division, the foregoing requirements shall be satisfied substantially concurrently with the formation of such Subsidiary.

7.14Certain Amendments. Borrower shall not, and shall not permit its Subsidiaries to:

(a) amend, restate, supplement, modify, waive or otherwise change, or consent or agree to any amendment, restatement, supplement, modification, waiver or other change to, any Permitted Convertible Debt Document in any manner that is, or could reasonably be expected to be, adverse in any material respect to the interests of Agent and the Lenders; or

(b) amend, restate, supplement or otherwise modify any of its Organizational Documents or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments, modifications or changes or such new agreements which are not, and could not reasonably be expected to be, adverse in any material respect to the interests of Agent and the Lenders.

7.15Notification of Defaults and Events of Default. Borrower shall notify Agent immediately of the occurrence of any Default or Event of Default.

7.16SBA. One or more affiliates of Agent have received a license from the U.S. Small Business Administration ("SBA") to extend loans as a small business investment company ("SBIC") pursuant to the Small Business Investment Act of 1958, as amended, and the associated regulations (collectively, the "SBIC Act"). Portions of the Loan to Borrower may be made by a Lender that is a SBIC. Addendum 2 to this Agreement outlines various responsibilities of Agent, each Lender and Borrower associated with a loan made by a SBIC, and such Addendum 2 is hereby incorporated in this Agreement.

7.17Use of Proceeds. Borrower agrees that the proceeds of the Loans shall be used solely to pay related fees and expenses in connection with this Agreement and for working capital and general corporate purposes. The proceeds of the Loans will not be used in violation of Anti-Corruption Laws or applicable Sanctions.

7.18[Reserved.]

7.19Material Agreement. Concurrently with the delivery of each Compliance Certificate, Borrower shall give written notice to Agent of entering into a Material Agreement or materially amending or terminating a Material Agreement.

7.20Compliance with Laws.

(a) Borrower (i) shall maintain, and shall cause its Subsidiaries to maintain, compliance in all material respects with all applicable laws, rules or regulations (including any law, rule or regulation with respect to the making or brokering of loans or financial accommodations), and (ii) shall, or cause its Subsidiaries to, obtain and maintain all required governmental authorizations, approvals, licenses, franchises, permits or registrations reasonably necessary in connection with the conduct of Borrower's business. Borrower shall not become an "investment company," a company that would be an "investment company" except for the exclusion from the definition of "investment company" in Section 3(c) of the 1940 Act, or a company controlled by an "investment company" under the 1940 Act, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation X, T and U of the Federal Reserve Board of Governors).

(b) Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

(c) Borrower has implemented and shall maintain in effect policies and procedures designed to ensure compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

(d) None of Borrower, any of its Subsidiaries or any of their respective directors, officers or employees, or to the knowledge of Borrower, any agent for Borrower or its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Loan, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

7.21 Financial Covenants.

(a) *Minimum Cash*

(i) From and after the Fourth Amendment Effective Date and at all times thereafter, Borrower shall maintain Qualified Cash in an amount not less than Eighteen Million Dollars (\$18,000,000); provided that, from and after the date on which Borrower has satisfied in full its obligations under Section 2.5(g) [***], such amount shall step down to Thirteen Million Five Hundred Thousand Dollars (\$13,500,000).

(ii) The amount of Qualified Cash otherwise required under clause (i) above shall be reduced by (A) Five Million Dollars (\$5,000,000) from and after the date on which Borrower has entered into a Qualifying Sale Agreement and for so long as such Qualifying Sale Agreement remains in full force and effect; provided that, if such Qualifying Sale Agreement is terminated at any time following the execution thereof, such reduction shall immediately cease to apply, and (B) [***].

(iii) If Borrower makes a redemption or any other cash payment in respect of Permitted Convertible Debt, subject to satisfaction of the Redemption Conditions, Borrower shall, at all times thereafter, maintain Qualified Cash in the amount required by the defined term “Redemption Conditions”.

(b) *Minimum Revenue.* Beginning with the test date occurring on August 31, 2026, and as of the last day of each calendar month thereafter, Borrower shall achieve T3M Net Product Revenue of at least the amount set forth in Schedule 7.21(b) with respect to the applicable corresponding test date.

(c) *Minimum EBITDA.* Beginning with the test date occurring on August 31, 2026, and as of the last day of each calendar month thereafter, Borrower shall achieve T3M Adjusted EBITDA of at least the amount set forth in Schedule 7.21(c) with respect to the applicable corresponding test date.

7.22 Intellectual Property. Borrower shall (i) protect, defend and maintain the validity and enforceability of its material Intellectual Property; (ii) promptly advise Agent in writing of infringements of its material Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower’s business to be abandoned, forfeited or dedicated to the public without Agent’s written consent. If Borrower (a) obtains any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (b) applies for any Patent or the registration of any Trademark or any Copyright or mask works, in each case, with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, then Borrower shall provide written notice thereof to Agent concurrently with the delivery of the first Compliance Certificate due immediately thereafter, and shall execute such intellectual property security agreements and other documents and take such other actions as Agent may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent in such property. Borrower shall provide written notice to Agent within thirty (30) days of entering or becoming bound by any Restricted License (other than off-the-shelf software that is commercially available to the public). Borrower shall exercise commercially reasonable efforts to take such steps as Agent reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (1) any Restricted License to be deemed “Collateral” and for Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (2) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent’s rights and remedies under this Agreement and the other Loan Documents.

7.23 Transactions with Affiliates. Except as otherwise described on Schedule 7.23, Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction of any kind with any Affiliate of Borrower or such Subsidiary on terms that are less favorable to Borrower or such Subsidiary, as the case may be, than could reasonably be expected to be obtained in an arm’s length transaction from a Person who is not an Affiliate of Borrower or such Subsidiary.

7.24 Post-Closing Obligations. Borrower shall deliver, or caused to be delivered, to Agent:

(a) within thirty (30) days of the Closing Date (or such later date as Agent may agree to in its sole discretion), insurance endorsements with respect to all policies as required under Section 4.1(k), in each case, in form and substance reasonably satisfactory to Agent and to the extent not otherwise delivered on or prior to the Closing Date;

(b) within thirty (30) days of the Closing Date (or such later date as Agent may agree to in its sole discretion), duly executed landlord consents and bailee agreements as required under Section 4.1(l) and (m), in each case, in form and substance reasonably satisfactory to Agent and to the extent not otherwise delivered on or prior to the Closing Date; and

(c) within two (2) Business Days of the Closing Date (or such later date as Agent may agree to in its sole discretion), duly executed Account Control Agreements as required under Section 4.1(b), each in form and substance reasonably satisfactory to Agent and to the extent not otherwise delivered on or prior to the Closing Date.

7.25[***].

7.26 Liquidity Monitoring. Borrower shall, and shall cause each of its Subsidiaries to, enroll in and at all times maintain Plaid automatic bank connection via Lumonic with respect to each of its Deposit Accounts and accounts holding Investment Property. To the extent Borrower is unable to so enroll any such account, Borrower shall provide Agent with continuous view-only access to each such existing bank and investment account.

7.27 Financial Advisor. Agent shall have the right, at any time and from time to time, to require Borrower to initiate and thereafter maintain an engagement with an independent financial advisor acceptable to Agent, at Borrower's sole cost and expense. Borrower shall provide any such financial advisor with full access to its financial materials, books, records, personnel and systems, and shall permit such financial advisor to communicate directly with Agent.

7.28[***].

Notwithstanding anything to the contrary in this Section 7, and for the avoidance of doubt, neither Section 7.6 nor Section 7.7 shall not prohibit the conversion by holders of (including any cash payment upon conversion), or required payment of any principal or premium on (including, for the avoidance of doubt, in respect of a required repurchase in connection with the payment of Permitted Convertible Debt upon satisfaction of any condition related to the stock price of Borrower's common stock) or required payment of any interest with respect to, any Permitted Convertible Debt in each case, in accordance with the terms of the indenture or other instrument governing such Permitted Convertible Debt; provided that, to the extent the aggregate amount of cash payable upon conversion or payment of any Permitted Convertible Debt (excluding any required payment of interest with respect to such Permitted Convertible Debt and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) exceeds the sum of (a) the aggregate principal amount thereof and (b) the aggregate amount received by Borrower pursuant to an exercise or early unwind or settlement of a corresponding portion of the Permitted Bond Hedge Transactions relating to such Permitted Convertible Debt (including, for the avoidance of doubt, the case where there is no Permitted Bond Hedge Transaction relating to such Permitted Convertible Debt), the payment of such excess cash shall not be permitted by the preceding sentence; provided further that principal payments in cash (other than cash in lieu of fractional shares) shall only be allowed if the Redemption Conditions are satisfied in respect of such payment and at all times after such payment.

Notwithstanding anything to the contrary in this Section 7, none of Section 7.4, 7.6, 7.7 nor 7.8 shall not prohibit the repurchase, exchange or inducement of the conversion of Permitted Convertible Debt by delivery of shares of common stock and/or a different series of Permitted Convertible Debt and/or by payment of cash (in an amount that does not exceed the proceeds received by Borrower from the substantially concurrent issuance of common stock

and/or such different series of Permitted Convertible Debt minus the net cost of any Permitted Bond Hedge Transactions and/or Permitted Warrant Transactions plus the net cash proceeds, if any, received by Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, pursuant to the immediately following proviso); provided that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Permitted Convertible Debt that is so repurchased, exchanged or converted, Borrower shall exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, corresponding to such Permitted Convertible Debt that are so repurchased, exchanged or converted.

SECTION 8. RIGHT TO invest

8.1 Borrower shall use commercially reasonable efforts to grant the Lenders (or their Affiliates, assignees or other nominees) the option to invest in the Subsequent Financing in an aggregate amount of up to Five Million Dollars (\$5,000,000) on the same terms, conditions and pricing afforded to others participating in such Subsequent Financing. This Section 8.1, and all rights and obligations provided for hereunder, shall terminate upon the date on which the Secured Obligations (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement) have been paid in full and this Agreement has been terminated.

SECTION 9. EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall be an “Event of Default”:

9.1 Payments. A Loan Party fails to pay any amount due under this Agreement or any of the other Loan Documents on the due date; provided, however, that an Event of Default shall not occur on account of a failure to pay due solely to an administrative or operational error of Agent or Lenders or Borrower’s bank if Borrower had the funds to make the payment when due and makes the payment within three (3) Business Days following Borrower’s knowledge of such failure to pay; or

9.2 Covenants. A Loan Party breaches or defaults in the performance of any covenant or Secured Obligation under this Agreement, or any of the other Loan Documents or any other agreement among Borrower, Agent and Lenders, and (a) with respect to a Default under any covenant under this Agreement (other than under Sections 6, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.14, 7.15, 7.16, 7.17, 7.19, 7.21, 7.22, 7.23, 7.24, 7.25, 7.26 and 7.28), any other Loan Document, or any other agreement among Borrower, Agent and Lenders, such default continues for more than ten (10) Business Days after the earlier of the date on which (i) Agent or Lenders has given notice of such default to Borrower and (ii) Borrower has actual knowledge of such default or (b) with respect to a Default under any of Sections 6, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.14, 7.15, 7.16, 7.17, 7.19, 7.21, 7.22, 7.23, 7.24, 7.25, 7.26 and 7.28, the occurrence of such Default; or

9.3 Material Adverse Effect. A circumstance has occurred that could reasonably be expected to have a Material Adverse Effect; or

9.4 Representations. Any representation or warranty made by any Loan Party in any Loan Document shall have been false or misleading in any material respect when made or when deemed made; or

9.5 Insolvency. (a) A Loan Party or any of its Subsidiaries fails to be solvent as described under Section 5.15 hereof; (b) a Loan Party or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against a Loan Party or any of

its Subsidiaries and is not dismissed or stayed within thirty (30) days (but no Advances shall be made while any of the conditions described in clause (a) exist or until any Insolvency Proceeding is dismissed); or

9.6Judgments; Penalties. One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000) (not covered by independent third-party insurance as to which liability has not been rejected by such insurance carrier) shall be rendered against any Loan Party or any of its Subsidiaries by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, or after execution thereof, or stayed pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Advances shall be made prior to the discharge, or stay of such fine, penalty, judgment, order or decree); or

9.7Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of any Loan Party or any of its Subsidiaries, or (ii) a notice of lien or levy is filed against any of any Loan Party's or any of its Subsidiaries' assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Advances shall be made during any ten (10) day cure period; or

(b) (i) any material portion of any Loan Party's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents any Loan Party from conducting all or any material part of its business; or

9.8Fundamental Change. The occurrence of any "fundamental change" (or equivalent term, howsoever defined) under any Permitted Convertible Debt Document; or

9.9Other Obligations. The occurrence of any default under (i) any agreement or obligation of a Loan Party involving any Indebtedness in excess of Five Hundred Thousand Dollars (\$500,000) or (ii) any Material Agreement.

9.10Permits; Governmental Authority Action. (a) Any Permit shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term and such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Effect; or (b) (i) the FDA, DOJ, CMS or other Governmental Authority initiates a regulatory action or any other enforcement action against Borrower or any of its Subsidiaries or any supplier of Borrower or any of its Subsidiaries that causes Borrower or any of its Subsidiaries to recall, withdraw, remove or discontinue manufacturing, distributing, and/or marketing any of its products, even if such action is based on previously disclosed conduct; (ii) the FDA or any other comparable Governmental Authority issues a warning letter to Borrower or any of its Subsidiaries with respect to any of its activities or products which could reasonably be expected to result in a Material Adverse Effect; (iii) Borrower or any of its Subsidiaries conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to Borrower or any of its Subsidiaries of Five Hundred Thousand Dollars (\$500,000) or more; (iv) Borrower or any of its Subsidiaries enters into a settlement agreement with the FDA, DOJ, CMS or other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of Five Hundred Thousand Dollars (\$500,000) or more, or that could reasonably be expected to result in a Material Adverse Effect, even if such settlement agreement is based on previously disclosed conduct; or (v) the FDA or any other comparable Governmental Authority withdraws, revokes, suspends or limits, any authorization

or permission granted under any Permit, or Borrower or any of its Subsidiaries withdraws any Registration, where such withdrawal, revocation, suspension or limitation could reasonably be expected to result in a Material Adverse Effect.

SECTION 10. REMEDIES

10.1 General. Upon the occurrence and continuance of any one or more Events of Default, Agent may, and at the direction of the Required Lenders shall, accelerate and demand payment of all or any part of the outstanding Secured Obligations together with a Prepayment Charge and declare them to be immediately due and payable (provided, that upon the occurrence of an Event of Default of the type described in Section 9.5, all of the Secured Obligations (including, without limitation, the Prepayment Charge and the End of Term Charge) shall automatically be accelerated and made due and payable, in each case without any further notice or act). Borrower hereby irrevocably appoints Agent as its lawful attorney-in-fact to: (a) exercisable following the occurrence of an Event of Default, (i) sign Borrower's name on any invoice or bill of lading for any account or drafts against account debtors; (ii) demand, collect, sue, and give releases to any account debtor for monies due, settle and adjust disputes and claims about the accounts directly with account debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Agent's or Borrower's name, as Agent may elect); (iii) make, settle, and adjust all claims under Borrower's insurance policies; (iv) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (v) transfer the Collateral into the name of Agent or a third party as the UCC permits; and (vi) receive, open and dispose of mail addressed to Borrower; and (b) regardless of whether an Event of Default has occurred, (i) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; and (ii) notify all account debtors to pay Agent directly. Borrower hereby appoints Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Secured Obligations have been satisfied in full and the Loan Documents (other than the Warrant) have been terminated. Agent's foregoing appointment as Borrower's attorney in fact, and all of Agent's rights and powers, coupled with an interest, are irrevocable until all Secured Obligations (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement) have been fully repaid and performed and the Loan Documents have been terminated. Agent may, and at the direction of the Required Lenders shall, exercise all rights and remedies with respect to the Collateral under the Loan Documents (other than the Warrant) or otherwise available to it under the UCC and other applicable law, including the right to release, hold, sell, lease, liquidate, collect, realize upon, or otherwise dispose of all or any part of the Collateral and the right to occupy, utilize, process and commingle the Collateral. All Agent's rights and remedies shall be cumulative and not exclusive.

10.2 Collection; Foreclosure. Upon the occurrence and during the continuance of any Event of Default, Agent may, and at the direction of the Required Lenders shall, at any time or from time to time, apply, collect, liquidate, sell in one or more sales, lease or otherwise dispose of, any or all of the Collateral, in its then condition or following any commercially reasonable preparation or processing, in such order as Agent may elect. Any such sale may be made either at public or private sale at its place of business or elsewhere. Borrower agrees that any such public or private sale may occur upon ten (10) calendar days' prior written notice to Borrower. Agent may require Borrower to assemble the Collateral and make it available to Agent at a place designated by Agent that is reasonably convenient to Agent and Borrower. The proceeds of any sale, disposition or other realization upon all or any part of the Collateral shall be applied by Agent in the following order of priorities:

(a) **First**, to Agent, in an amount equal to the sum of all fees owing to Agent hereunder and under any other Loan Document;

(b) **Second**, to Agent and Lenders in an amount sufficient to pay in full Agent's and Lenders' reasonable costs and professionals' and advisors' fees and expenses as described in Section 11.12;

(c) **Third**, to Lenders, ratably, in an amount equal to the sum of all accrued interest owing to Lenders on the Term Loan Advances hereunder;

(d) **Fourth**, to Lenders, ratably, in an amount equal to the sum of the outstanding principal and premium, if any owing to Lenders from Borrower on the Term Loan Advances hereunder;

(e) **Fifth**, to Lenders and Agent, ratably (in proportion to all remaining Secured Obligations owing to each), in an amount equal to the sum of all other outstanding and unpaid Secured Obligations (including principal, interest, and the default rate interest set forth in Section 2.4, if required under this Agreement), in such order and priority as Agent may choose in its sole discretion; and

(f) **Finally**, after the full and final payment in Cash of all of the Secured Obligations (other than inchoate obligations which, by their terms, survive termination of this Agreement), to any creditor holding a junior Lien on the Collateral, or to Borrower or its representatives or as a court of competent jurisdiction may direct.

Agent shall be deemed to have acted reasonably in the custody, preservation and disposition of any of the Collateral if it complies with the obligations of a secured party under the UCC.

10.3No Waiver. Agent shall be under no obligation to marshal any of the Collateral for the benefit of Borrower or any other Person, and Borrower expressly waives all rights, if any, to require Agent to marshal any Collateral.

10.4Waivers. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Agent on which Borrower is liable.

10.5Cumulative Remedies. The rights, powers and remedies of Agent hereunder shall be in addition to all rights, powers and remedies given by statute or rule of law and are cumulative. The exercise of any one or more of the rights, powers and remedies provided herein shall not be construed as a waiver of or election of remedies with respect to any other rights, powers and remedies of Agent.

SECTION 11. MISCELLANEOUS

11.1Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent and duration of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11.2Notice. Except as otherwise provided herein, any notice, demand, request, consent, approval, declaration, service of process or other communication (including the delivery of Financial Statements) that is required, contemplated, or permitted under the Loan Documents or with respect to the subject matter hereof shall be in writing, and shall be deemed to have been validly served, given, delivered, and received upon the earlier of: (i) the day of

transmission by electronic mail or hand delivery or delivery by an overnight express service or overnight mail delivery service; or (ii) the third calendar day after deposit in the United States of America mails, with proper first class postage prepaid, in each case addressed to the party to be notified as follows:

(a) If to Agent:

HERCULES CAPITAL, INC.
Legal Department
Attention: Chief Legal Officer and [***]
1 North B Street, Suite 2000
San Mateo, CA 94401
email: [***]; [***]
Telephone: 650-289-3060

(b) If to Lenders:

HERCULES CAPITAL IV L.P.
Legal Department
Attention: Chief Legal Officer and [***]
1 North B Street, Suite 2000
San Mateo, CA 94401
email: [***]; [***]
Telephone: 650-289-3060

(c) If to Borrower:

HERON THERAPEUTICS, INC.
Attention: Chief Financial Officer
100 Regency Forest Drive, Suite 300
Cary, NC 27518
email: [***]
Telephone: 858-251-4400

With a copy to:

Attention: Legal Department
100 Regency Forest Drive, Suite 300
Cary, NC 27518
email: [***]
Telephone: 858-251-4400

or to such other address as each party may designate for itself by like notice.

11.3 Entire Agreement; Amendments.

(a) This Agreement and the other Loan Documents constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and thereof, and supersede and replace in their entirety any prior proposals, term sheets, non-disclosure or confidentiality agreements, letters, negotiations or other documents or agreements, whether written or oral, with respect to the subject matter hereof or thereof (including Agent's proposal letter dated July 13, 2023 and the Non-Disclosure Agreement).

(b) Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 11.3(b). The Required Lenders and Loan Parties party to the relevant Loan Document may, or, with the written consent of the Required Lenders, Agent and Loan Parties

party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of Lenders or of Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan Advance, reduce the stated rate of any interest (or fee payable hereunder) or extend the scheduled date of any payment thereof, in each case without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 11.3(b) without the written consent of such Lender; (C) reduce any percentage specified in the definition of Required Lenders, consent to the assignment or transfer by Loan Parties of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release a Loan Party from its obligations under the Loan Documents, in each case without the written consent of all Lenders; or (D) amend, modify or waive any provision of Section 11.18 or Addendum 3 without the written consent of Agent. Any such waiver and any such amendment, supplement or modification shall apply equally to each Lender and shall be binding upon the applicable Loan Parties, Lenders, Agent and all future holders of the Loans.

11.4No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

11.5No Waiver. The powers conferred upon Agent and Lenders by this Agreement are solely to protect their rights hereunder and under the other Loan Documents and their interest in the Collateral and shall not impose any duty upon Agent or Lenders to exercise any such powers. No omission or delay by Agent or Lenders at any time to enforce any right or remedy reserved to them, or to require performance of any of the terms, covenants or provisions hereof by Borrower at any time designated, shall be a waiver of any such right or remedy to which Agent or Lenders is entitled, nor shall it in any way affect the right of Agent or Lenders to enforce such provisions thereafter.

11.6Survival. All agreements, representations and warranties contained in this Agreement and the other Loan Documents or in any document delivered pursuant hereto or thereto shall be for the benefit of Agent and Lenders and shall survive the execution and delivery of this Agreement. Sections 6.3, 11.9, 11.11, 11.14, 11.15, 11.17 and 11.18 shall survive the termination of this Agreement.

11.7Successors and Assigns. The provisions of this Agreement and the other Loan Documents shall inure to the benefit of and be binding on Borrower and its permitted assigns (if any). No Loan Party shall assign its obligations under this Agreement or any of the other Loan Documents without Agent's express prior written consent, and any such attempted assignment shall be void and of no effect. Agent and Lenders may assign, transfer, or endorse its rights hereunder and under the other Loan Documents without prior notice to Borrower, and all of such rights shall inure to the benefit of Agent's and Lenders' successors and assigns; provided that as long as no Event of Default has occurred and is continuing, neither Agent nor any Lender may assign, transfer or endorse its rights hereunder or under the Loan Documents to any party that is a direct competitor of Borrower (as reasonably determined by Agent), it being acknowledged that in all cases, any transfer to an Affiliate of any Lender or Agent shall be allowed. Notwithstanding the foregoing, (x) in connection with any assignment by a Lender as a result of

a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Agent and Lenders may assign, transfer or endorse its rights hereunder and under the other Loan Documents to any Person or party and (y) in connection with a Lender's own financing or securitization transactions, the restrictions set forth herein shall not apply and Agent and Lenders may assign, transfer or endorse its rights hereunder and under the other Loan Documents to any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such assignee as Agent reasonably shall require. Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of Lender(s), and the Term Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Agent and Lender(s) shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

11.8Participations. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register. Borrower agrees that each participant shall be entitled to the benefits of the provisions in Addendum 1 attached hereto (subject to the requirements and limitations therein, including the requirements under Section 7 of Addendum 1 attached hereto (it being understood that the documentation required under Section 7 of Addendum 1 attached hereto shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.7; provided that such participant shall not be entitled to receive any greater payment under Addendum 1 attached hereto, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation.

11.9Governing Law. This Agreement and the other Loan Documents have been negotiated and delivered to Agent and Lenders in the State of California, and shall have been accepted by Agent and Lenders in the State of California. Payment to Agent and Lenders by Borrower of the Secured Obligations is due in the State of California. This Agreement and the other Loan Documents (other than the Warrant) shall be governed by, and construed and

enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

11.10Consent to Jurisdiction and Venue. All judicial proceedings (to the extent that the reference requirement of Section 11.11 is not applicable) arising in or under or related to this Agreement or any of the other Loan Documents (other than the Warrant) may be brought in any state or federal court located in the State of California. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (a) consents to nonexclusive personal jurisdiction in Santa Clara County, State of California; (b) waives any objection as to jurisdiction or venue in Santa Clara County, State of California; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement or the other Loan Documents. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in Section 11.2, and shall be deemed effective and received as set forth in Section 11.2. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

11.11Mutual Waiver of Jury Trial / Judicial Reference.

(a) Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert Person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF BORROWER, AGENT AND LENDERS SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY BORROWER AGAINST AGENT, LENDERS OR THEIR RESPECTIVE ASSIGNEE OR BY AGENT, LENDERS OR THEIR RESPECTIVE ASSIGNEE AGAINST BORROWER. This waiver extends to all such Claims, including Claims that involve Persons other than Agent, Borrower or any Lenders; Claims that arise out of or are in any way connected to the relationship among Borrower, Agent and Lenders; and any Claims for damages, breach of contract, tort, specific performance, or any equitable or legal relief of any kind, arising out of this Agreement, any other Loan Document.

(b) If the waiver of jury trial set forth in Section 11.11(a) is ineffective or unenforceable, the parties agree that all Claims shall be resolved by reference to a private judge sitting without a jury, pursuant to Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Santa Clara County, California. Such proceeding shall be conducted in Santa Clara County, California, with California rules of evidence and discovery applicable to such proceeding.

(c) In the event Claims are to be resolved by judicial reference, either party may seek from a court identified in Section 11.10, any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by judicial reference.

11.12Professional Fees. Borrower promises to pay Agent's and Lenders' reasonable and documented fees and expenses necessary to finalize the Loan Documents, including but not limited to reasonable attorneys' fees, UCC searches, filing costs, and other miscellaneous expenses. In addition, Borrower promises to pay any and all reasonable attorneys' and other professionals' fees (including allocated costs of in-house counsel incurred after the Closing Date) and expenses incurred by Agent and Lenders after the Closing Date in connection with or related to: (a) the Loan; (b) the administration, collection, or enforcement of the Loan; (c) the amendment or modification of the Loan Documents; (d) any waiver, consent, release, or

termination under the Loan Documents; (e) the protection, preservation, audit, field exam, sale, lease, liquidation, or disposition of Collateral or the exercise of remedies with respect to the Collateral; (f) any legal, litigation, administrative, arbitration, or out of court proceeding in connection with or related to Borrower or the Collateral, and any appeal or review thereof; and (g) any bankruptcy, restructuring, reorganization, assignment for the benefit of creditors, workout, foreclosure, or other action related to Borrower, the Collateral, the Loan Documents, including representing Agent or Lenders in any adversary proceeding or contested matter commenced or continued by or on behalf of Borrower's estate, and any appeal or review thereof.

11.13 Confidentiality. Agent and Lenders acknowledge that certain items of Collateral and non-public information provided to Agent and Lenders by Borrower are confidential and proprietary information of Borrower, if, and to the extent, such information either (x) is marked as confidential by Borrower at the time of disclosure, or (y) should reasonably be understood to be confidential (the "Confidential Information"). Accordingly, Agent and Lenders agree that any Confidential Information it may obtain in the course of acquiring, administering, or perfecting Agent's security interest in the Collateral shall not be disclosed to any other Person or entity in any manner whatsoever, in whole or in part, without the prior written consent of Borrower, except that Agent and Lenders may disclose any such information: (a) to its Affiliates and its partners, investors, lenders, directors, officers, employees, agents, advisors, counsel, accountants, representative and other professional advisors if Agent or Lenders in their sole discretion determines that any such party should have access to such information in connection with such party's responsibilities in connection with the Loan or this Agreement and, provided that such recipient of such Confidential Information either (i) agrees to be bound by the confidentiality provisions of this Section or (ii) is otherwise subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information; (b) if such information is generally available to the public or to the extent such information becomes publicly available other than as a result of a breach of this Section or becomes available to Agent or any Lender, or any of their respective Affiliates on a non-confidential basis from a source other than Borrower; (c) if required or appropriate in any report, statement or testimony submitted to any Governmental Authority having or claiming to have jurisdiction over Agent or Lenders and any rating agency; (d) if required or appropriate in response to any summons or subpoena or in connection with any litigation, to the extent permitted or deemed advisable by Agent's or Lenders' counsel; (e) to comply with any legal requirement or law applicable to Agent or Lenders or demanded by any Governmental Authority; (f) to the extent reasonably necessary in connection with the exercise of, or preparing to exercise, or the enforcement of, or preparing to enforce, any right or remedy under any Loan Document (including Agent's sale, lease, or other disposition of Collateral after the occurrence of a Default), or any action or proceeding relating to any Loan Document; (g) to any participant or assignee of Agent or Lenders or any prospective participant or assignee, provided, that such participant or assignee or prospective participant or assignee is subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information; (h) to any investor or potential investor (and each of their respective Affiliates or clients) in Agent or Lenders (or each of their respective Affiliates); provided that such investor, potential investor, Affiliate or client is subject to confidentiality obligations with respect to the Confidential Information; (i) otherwise to the extent consisting of general portfolio information that does not identify Borrower; or (j) otherwise with the prior consent of Borrower; provided, that any disclosure made in violation of this Agreement shall not affect the obligations of Borrower or any of its Affiliates or any guarantor under this Agreement or the other Loan Documents. Agent's and Lenders' obligations under this Section 11.13 shall supersede all of their respective obligations under the Non-Disclosure Agreement.

11.14 Assignment of Rights. Borrower acknowledges and understands that Agent or Lenders may, subject to Section 11.7, sell and assign all or part of its interest hereunder and under the Loan Documents to any Person or entity (an "Assignee"). After such assignment the term "Agent" or "Lender" as used in the Loan Documents shall mean and include such Assignee,

and such Assignee shall be vested with all rights, powers and remedies of Agent and Lenders hereunder with respect to the interest so assigned; but with respect to any such interest not so transferred, Agent and Lenders shall retain all rights, powers and remedies hereby given. No such assignment by Agent or Lenders shall relieve Borrower of any of its obligations hereunder. Lenders agree that in the event of any transfer by it of the promissory note(s) (if any), it will endorse thereon a notation as to the portion of the principal of the promissory note(s), which shall have been paid at the time of such transfer and as to the date to which interest shall have been last paid thereon.

11.15Revival of Secured Obligations. This Agreement and the Loan Documents shall remain in full force and effect and continue to be effective if any petition is filed by or against Borrower for liquidation or reorganization, if Borrower becomes insolvent or makes an assignment for the benefit of creditors, if a receiver or trustee is appointed for all or any significant part of Borrower's assets, or if any payment or transfer of Collateral is recovered from Agent or Lenders. The Loan Documents and the Secured Obligations and Collateral security shall continue to be effective, or shall be revived or reinstated, as the case may be, if at any time payment and performance of the Secured Obligations or any transfer of Collateral to Agent, or any part thereof is rescinded, avoided or avoidable, reduced in amount, or must otherwise be restored or returned by, or is recovered from, Agent, Lenders or by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment, performance, or transfer of Collateral had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, avoided, avoidable, restored, returned, or recovered, the Loan Documents and the Secured Obligations shall be deemed, without any further action or documentation, to have been revived and reinstated except to the extent of the full, final, and indefeasible payment to Agent or Lenders in Cash.

11.16Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so delivered shall be deemed an original, but all of which counterparts shall constitute but one and the same instrument.

11.17No Third-Party Beneficiaries. No provisions of the Loan Documents are intended, nor will be interpreted, to provide or create any third-party beneficiary rights or any other rights of any kind in any Person other than Agent, Lenders and Borrower unless specifically provided otherwise herein, and, except as otherwise so provided, all provisions of the Loan Documents will be personal and solely among Agent, Lenders and the Loan Parties party thereto.

11.18Agency. Agent and each Lender hereby agree to the terms and conditions set forth on Addendum 3 attached hereto. Borrower acknowledges and agrees to the terms and conditions set forth on Addendum 3 attached hereto.

11.19Publicity. None of the parties hereto nor any of its respective member businesses and Affiliates shall, without the other parties' prior written consent (which shall not be unreasonably withheld or delayed), publicize or use (a) the other party's name (including a brief description of the relationship among the parties hereto), logo or hyperlink to such other parties' web site, separately or together, in written and oral presentations, advertising, promotional and marketing materials, client lists, public relations materials or on its web site (together, the "Publicity Materials"); (b) the names of officers of such other parties in the Publicity Materials; and (c) such other parties' name, trademarks, servicemarks in any news or press release concerning such party; provided however, notwithstanding anything to the contrary herein, no such consent shall be required (i) to the extent necessary to comply with the requests of any regulators, legal requirements or laws applicable to such party, pursuant to any listing agreement with any national securities exchange (so long as such party provides prior notice to the other party hereto to the extent reasonably practicable) and (ii) to comply with Section 11.13.

11.20[Reserved.]

11.21[Reserved.]

11.22**Managerial Assistance.** Borrower acknowledges that Hercules Capital, Inc. has elected to be regulated as a business development company under the 1940 Act, and as such is required to make available significant managerial assistance to its portfolio companies. Significant managerial assistance may include, but is not limited to, guidance and counsel concerning the portfolio company's management, operations, business objectives and policies, arrangement of financing, management of relationships with financing sources, recruitment of management personnel and evaluation of acquisition and divestiture opportunities. Borrower hereby acknowledges and agrees that it may request such assistance at any time from Hercules Capital, Inc. by contacting [***].

11.23**Electronic Execution of Certain Other Documents.** The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transaction Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(SIGNATURES TO FOLLOW)

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Addendum 2: SBA Provisions

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Addendum 4: Delivery Instructions

Exhibit A: Advance Request

Attachment to Advance Request

Exhibit B: Name, Locations, and Other Information for Borrower

Exhibit C: Borrower's Patents, Trademarks, Copyrights and Licenses

Exhibit D: Borrower's Deposit Accounts and Investment Accounts

Exhibit E: Compliance Certificate

Exhibit F: Joinder Agreement

Exhibit G: [Reserved.]

Exhibit H: ACH Debit Authorization Agreement

Exhibit I: [Reserved.]

Exhibit J-1: Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Exhibit J-2: Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Exhibit J-3: Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Exhibit J-4: Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Schedule 1.1 Commitments

Schedule 1 Subsidiaries

Schedule 1A Existing Permitted Indebtedness

Schedule 1B Existing Permitted Investments

Schedule 1C Existing Permitted Liens

Schedule 5.3 Consents, Etc.

Schedule 5.8 Tax Matters

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Schedule 5.10 Intellectual Property

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Schedule 5.14 Capitalization

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Schedule 7.21(b) Minimum T3M Net Product Revenue

Schedule 7.21(c) Minimum T3M Adjusted EBITDA

Schedule 7.23 Affiliate Transactions

[***]

EXHIBIT B

EXHIBIT B

(See Attached)

[***]

SECTION 302 CERTIFICATION

I, Craig Collard, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Heron Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2026

By: /s/ Craig Collard
Craig Collard
Chief Executive Officer
(Principal Executive Officer)

SECTION 302 CERTIFICATION

I, Ira Duarte, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Heron Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2026

By: /s/ Ira Duarte

Ira Duarte

Executive Vice President, Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned, in their capacity as Principal Executive Officer and Principal Financial Officer, respectively, of Heron Therapeutics, Inc. (the “Registrant”), hereby certifies, for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of his or her knowledge that:

- the Quarterly Report of the Registrant on Form 10-Q for the quarter ended June 30, 2026 (the “Report”), which accompanies this certification, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in the Report fairly presents, in all material respects, the financial condition of the Registrant at the end of such quarter and the results of operations of the Registrant for such quarter.

Dated: August 10, 2026

By: /s/ Craig Collard
Craig Collard
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Ira Duarte
Ira Duarte
Executive Vice President, Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

This certification accompanies the Report to which it relates, is not deemed to be filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Heron Therapeutics, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

Note: A signed original of this written statement required by Section 906 has been provided to Heron Therapeutics, Inc. and will be retained by Heron Therapeutics, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.
