

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 September 30, 2025

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)

94-2875566

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

100 Regency Forest Drive, Suite 300

Cary, North Carolina

(Address of principal executive offices)

27518

(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 October 30, 2025 was 183,362,522.

HERON THERAPEUTICS, INC.
FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2025

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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, and our ability to capture the potential additional market opportunity from the expanded ZYNRELEF label approved in the U.S.;
- 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 and outcome of our pending patent litigations;
- 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 successfully launch our ZYNRELEF Vial Access Needle ("VAN") in the U.S.;
- 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 our 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 our 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 successfully operate in non-U.S. jurisdictions in which we may choose to do business, including compliance with applicable regulatory requirements and laws;
- our ability to obtain and enforce intellectual property rights to protect our Products, our product candidates, our Biochronomer Technology and our other technology;
- 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;
- our inability 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;
- 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, 2024, which was filed with the SEC on February 27, 2025, (the "2024 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)

	September 30, 2025 (Unaudited)	December 31, 2024 (See Note 2)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 43,068	\$ 25,802
Short-term investments	12,419	33,481
Accounts receivable, net	81,047	78,881
Inventory, net	70,025	53,160
Prepaid expenses and other current assets	22,841	17,690
Total current assets	229,400	209,014
Property and equipment, net	12,960	14,863
Right-of-use lease assets	708	2,787
Other assets	5,882	6,483
Total assets	\$ 248,950	\$ 233,147
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	\$ 12,017	\$ 11,709
Accrued clinical and manufacturing liabilities	19,663	25,402
Accrued payroll and employee liabilities	8,748	9,554
Other accrued liabilities	48,500	41,755
Current lease liabilities	780	3,037
Total current liabilities	89,708	91,457
Non-current notes payable, net	107,487	25,026
Non-current convertible notes payable, net	32,176	149,700
Other non-current liabilities	4,694	615
Total liabilities	234,065	266,798
Stockholders' equity (deficit):		
Common stock	1,833	1,521
Series A convertible preferred stock	7,862	—
Additional paid-in capital	1,942,025	1,884,409
Accumulated other comprehensive loss	—	13
Accumulated deficit	(1,936,835)	(1,919,594)
Total stockholders' equity (deficit)	14,885	(33,651)
Total liabilities and stockholders' equity (deficit)	\$ 248,950	\$ 233,147

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)

(In thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2025	2024	2025	2024
Revenues:				
Net product sales	\$ 38,213	\$ 32,810	\$ 114,316	\$ 103,504
Cost of product sales	11,914	9,458	30,228	28,420
Gross profit	26,299	23,352	84,088	75,084
Operating expenses:				
Research and development	3,470	4,465	8,683	13,505
General and administrative	13,980	12,373	41,153	41,252
Sales and marketing	12,942	10,972	36,828	36,028
Total operating expenses	30,392	27,810	86,664	90,785
Loss from operations	(4,093)	(4,458)	(2,576)	(15,701)
Loss on debt extinguishment	(11,339)	—	(11,339)	—
Other expense, net	(2,063)	(390)	(3,326)	(1,542)
Net loss	(17,495)	(4,848)	(17,241)	(17,243)
Other comprehensive loss:				
Unrealized gain (loss) on short-term investments	1	48	(13)	27
Comprehensive loss	\$ (17,494)	\$ (4,800)	\$ (17,254)	\$ (17,216)
Basic and diluted net loss per share	\$ (0.10)	\$ (0.03)	\$ (0.11)	\$ (0.11)
Weighted average common shares outstanding, basic and diluted	170,348	152,830	159,524	152,213

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(Unaudited)
(In thousands)

	Common Stock		Series A Preferred Stock		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
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)
Issuance of common stock under equity incentive plan	179	1	—	—	(52)	—	—	(51)
Issuance of common stock in settlement of 2026 Convertible Notes	16,667	167	—	—	30,500	—	—	30,667
Issuance of common stock in a private placement equity offering	13,225	132	—	—	18,175	—	—	18,307
Issuance of Series A convertible preferred stock in a private placement equity offering	—	—	524	7,862	—	—	—	7,862
Stock-based compensation expense	—	—	—	—	2,852	—	—	2,852
Net loss	—	—	—	—	—	—	(17,495)	(17,495)
Net unrealized gain on short-term investments	—	—	—	—	—	1	—	1
Comprehensive loss	—	—	—	—	—	—	—	(17,494)
Balance as of September 30, 2025 (unaudited)	183,324	\$ 1,833	524	\$ 7,862	\$ 1,942,025	\$ -	\$ (1,936,835)	\$ 14,885

	Common Stock		Series A Preferred Stock		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' (Deficit)
	Shares	Amount	Shares	Amount				
Balance as of December 31, 2023	150,285	\$ 1,503	—	\$ —	\$ 1,870,525	\$ 13	\$ (1,906,014)	\$ (33,973)
Issuance of common stock under equity incentive plan	93	1	—	—	10	—	—	11
Stock-based compensation expense	—	—	—	—	3,375	—	—	3,375
Net loss	—	—	—	—	—	—	(3,160)	(3,160)
Net unrealized loss on short-term investments	—	—	—	—	—	(19)	—	(19)
Comprehensive loss								(3,179)
Balance as of March 31, 2024 (unaudited)	150,378	1,504	—	—	1,873,910	(6)	(1,909,174)	(33,766)
Issuance of common stock under equity incentive plan	872	9	—	—	309	—	—	318
Issuance of common stock under the employee stock purchase plan	328	3	—	—	172	—	—	175
Stock-based compensation expense	—	—	—	—	4,570	—	—	4,570
Net loss	—	—	—	—	—	—	(9,235)	(9,235)
Net unrealized loss on short-term investments	—	—	—	—	—	(2)	—	(2)
Comprehensive loss								(9,237)
Balance as of June 30, 2024 (unaudited)	151,578	1,516	—	—	1,878,961	(8)	(1,918,409)	(37,940)
Issuance of common stock under equity incentive plan	124	1	—	—	12	—	—	13
Stock-based compensation expense	—	—	—	—	2,722	—	—	2,722
Net loss	—	—	—	—	—	—	(4,848)	(4,848)
Net unrealized gain on short-term investments	—	—	—	—	—	48	—	48
Comprehensive loss								(4,800)
Balance as of September 30, 2024 (unaudited)	151,702	\$ 1,517	—	\$ —	\$ 1,881,695	\$ 40	\$ (1,923,257)	\$ (40,005)

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Cash Flows

(Unaudited)
(In thousands)

	Nine Months Ended September 30,	
	2025	2024
Operating activities:		
Net loss	\$ (17,241)	\$ (17,243)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	8,160	10,667
Depreciation and amortization	1,777	1,911
Amortization of debt discount	505	504
Amortization of debt issuance costs	108	157
Accretion of discount on short-term investments	(650)	(1,754)
Retirement and impairment of property and equipment	409	4,269
Loss on extinguishment of debt	11,339	—
Change in operating assets and liabilities:		
Accounts receivable	(2,166)	(6,902)
Inventory	(16,865)	(3,840)
Prepaid expenses and other assets	(4,550)	(3,769)
Accounts payable	308	6,948
Accrued clinical and manufacturing liabilities	(5,787)	208
Accrued payroll and employee related liabilities	(806)	(693)
Other accrued expenses	7,052	(1,212)
Net cash used in operating activities	(18,407)	(10,749)
Investing activities:		
Purchases of short-term investments	(38,214)	(90,745)
Maturities and sales of short-term investments	59,914	99,109
Purchases of property and equipment	(317)	(1,068)
Proceeds from sale of property and equipment	82	—
Net cash provided by investing activities	21,465	7,296
Financing activities:		
Proceeds from the sale of common stock	19,838	—
Cash paid for issuance costs of stock	(1,531)	—
Proceeds from sale of Series A convertible preferred stock	7,862	—
Cash paid for 2026 Convertible Notes extinguishment	(125,000)	—
Cash paid for notes payable extinguishment	(25,000)	—
Proceeds from 2031 Convertible Notes issuance	33,250	—
Cash paid for 2031 Convertible Notes debt issuance costs	(1,386)	—
Proceeds from notes payable issuance	108,787	—
Cash paid for notes payable debt issuance cost	(3,406)	—
Proceeds from purchases under the employee stock purchase plan	587	175
Receipts for stock issued under the equity incentive plan	207	342
Net cash provided by financing activities	14,208	517
Net increase (decrease) in cash and cash equivalents	17,266	(2,936)
Cash and cash equivalents at beginning of period	25,802	28,677
Cash and cash equivalents at end of period	<u>\$ 43,068</u>	<u>\$ 25,741</u>
Supplemental disclosure of cash flow information:		
Interest paid	<u>\$ 3,862</u>	<u>\$ 3,088</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.

As of September 30, 2025, we had cash, cash equivalents and short-term investments of \$55.5 million. 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.

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 nine months ended September 30, 2025, are not necessarily indicative of the results that may be expected for other quarters or the year ending December 31, 2025. The condensed consolidated balance sheet as of December 31, 2024, 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 2024 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 September 30, 2025	Nine Months Ended September 30, 2025	As of September 30, 2025
Customer A	38.8%	42.2%	40.6%
Customer B	33.6%	33.5%	33.4%
Customer C	25.8%	22.8%	25.5%
Total	98.2%	98.5%	99.5%

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 September 30, 2025, and December 31, 2024, 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. During the three and nine months ended September 30, 2025, we incurred a loss on the write-off of property and equipment of \$0.3 million and \$0.5 million, respectively, which was recorded to operating expense. During the three and nine months ended September 30, 2024 we incurred a loss on the write-off of property and equipment of \$0.8 million and \$4.3 million, respectively. Of the \$4.3 million for the nine months ended September 30, 2024, \$2.5 million was recorded to other expense, net and the remaining loss was recorded to operating expense.

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 September 30,		Nine Months Ended September 30,	
	2025	2024	2025	2024
CINVANTI net product sales	\$ 23,955	\$ 22,662	\$ 73,841	\$ 73,205
SUSTOL net product sales	1,911	2,763	7,175	10,623
ZYNRELEF net product sales	9,313	6,245	25,542	17,089
APONVIE net product sales	3,034	1,140	7,758	2,587
Total net product sales	<u>\$ 38,213</u>	<u>\$ 32,810</u>	<u>\$ 114,316</u>	<u>\$ 103,504</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, 2024	\$ 3,791	\$ 5,883	\$ 27,745	\$ 37,419
Provision	1,544	25,949	170,019	197,512
Payments/credits	(842)	(25,264)	(167,462)	(193,568)
Balance at September 30, 2025	<u>\$ 4,493</u>	<u>\$ 6,568</u>	<u>\$ 30,302</u>	<u>\$ 41,363</u>

Comprehensive Loss

Comprehensive loss 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 and represent the difference between our net loss and comprehensive loss for all periods presented.

Net Loss 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 nine months ended September 30, 2025 and 2024, 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 September 30,	
	2025	2024
Stock options outstanding	28,888	26,156
Restricted stock units outstanding	4,014	1,547
Warrants outstanding	298	298
Shares of common stock underlying convertible notes outstanding	19,444	9,819
Series A Preferred Stock convertible to common shares	5,241	—

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 nine months ended September 30, 2025 and 2024 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. 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. 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 Adopted Accounting Standards

In November 2024, the FASB issued ASU No. 2024-04, *Induced Conversions of Convertible Debt Instruments* ("ASU 2024-04"), to improve the consistency in application of the induced conversion guidance in Subtopic 470-20, Debt - Debt with Conversions and Other Options. We early adopted the provisions of ASU 2024-04 in the three months ended September 30, 2025 and concluded that the settlement of the 2026 Convertible Notes did not represent an induced conversion. Refer to Note 8 - Long-Term Debt and Convertible Notes for evaluation of the accounting of the transaction.

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 December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* ("ASU 2023-09"), to enhance income tax reporting disclosures and require disclosure of specific categories in the tabular rate reconciliation. ASU 2023-09 is effective for annual periods beginning after December 15, 2024, on a prospective basis. Early adoption and retrospective application are permitted. We are currently evaluating the impact on our 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. We are 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 September 30, 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	\$ 36,397	\$ 36,397	\$ —	\$ —
U.S. Treasury bills and government agency obligations	6,732	6,732	—	—
U.S. corporate debt securities	5,018	—	5,018	—
Foreign commercial paper	6,551	—	6,551	—
U.S. commercial paper	789	—	789	—
Total	<u>\$ 55,487</u>	<u>\$ 43,129</u>	<u>\$ 12,358</u>	<u>\$ —</u>

	Balance at December 31, 2024	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	\$ 23,860	\$ 23,860	\$ —	\$ —
U.S. Treasury bills and government agency obligations	14,868	14,868	—	—
U.S. corporate debt securities	13,644	—	13,644	—
Foreign corporate debt securities	5,913	—	5,913	—
Foreign commercial paper	998	—	998	—
Total	<u>\$ 59,283</u>	<u>\$ 38,728</u>	<u>\$ 20,555</u>	<u>\$ —</u>

We have not transferred any investment securities between the three levels of the fair value hierarchy for the three and nine months ended September 30, 2025 or 2024.

As of September 30, 2025, cash equivalents included \$16.9 million of available-for-sale securities with contractual maturities of three months or less and short-term investments included \$5.3 million of available-for-sale securities with contractual maturities of three months to one year. As of December 31, 2024, cash equivalents included \$1.9 million of available-for-sale securities with contractual maturities of three months or less and short-term investments included \$9.0 million of available-for-sale securities with contractual maturities of three months to one year. The money market funds as of September 30, 2025 and December 31, 2024 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 September 30, 2025 and December 31, 2024 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.

5. Short-Term Investments

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

	September 30, 2025			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. Treasury bills and government agency obligations	\$ 3,742	\$ —	\$ —	\$ 3,742
U.S. corporate debt securities	4,519	—	—	4,519
U.S. commercial paper	789	—	—	789
Foreign commercial paper	3,369	—	—	3,369
Total	<u>\$ 12,419</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 12,419</u>

	December 31, 2024			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. Treasury bills and government agency obligations	\$ 14,860	\$ 8	\$ —	\$ 14,868
U.S. corporate debt securities	11,699	3	—	11,702
Foreign corporate debt securities	5,911	2	—	5,913
Foreign commercial paper	998	—	—	998
Total	<u>\$ 33,468</u>	<u>\$ 13</u>	<u>\$ —</u>	<u>\$ 33,481</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 nine months ended September 30, 2025 and 2024.

Unrealized gains and losses associated with our investments are reported in accumulated other comprehensive loss. Realized gains and losses associated with our investments, if any, are reported in the statements of operations and comprehensive loss. We did not recognize any realized gains or losses during the three and nine months ended September 30, 2025 and 2024.

6. Inventory

Inventory consists of the following (in thousands):

	September 30, 2025	December 31, 2024
Raw materials	\$ 32,785	\$ 19,733
Work in process	26,343	27,190
Finished goods	10,897	6,237
Total inventory	<u>\$ 70,025</u>	<u>\$ 53,160</u>

	September 30, 2025	December 31, 2024
CINVANTI	\$ 30,434	\$ 36,484
SUSTOL	1,477	3,206
APONVIE	5,427	1,626
ZYNRELEF	32,687	11,844
Total inventory	<u>\$ 70,025</u>	<u>\$ 53,160</u>

For the three and nine months ended September 30, 2025, cost of product sales included charges of \$2.2 million and \$2.7 million, respectively relating to reserves and write-offs of inventory. For the three and nine months ended September 30, 2024, cost of product sales included charges of \$0.8 million and \$2.4 million, respectively, relating to reserves and write-offs of inventory.

7. Leases

As of September 30, 2025, we had an operating lease for 52,148 square feet of laboratory and office space in San Diego, California, with a lease term that expires on December 31, 2025. In October 2021, we entered into a sublease agreement to sublet 23,873 square feet of laboratory and office space in San Diego, California. The space was delivered to the subtenant in March 2022. As a result of the sublease agreement, our one five-year option to renew this lease on expiration applies only with respect to our remaining 28,275 square feet of laboratory and office space. In August 2025, we entered into a lease agreement for 16,837 square feet of office space in Cary, North Carolina, with the lease term expected to commence no later than May 25, 2026 ("lease commencement date") and expire 111 months from the lease commencement date, with the option to extend for one additional period of 84 months upon written notice. As the lease commencement date has not yet occurred, no right-of-use asset or lease liability has been recognized in the accompanying condensed consolidated financial statements. 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.

During the three and nine months ended September 30, 2025, we recognized \$0.8 million and \$2.3 million of operating lease expense, respectively. During the three and nine months ended September 30, 2025, we paid \$0.8 million and \$2.4 million, respectively, for our operating leases.

During the three and nine months ended September 30, 2024, we recognized \$0.7 million and \$2.2 million of operating lease expense, respectively. During the three and nine months ended September 30, 2024, we paid \$0.8 million and \$2.4 million, respectively, for our operating leases.

Annual future minimum lease payments as of September 30, 2025 are as follows (in thousands):

2025	\$ 785
Less: discount	(5)
Total lease liabilities	<u>\$ 780</u>

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 September 30, 2025.

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, (iv) 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. 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. We were in compliance with all covenants of the Second Amendment to the Working Capital Facility Agreement as of September 30, 2025. The Initial Working Capital Facility Agreement, together with the First Amendment to the Working Capital Facility Agreement and the Second Amendment to the Working Capital Facility Agreement are referred to 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 tranche 1 funding under the Second Amendment to the Working Capital Facility Agreement of \$110.0 million plus the accrued and unpaid paid-in-kind interest of \$0.7 million from the Initial Working Capital Facility Agreement are 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 September 30, 2025 is 11.6%.

For the three and nine months ended September 30, 2025, interest expense related to the Working Capital Facility Agreement was \$2.2 million and \$4.0 million, respectively, which included \$1.7 million and \$3.0 million, respectively, related to the stated interest rate, \$0.2 million and \$0.4 million, respectively, related to paid-in-kind interest, and \$0.2 million and \$0.6 million, respectively, related to the amortization of the debt discounts and accretion of the end of term fee.

For the three and nine months ended September 30, 2024, interest expense related to the Working Capital Facility Agreement was \$0.9 million and \$2.7 million, respectively, which included \$0.6 million and \$1.9 million, respectively, related to the stated interest rate, \$0.1 million and \$0.3 million, respectively, related to paid-in-kind interest, and \$0.2 million and \$0.5 million, respectively, related to the amortization of the debt discounts.

As of September 30, 2025, the carrying value of the Working Capital Facility Agreement was \$107.5 million, which is comprised of the \$110.8 million principal amount outstanding, \$0.1 million of accumulated paid-in-kind interest, less debt discounts of \$3.4 million. The end of term fee accreted as of September 30, 2025, of \$4.7 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”). We received a total of \$149.0 million, net of issuance costs, from the issuance of the 2026 Convertible Notes.

The 2026 Convertible Notes bear interest at a rate of 1.5% per annum, payable in cash semi-annually in arrears on June 15 and December 15 of each year with a maturity date of May 26, 2026, unless earlier converted, redeemed or repurchased.

The 2026 Convertible Notes were accounted for in accordance with ASC Subtopic 470-20, Debt with Conversion and Other Options (“ASC 470-20”), and ASC Subtopic 815-40, Contracts in Entity's Own Equity (“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 2026 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 2026 Convertible Notes were recorded as a liability on the condensed consolidated balance sheets.

We incurred issuance costs related to the 2026 Convertible Notes of \$1.0 million, which we recorded as debt issuance costs and were included as a reduction to the 2026 Convertible Notes on the condensed consolidated balance sheets. The debt issuance costs are

being amortized to interest expense using the effective interest rate method over the term of the 2026 Convertible Notes, resulting in an effective interest rate of 1.6%.

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 September 30, 2025, no 2026 Convertible Notes remain outstanding.

The exchange agreement was accounted for in accordance with ASC 470-20, after the adoption of ASU 2024-04, whereby we concluded that the exchange did not qualify as an induced conversion. Thus, we accounted for the exchange as a debt extinguishment. We recorded a loss on extinguishment during the quarter ended September 30, 2025 of \$5.8 million, which was equal to the carrying value of the 2026 Convertible Notes less the fair value of the consideration offered in the exchange. The fair value of the consideration offered in the exchange was determined to be \$125.0 million for the cash consideration and \$30.7 million for the common shares offered. The fair value of the common stock exchanged was determined using the closing price of the common stock on August 7, 2025.

For the three and nine months ended September 30, 2025, interest expense related to the 2026 Convertible Notes was \$0.4 million and \$1.6 million, respectively, which included \$0.4 million and \$1.5 million, respectively, related to the stated interest rate and nil and \$0.1 million, respectively, related to the amortization of debt issuance costs.

For the three and nine months ended September 30, 2024, interest expense related to the 2026 Convertible Notes was \$0.6 million and \$1.8 million, respectively, which included \$0.5 million and \$1.6 million, respectively, related to the stated interest rate and \$0.1 million and \$0.2 million, respectively, 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, which includes the maximum number of shares of common stock issuable under the make-whole premium, 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 7.16%.

For the three and nine months ended September 30, 2025, interest expense related to the 2031 Convertible Notes was \$0.3 million, respectively, which included \$0.3 million, related to paid-in-kind interest and nil, related to the amortization of debt issuance costs.

As of September 30, 2025, the carrying value of the 2031 Convertible Notes was \$32.2 million, which is comprised of the \$35.0 million principal amount of the 2031 Convertible Notes outstanding, \$0.3 million of accumulated paid-in-kind interest, less debt issuance costs of \$3.1 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.

We evaluated the terms of the Series A convertible preferred stock under the guidance of ASC 480-10, Distinguishing Liabilities from Equity, and ASC 815-40 and recorded the Series A convertible preferred stock in stockholders' equity in the condensed consolidated balance sheets.

10. Equity Incentive Plan

Option Plan Activity

The following table summarizes the stock option activity for the nine months ended September 30, 2025:

	Shares (in thousands)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)
Outstanding at December 31, 2024	26,082	\$ 4.46	7.80
Granted	6,244	\$ 1.84	
Exercised	(287)	\$ 1.46	
Expired and forfeited	(3,151)	\$ 12.65	
Outstanding at September 30, 2025	28,888	\$ 3.03	7.91

We estimated the fair value of each option grant on the grant date using the Black-Scholes option pricing model and for market-based stock option grants using the Monte Carlo simulation model. The following are the weighted-average assumptions:

	For the Nine Months Ended September 30,	
	2025	2024
Risk-free interest rate	4.2%	3.7%
Dividend yield	0.0%	0.0%
Volatility	80.1%	79.8%
Expected life (years)	6 to 10	6 to 10

The following table summarizes the restricted stock unit activity ("RSUs") for the nine months ended September 30, 2025:

	Shares (in thousands)	Weighted-Average Grant Date Fair Value
Outstanding at December 31, 2024	1,981	\$ 2.35
Granted	2,896	\$ 1.82
Released	(663)	\$ 1.95
Expired and forfeited	(200)	\$ 2.57
Outstanding at September 30, 2025	4,014	\$ 1.94

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 Nine Months Ended September 30,	
	2025	2024
Risk-free interest rate	4.2%	5.4%
Dividend yield	0.0%	0.0%
Volatility	79.1%	83.6%
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 September 30,		Nine Months Ended September 30,	
	2025	2024	2025	2024
Research and development	\$ 277	\$ 361	\$ 797	\$ 1,615
General and administrative	1,918	1,671	5,315	5,609
Sales and marketing	657	690	2,048	3,443
Total stock-based compensation expense	<u>\$ 2,852</u>	<u>\$ 2,722</u>	<u>\$ 8,160</u>	<u>\$ 10,667</u>

As of September 30, 2025, there was \$24.4 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 September 30, 2025.

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 2024 Annual Report, continue to be accurate for the three and nine months ended September 30, 2025.

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 2024 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 2024 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 nine months ended September 30, 2025 and 2024.
- *Liquidity and Capital Resources.* This section provides a discussion of our financial condition and liquidity, an analysis of our cash flows for the nine months ended September 30, 2025 and 2024, and a discussion of our outstanding commitments and contingencies that existed as of September 30, 2025.

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.

In March 2022, the Centers for Medicare and Medicaid Services ("CMS") approved a 3-year transitional pass-through status of ZYNRELEF, which became effective on April 1, 2022 and expired March 31, 2025, for separate reimbursement outside of the surgical bundle payment in the Hospital Outpatient Department ("HOPD") setting of care. In addition, in December 2022, H.R. 2617, the omnibus spending bill was approved by Congress, which includes 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 from April 1, 2025, through December 31, 2027.

APONVIE

APONVIE is the first and only intravenous formulation of 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.

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 and only 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.

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.

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

On August 8, 2025, we entered into the Second Amendment to the Working Capital Facility Agreement with Hercules Capital, Inc., as administrative agent, collateral agent and lender, which among other things, (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, which was funded on August 12, 2025 (the "Closing Date") and (ii) extends the maturity date of the Working Capital Facility Agreement to September 1, 2030. See Note 8 - Long-Term Debt and Convertible Notes to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q. Concurrently on the Closing Date, we (i) issued and sold \$35.0 million aggregate principal amount of 2031 Convertible Notes in a private placement pursuant to a note purchase agreement entered with a fund affiliated with Rubric Capital Management LP, for which we received a total of \$31.9 million, net of issuance costs and original issuance discount, (ii) issued and sold 13,225,227 shares of common stock at a purchase price of \$1.50 per share and 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, (iii) exchanged all \$150.0 million aggregate principal amount of the 2026 Convertible Notes outstanding for 16,666,666 shares of common stock for an aggregate principal amount of \$25.0 million of the 2026 Convertible Notes and paid the remaining \$125.0 million plus accrued and unpaid interest under the 2026 Convertible Notes in cash. 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, at the option of the holders, of the 2031 Convertible Notes and the Series A convertible preferred stock.

Material Trends and Developments

We intend to wind down commercialization of SUSTOL over the next 12 months while we evaluate potential product updates. Subject to development progress, manufacturing readiness, and regulatory feedback, we may consider reintroducing SUSTOL as early as late 2027. During the wind down, we'll continue to support customers and manage inventory responsibly, and we expect one time transition costs, which we'll quantify as plans are finalized.

There are no other material changes to our material trends and developments disclosures included in our 2024 Annual Report during the three and nine months ended September 30, 2025.

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. 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.

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 has been subleased to a third party, has a lease term that expires on December 31, 2025. Our one five-year option to renew this lease on expiration applies only with respect to the portion of the premise that has not been subleased. The lease for office space in Cary, North Carolina is expected to commence no later than May 25, 2026 and expire 111 months from the lease commencement date, with the option to extend for one additional period of 84 months upon written notice. As the lease commencement date has not yet occurred, no right-of-use asset or lease liability has been recognized in the accompanying condensed consolidated financial statements. 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.

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, and stock-based compensation. There are no material changes to our critical accounting estimates disclosures included in our 2024 Annual Report, during the three and nine months ended September 30, 2025.

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 Nine Months Ended September 30, 2025 and 2024

The following table summarizes the results of our operations for the three and nine months ended September 30, 2025 and 2024 (in thousands):

(\$ in thousands)	Three Months Ended September 30,				Nine Months Ended September 30,			
	2025	% of Sales	2024	% of Sales	2025	% of Sales	2024	% of Sales
Net product sales	\$ 38,213		\$ 32,810		\$ 114,316		\$ 103,504	
Cost of product sales	11,914	31.2%	9,458	28.8%	30,228	26.4%	28,420	27.5%
Gross profit	\$ 26,299		\$ 23,352		\$ 84,088		\$ 75,084	
Operating expenses:								
Research and development	3,470	9.1%	4,465	13.6%	8,683	7.6%	13,505	13.0%
General and administrative	13,980	36.6%	12,373	37.7%	41,153	36.0%	41,252	39.9%
Sales and marketing	12,942	33.9%	10,972	33.4%	36,828	32.2%	36,028	34.8%
Loss from operations	\$ (4,093)	(9.7%)	\$ (4,458)	(13.6%)	\$ (2,576)	(1.9%)	\$ (15,701)	(15.2%)

Net Product Sales

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2025	2024	2025	2024
Acute Care Net Product Sales	\$ 12,347	\$ 7,385	\$ 33,300	\$ 19,676
Oncology Net Product Sales	25,866	25,425	81,016	83,828
Total Net Product Sales	\$ 38,213	\$ 32,810	\$ 114,316	\$ 103,504

Total acute care net product sales increased 67.2% or \$4.9 million during the three months ended September 30, 2025, as compared to the comparable period in 2024.

Total acute care net product sales increased 69.2% or \$13.6 million during the nine months ended September 30, 2025, as compared to the comparable period in 2024.

These increases were 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 increased 1.7% or \$0.4 million during the three months ended September 30, 2025, as compared to the comparable period in 2024.

The increase was primarily attributable to an increase in units sold, offset by an increase in discounts, rebates and administrative fees.

Total oncology net product sales decreased 3.4% or \$2.8 million during the nine months ended September 30, 2025, as compared to the comparable period in 2024.

The decrease was primarily attributable to market competition from branded products and generics. The competition and decreases in oncology net product sales are expected to continue for the foreseeable future.

Cost of Product Sales and Gross Profit

Cost of product sales increased by 26.0% or \$2.5 million during the three months ended September 30, 2025, as compared to the comparable period in 2024 and as a percentage of sales increased 2.4% during the same period.

Cost of product sales increased by 6.4% or \$1.8 million during the nine months ended September 30, 2025, as compared to the comparable period in 2024 and as a percentage of sales decreased by 1.1% during the same period.

Gross profit for the three months ended September 30, 2025 was 68.8%, compared to 71.2% for the comparable period ended September 30, 2024.

Gross profit for the nine months ended September 30, 2025 was 73.6%, compared to 72.5% for the comparable period ended September 30, 2024.

The increase in cost of product sales for the three months ended September 30, 2025, as compared to the same period ended September 30, 2024, is primarily attributable to an increase of \$1.4 million of inventory reserves and write-offs recorded and an increase of \$1.3 million in the cost of units sold, primarily due to supplier mix.

The increase in cost of product sales for the nine months ended September 30, 2025, as compared to the same period ended September 30, 2024, is primarily attributable to an increase in units sold combined with a lower cost per unit due to supplier mix.

Research and Development Expense

Reclassification of Certain Expenses

The table of research and development expense below for the three and nine months ended September 30, 2024 reflect reclassification of certain expenses amongst products to align with the Company's presentation for the three and nine months ended September 30, 2025 as a result of further review of the nature of the expenses. This presentation results in no change to total operating expenses, loss from operations or net loss and no pro forma financial information is necessary.

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2025	2024	2025	2024
ZYNRELEF-related costs	\$ 1,944	\$ 2,426	\$ 3,861	\$ 5,056
SUSTOL-related costs	—	53	75	312
CINVANTI-related costs	—	319	302	1,180
APONVIE-related costs	—	157	1	396
Personnel costs and other expenses	1,249	1,149	3,647	4,946
Stock-based compensation expense	277	361	797	1,615
Total research and development expense	<u>\$ 3,470</u>	<u>\$ 4,465</u>	<u>\$ 8,683</u>	<u>\$ 13,505</u>

Research and development expense decreased by \$1.0 million or 22.3%, during the three months ended September 30, 2025 compared to the same period in 2024. The decrease in costs is primarily attributable to a \$0.8 million decrease in contract services due to timing and a \$0.4 million decrease in write-offs of property and equipment.

Research and development expense decreased by \$4.8 million or 35.7%, during the nine months ended September 30, 2025 compared to the same period in 2024. The decrease in costs is primarily attributable to a \$2.0 million decrease in personnel and related expenses due to terminations, a decrease of \$1.6 million in write-offs of property and equipment and other assets and a decrease of \$0.9 million in contract services due to timing.

General and Administrative Expense

General and administrative expense increased by \$1.6 million or 13.0%, during the three months ended September 30, 2025 compared to the same period in 2024. The increase in costs is primarily attributable to \$0.8 million increase in personnel and related expenses due to net new hires and a \$0.5 million increase in contract services due to timing.

General and administrative expense decreased by \$0.1 million or 0.2%, during the nine months ended September 30, 2025 compared to the same period in 2024. The decrease in costs is primarily attributable to a \$0.7 million decrease in legal expense due to timing of litigation, a \$0.6 million decrease in personnel and related costs due to terminations. These decreases were partially offset by an increase of \$1.1 million in contract services due to timing.

Sales and Marketing Expense

Sales and marketing expense increased by \$2.0 million or 18.0%, during the three months ended September 30, 2025 compared to the same period in 2024. The increase is primarily attributable to an increase in marketing costs of \$1.5 million, primarily related to ZYNRELEF and a \$0.3 million increase in personnel and related expenses due to net new hires.

Sales and marketing expense increased by \$0.8 million or 2.2%, during the nine months ended September 30, 2025 compared to the same period in 2024. The increase is primarily attributable to a \$2.2 million increase in marketing costs, primarily related to

ZYNRELEF, partially offset by a decrease in personnel and related costs of \$1.6 million as a result of a one-time stock compensation expense in 2024, which did not reoccur in 2025.

Other Expense, Net

For the three months ended September 30, 2025, other expense, net was \$13.4 million, compared to \$0.4 million, for the same period in 2024. The increase in expense is related to the loss on debt extinguishment of \$11.3 million and an increase in interest expense as a result of the debt refinancing completed in 2025.

For the nine months ended September 30, 2025, other expense, net, was \$14.7 million compared to \$1.5 million for the same period in 2024. The increase in expense is related to the loss on debt extinguishment of \$11.3 million, an increase in interest expense as a result of the debt refinancing completed in 2025, and a decrease in interest income as a result of a decreasing interest rates.

Liquidity and Capital Resources

Sources of Liquidity

As of September 30, 2025, we had cash, cash equivalents and short-term investments of \$55.5 million. Our net loss for the three months ended September 30, 2025 was \$17.5 million, or \$0.10 per share, compared to a net loss of \$4.8 million, or \$0.03 per share, for the same period in 2024. Our net loss for the nine months ended September 30, 2025 was \$17.2 million, or \$0.11 per share, compared to a net loss of \$17.2 million, or \$0.11 per share, for the same period in 2024. We have incurred significant operating losses and negative cash flows from operations and had an accumulated deficit of \$1.9 billion as of September 30, 2025. From our inception through September 30, 2025, we have financed our growth and operations, including technology and product research and development, primarily through the issuance of common stock, convertible notes and warrants, product sales and debt financings. 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.

Cash Flows

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

Our net cash used in operating activities for the nine months ended September 30, 2025 and September 30, 2024 was \$18.4 million and \$10.7 million, respectively. The increase in net cash used in operating activities of \$7.7 million or 71.2%, was primarily attributable to payments for inventory, accounts payable, and accrued clinical and manufacturing liabilities, partially offset by a decrease in net loss for the nine months ended September 30, 2025 compared to the same period in 2024 and the loss on debt extinguishment recognized in the nine months ended September 30, 2025.

Our net cash provided by investing activities for the nine months ended September 30, 2025, and September 30, 2024 was \$21.5 million, and \$7.3 million, respectively. The increase in net cash provided by investing activities of \$14.2 million or approximately two-fold, was primarily attributable to net maturities of short-term investments of \$21.7 million for the nine months ended September 30, 2025 compared to \$8.4 million for the nine months ended September 30, 2024.

Our net cash provided by financing activities for the nine months ended September 30, 2025, and September 30, 2024 was \$14.2 million, and \$0.5 million, respectively. The increase in net cash provided by financing activities of \$13.7 million is primarily attributable to \$13.4 million in cash provided through the debt and equity transactions which closed in the nine months ended September 30, 2025.

Material Cash Requirements

There are no material changes to our material cash requirements disclosures included in our 2024 Annual Report during the three and nine months ended September 30, 2025.

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 2024 Annual Report. There are no material changes to the quantitative and qualitative disclosures included in our 2024 Annual Report during the three and nine months ended September 30, 2025.

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 2024 Annual Report during the three and nine months ended September 30, 2025.

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 ANDA to the 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 U.S. Food and Drug Administration of Fresenius Kabi’s ANDA shall not be a date earlier than September 18, 2035, the expiration date of each of U.S. Patents 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 (“Federal Circuit”). On September 24, 2025, the briefing was completed, and the Company awaits a date for oral argument. 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 abbreviated new drug application (“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 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 Orange Book. The Mylan August 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 Mylan’s ANDA for a generic version of CINVANTI. 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. The complaint seeks, among other relief, equitable relief enjoining Mylan from infringing the CINVANTI Patents. On November 9, 2023, the Company received an updated Notice Letter from Mylan advising that it had submitted an amendment to Mylan’s ANDA for a generic version of CINVANTI to include a Paragraph IV certification to the Company’s recently listed U.S. Patent No. 11,744,800. 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. The Mylan December Notice Letter alleges that the APONVIE Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Mylan's ANDA for a generic version of APONVIE. 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 an ANDA for a generic version of APONVIE. The complaint seeks, among other relief, equitable relief enjoining Mylan from infringing the APONVIE Patents. On January 26, 2024, the Court consolidated this litigation concerning Mylan's ANDA for a generic version of APONVIE with the previously-filed litigation concerning 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 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 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 the 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. The parties completed expert discovery. The parties' entered into a stipulation (Case No. 24-1363, D.I. 119) limiting the issues for trial. A bench trial is currently scheduled for November 17, 2025. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI. As a result of our initial complaint for patent infringement, the FDA may not approve Slayback's NDA until the earlier of June 12, 2026 or resolution of the litigation.

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") 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, and 12,115,255 (the "Noticed APONVIE Patents"), which are listed in the Orange Book, Qilu's ANDA alleges that the Noticed APONVIE Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Qilu's ANDA for a generic version of APONVIE. 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. The complaint seeks, among other relief, equitable relief enjoining Qilu from infringing the Noticed APONVIE Patents.

On June 11, 2025, the Company received a Notice Letter (the "Qilu CINVANTI 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 CINVANTI in the U.S. ("Qilu's CINVANTI ANDA") 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. Qilu's CINVANTI ANDA alleges that the Noticed CINVANTI Patents are invalid, unenforceable, and/or will not be infringed by the commercial manufacture, use or sale of the generic product described in Qilu's CINVANTI ANDA. 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 CINVANTI ANDA. The complaint seeks, among other relief, equitable relief enjoining Qilu from infringing the Noticed CINVANTI Patents.

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 3, 2025, the parties filed a 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.

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. In addition to the other information described below, 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 2024 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 the 2024 Annual Report.

Changes in government policies, laws, and regulations and with respect to the government workforce may have a negative impact on our business and the markets in which we operate.

The laws and regulations governing our operations, as well as their interpretation, may change from time to time, and new laws and regulations may be enacted. Similarly, operational changes at government agencies, including actions intended to reduce government spending at agencies that regulate significant parts of our business, such as the FDA and CMS, could have a significant impact on the implementation of laws and regulations that impact our business.

For example, the layoffs and reorganizations at several U.S. health agencies, including the FDA, the Department of Health and Human Services (the "HHS"), the Centers for Disease Control and Prevention and the National Institutes of Health, are expected to impact the FDA's ability to review and approve new medicines and conduct necessary inspections. Over the last several years, the U.S. government has also shut down several times and certain regulatory agencies, such as the FDA and SEC, have had to furlough critical employees and stop critical activities. In addition, government funding of agencies on which our operations may rely, including those that fund research and development activities, is subject to the political process, which is inherently fluid and unpredictable. Such disruptions at the FDA and other agencies may also increase the time necessary for new drugs or modifications to approved drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. There is also a great degree of uncertainty related to the impact of recent U.S. Supreme Court decisions and executive orders on the enforcement and decision-making authority of regulatory agencies, including those in the FDA, which may lead to delays, if not cancellations, of pending and proposed regulations at federal agencies and subject significant regulatory actions by the agencies to presidential supervision and control.

Accordingly, any change in these laws or regulations, changes in their interpretation, or newly enacted laws or regulations and any failure by us to comply with these laws or regulations could require changes to certain of our business practices, negatively impact our operations, cash flow or financial condition, impose additional costs on us or otherwise adversely affect our business. For example, significant changes to U.S. trade policy, including potential new or increased tariffs, along with countermeasures by the affected countries, may impact global trade, create sourcing challenges with respect to raw materials and instruments and increase our costs, potentially harming our business. The U.S. has recently imposed increased tariffs on certain countries, focusing on those with which it has the largest trade deficits. Other countries have responded, and may continue to respond, by announcing retaliatory tariffs on U.S. imports. The tariffs have disrupted and may continue to disrupt the global markets and escalate geopolitical tensions between

the U.S. and other countries. The extent of the impact of such tariffs and proposed regulations on our business specifically, or on the U.S. market and global economy generally, are uncertain and unpredictable, and could adversely affect our business, financial condition and results of operations. Further, the U.S. may also enact other regulations or policies that affect trade or otherwise impact the pharmaceutical industry by restricting U.S. pharmaceutical companies from contracting with certain countries for the development, research or manufacturing of pharmaceutical products. For example, the U.S. Department of Commerce initiated national security investigations into the importation of pharmaceuticals and pharmaceutical ingredients pursuant to Section 232 of the Trade Expansion Act of 1962, which could result in the imposition of new tariffs on imports within the pharmaceutical industry.

In addition, the U.S. announced a 100% tariff, effective October 1, 2025, on any branded or patented pharmaceuticals imported into the U.S., unless the relevant drug manufacturer has or is in the process of building a manufacturing facility in the U.S. The imposition of such tariffs is currently delayed as the U.S. administration seeks to negotiate drug pricing agreements with large drug manufacturers. The outcome of such ongoing negotiations is currently unclear and the final terms and impact remain uncertain. While we currently do not anticipate a material impact from such tariffs on our business or operations, such tariffs could have implications on drug pricing, drug production levels and patient access, and may result in supply chain or other operational disruptions. Further, if we are required to change our current manufacturing partners or suppliers now or in the future in order to avoid such tariffs, the terms of new agreements that we may enter into may not be favorable to us and related operational disruptions may heighten manufacturing and compliance risks and derail commercialization plans.

Moreover, uncertainty with respect to legislation, regulation and government policy at the federal, state and local levels, has introduced new and difficult-to-quantify macroeconomic and geopolitical risks with potentially far-reaching implications. There are currently a number of laws and regulations in the U.S. that have recently been adopted but not yet implemented, have been proposed or are being considered to which we or our customers may become subject, including healthcare reform initiatives and potential spending and tax proposals, but at this time their impact on our business and results of operations remains uncertain. Changes in legislation, regulation or policy increase the likelihood that we will fail to appropriately adapt to changes in our compliance obligations, particularly when such changes happen abruptly, such as following a change in government. Any of the foregoing changes could increase our litigation and regulatory exposure, directly impact our results of operations and cash flows, adversely affect our ability to provide our products, or adversely impact the demand for our Products. Such changes may also impact our business by creating increased volatility and uncertainty in the markets in which we operate. At this time, we cannot predict the ultimate content, timing, or effect of these changes, including any legislative, regulatory and other actions under the new U.S. administration, or estimate the overall impact of any such changes on our business, results of operations and financial condition.

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 September 30, 2025, 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 September 30, 2025, 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
3.1	<u>Certificate of Designation of Rights, Preferences and Privileges of Series A Convertible Preferred Stock of Heron Therapeutics, Inc., filed with the Secretary of State of the State of Delaware on August 11, 2025 (incorporated by reference to our Current Report on Form 8-K, as Exhibit 3.1, filed on August 12, 2025)</u>
3.2	<u>Certificate of Designation of Series B Preferred Stock of Heron Therapeutics, Inc., filed with the Secretary of State of the State of Delaware on August 14, 2025 (incorporated by reference to our Current Report on Form 8-K, as Exhibit 3.1, filed on August 15, 2025)</u>
4.1	<u>Form of Convertible Senior Unsecured Promissory Note due 2031 (included in Exhibit 10.6)</u>
4.2	<u>Tax Benefit Preservation Plan, dated August 14, 2025, by and between Heron Therapeutics, Inc. and Computershare Trust Company N.A., which includes the Form of Certificate of Designation of Series B Preferred Stock as Exhibit A, Form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C (incorporated by reference to our Current Report on Form 8-K, as Exhibit 4.1, filed on August 15, 2025)</u>
10.1+*	<u>Framework Agreement, dated August 6, 2025, by and between Heron Therapeutics, Inc. and Patheon Austria GmbH & Co KG</u>
10.2	<u>Cooperation Agreement, dated August 8, 2025, by and among Heron Therapeutics, Inc. and Rubric Capital Management L.P. (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.1, filed on August 12, 2025)</u>
10.3*	<u>Second Amendment to Working Capital Facility Agreement, dated August 8, 2025, by and between Heron Therapeutics, Inc. and Hercules Capital, Inc., as administrative agent, collateral agent, and lender (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.2, filed on August 12, 2025)</u>
10.4*	<u>Exchange Agreement, dated August 8, 2025, by and among Heron Therapeutics, Inc. and the holders party thereto (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.3, filed on August 12, 2025)</u>
10.5	<u>Securities Purchase Agreement, dated August 8, 2025, by and among Heron Therapeutics, Inc. and the purchasers party thereto (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.5, filed on August 12, 2025)</u>
10.6	<u>Note Purchase Agreement, dated August 8, 2025, by and among Heron Therapeutics, Inc. the purchasers party from time to time thereto and Rubric Capital Management LP (incorporated by reference to our Registration Statement on Form S-3, as Exhibit 10.1, filed on September 9, 2025)</u>
10.7+*	<u>Office Lease Agreement, dated August 22, 2025, by and between Heron Therapeutics, Inc. and USEF HCG Fenton LLC</u>
10.8+*	<u>Amendment No. 6 to Co-Promotion Agreement, dated as of August 15, 2025, by and between the Company and Crosslink Network, LLC</u>
31.1+	<u>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</u>
31.2+	<u>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</u>
32.1++	<u>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</u>
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
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Extension Definition
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document

101.PRE Inline XBRL Taxonomy Extension Presentation Linkbase 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: November 4, 2025

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.**

FRAMEWORK AGREEMENT

This Framework Agreement (this “Framework Agreement”) is made as of the 6th day of August 2025 (the “Framework Agreement Effective Date”), by and between Patheon Austria GmbH & Co KG, incorporated and existing under the laws of Austria and located at St. Peter Straße 25, 4020 Linz, Austria (“Patheon”) and Heron Therapeutics, Inc., a Delaware corporation located at 100 Regency Forest Drive, Suite 300, Cary, North Carolina 27518, USA (“Heron”). Patheon and Heron are each sometimes referred to herein as a “Party” and collectively as the “Parties”. In addition, Thermo Fisher Scientific Inc., a Delaware corporation located at 168 Third Avenue, Waltham, Massachusetts 02451, USA (“Patheon TopCo”) is a party to this Framework Agreement solely for the purposes of agreeing to Section 12.

RECITALS

WHEREAS, the Parties entered into a Manufacturing and Supply Agreement, dated February 5, 2021 (the “MSA”), providing for Patheon to manufacture and supply Heron with the Product, as set forth in more detail and on the terms and conditions therein, as amended by the amendments set forth herein (such amended MSA, the “Amended MSA”). The Parties entered into certain project addendums and related purchase orders pursuant to the MSA;

WHEREAS, the Parties desire to (i) keep in place the project addendums or portions of project addendums under the MSA that provide for Patheon to perform stability studies for Heron, and (ii) terminate all other project addendums or portions of project addendums under the MSA that provide for Patheon to supply Heron with Product, and any other services other than Patheon performing stability studies for Heron;

WHEREAS, the Parties entered into a Settlement Agreement, dated June 29, 2022 (the “Initial Settlement Agreement”), as amended by the Amendment to Settlement Agreement, dated June 29, 2023, by and between the Parties (the “Settlement Agreement Amendment #1”), and as further amended by the Second Amendment to Settlement Agreement, dated May 15, 2024, by and between the Parties (the “Settlement Agreement Amendment #2” and, together with the Settlement Agreement Amendment #1 and the Initial Settlement Agreement, the “Settlement Agreement”), providing for settlement terms for certain project addendums under the MSA and other items, as set forth in more detail and on the terms and conditions therein;

WHEREAS, as set forth in more detail herein, the Parties desire to terminate the Settlement Agreement and certain other agreements;

WHEREAS, as set forth in more detail herein, the Parties desire to confirm that certain other agreements are completed, previously terminated, or expired;

WHEREAS, as set forth in more detail herein, the Parties desire to terminate certain purchase obligations or commitments;

WHEREAS, as set forth in more detail herein, each Party desires to release and forever discharge the other Party from certain claims, rights and obligations as set forth in this Framework Agreement; and

WHEREAS, the Parties entered into discussions to resolve their respective rights and obligations, and following these discussions, the Parties have agreed to the terms and conditions set forth herein in order to fully and finally resolve all disputes and controversies between the Parties, and to clarify the rights and obligations of the Parties going forward, as set forth in this Framework Agreement.

NOW, THEREFORE, in consideration of and in reliance upon the recitals, promises, covenants, understandings, and obligations set forth herein, and intending to be legally bound, the Parties mutually agree as follows:

1. **Settlement Payment and Mutual Release.**

- 1.1 As a negotiated compromise, in consideration of the agreement by Patheon and Heron to perform the obligations required hereunder, (a) Heron will pay Patheon a total sum of €[***] (the “Settlement Amount”) as provided herein, subject to any reductions pursuant to Section 2.4, and (b) each Party and its Affiliates will release the other Party and its Affiliates to the full extent set forth in the releases described hereunder. The Settlement Amount will be paid in accordance with the Monthly Payments set out in Exhibit A, subject to any reductions pursuant to Section 2.4.
- 1.2 This Framework Agreement is in full and final settlement of, and each Party hereby forever releases and discharges, any Claim that it, its Affiliates or any of them (i) ever had, (ii) now has, or (iii) can, will, or may have in the future, in each case against the other Party or any of its Affiliates.
- 1.3 Claims.
- (a) Except as excluded in Section 1.3(b), “Claim” means any and all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, expenses (including attorneys’ fees and costs actually incurred), and punitive damages (each, a “Loss”), of any nature whatsoever, known or unknown, which either Party has, may have had, or may have against the other Party or its Affiliates, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions, whether in law (including negligence) or equity, relating to or arising out of:
- (i) the MSA (as unamended by this Framework Agreement), the Completed Transaction Documents, and the Terminated Transaction Documents, other than in each case the Surviving Indemnification Obligations;
 - (ii) the Ongoing Transaction Documents (including the Amended MSA), other than the Surviving Indemnification Obligations;
 - (iii) the Heron Financial Obligations; or
 - (iv) the Patheon Financial Obligations;
- in Section 1.3(a)(i) relating to time periods prior to, on, or after the Framework Agreement Effective Date; and in Section 1.3(a)(ii) relating only to time periods prior to the Framework Agreement Effective Date.
- (b) The term “Claim” excludes Loss of any nature whatsoever, known or unknown, which either Party has, may have had, or may have against the other Party or its Affiliates, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions, whether in law (including negligence) or equity, relating to or arising out of:
- (i) this Framework Agreement or a breach thereof;
 - (ii) the Surviving Indemnification Obligations;
 - (iii) acts or omissions pursuant to any Ongoing Transaction Document that occur on or after the Framework Agreement Effective Date that are not released as part of the Heron Financial Obligations pursuant to Section 1.3(a)(iii);
 - (iv) any agreement between Patheon or any of its Affiliates and Heron or any of its Affiliates relating to any Instrument and Enterprise Services or other support or services for equipment supplied by an entity within the Thermo Fisher corporate group; or

- (v) any agreement between Patheon or any of its Affiliates and Heron or any of its Affiliates that is not included in the Transaction Documents.

(c) Additional Definitions.

- (i) “Heron Purchasing Obligations” means all obligations or commitments by Heron regarding purchasing, payments, price, investments, or capacity (including any and all worldwide purchase requirements, forecast commitments, purchase orders, Stand-By Fees, indexation, and raw material related payments, in each case whether binding, non-binding, cancellable or non-cancellable), and any related interest charges, late fees, services fees, cancellation fees, fees for payment term extension, or similar fees, in all Transaction Documents relating to (A) Product, (B) Manufacturing, (C) [***], (D) Materials, (E) drums (including New Drums and Used Drums) (collectively, “Drums”), and (F) storage of, stability studies for, or discontinuance of Product, in each case of (A)-(F) whether relating to time periods prior to, on, or after the Framework Agreement Effective Date.
- (ii) “Heron Financial Obligations” means each of (A) the Heron Purchasing Obligations, and (B) all obligations or commitments by Heron regarding payments of any kind in the Transaction Documents relating to time periods prior to the Framework Agreement Effective Date, except in each case of (A)-(B) for (1) those in this Framework Agreement, and (2) the Remaining Heron Payment Obligations.
- (iii) “Patheon Financial Obligations” means all obligations or commitments by Patheon regarding payments of any kind in the Transaction Documents relating to time periods prior to the Framework Agreement Effective Date, except for (A) those under Section 11.2 of the Amended MSA, and (B) the Surviving Patheon Indemnification Obligations.
- (iv) “Surviving Heron Indemnification Obligations” means Heron’s indemnification, defense, or hold harmless obligations, as applicable, set forth in Sections 3.8 or 19.2(c)-(d) of the Amended MSA and Section 7.2(ii) of the Warehousing Services Agreement.
- (v) “Surviving Patheon Indemnification Obligations” means (i) Patheon’s indemnification, defense, and hold harmless obligations set forth in Section 19.1 of the Amended MSA to the extent relating to or arising from Non-Conforming Product and Section 7.1(ii) of the Warehousing Services Agreement, and (ii) Patheon’s reimbursement obligations set forth in Section 6.8 of the Amended MSA.
- (vi) “Surviving Indemnification Obligations” means the Surviving Heron Indemnification Obligations and the Surviving Patheon Indemnification Obligations.

- 1.4 Acceleration. Heron will be obliged immediately to meet any of its obligations under this Framework Agreement not yet fulfilled including payment of the Settlement Amount (subject to any reductions pursuant to Section 2.4) in full if, (i) the Amended MSA is terminated by Heron for any reason prior to 31 December 2026, (ii) the Amended MSA is terminated by Patheon under Section 17.1.3 of the Amended MSA prior to 31 December 2026, (iii) the Amended MSA is terminated by Patheon under Section 17.1.4 of the Amended MSA for Heron’s breach of Sections 15, 18.2, 19, or 20 of the Amended MSA prior to 31 December 2026, (iv) Heron fails to pay any of the Monthly Payments (subject to any reductions pursuant to Section 2.4) due in accordance with this Framework Agreement within [***] after Heron receives written notice from Patheon that such payment has not been received, or (v) Heron is subject to a Change of Control. “Change of Control” of Heron occurs if a Person that, directly or indirectly, owns or controls at least fifty percent (50%) of the voting securities of Heron ceases to do so. “Person” means any individual, organization, general partnership, limited partnership, corporations, limited liability company, cooperative, joint venture, estate, trust, business trust, association, governmental entity, or other legal entity.

1.5 Satisfaction of Heron's Payment Obligations.

- (a) “Remaining Heron Payment Obligations” means, collectively, (1) the amounts not yet paid by Heron under the MSA Ongoing Project Addendums and the Warehousing Services Agreement, (2) any obligation of Heron to pay Patheon pursuant to Sections 7.5 or 11.2 of the Amended MSA, and (3) any obligation of Heron to pay Patheon pursuant to the Surviving Heron Indemnification Obligations.
- (b) (1) The Remaining Heron Payment Obligations and (2) any payment obligations of Heron for any project addendums or changes of scope or other agreements entered into pursuant to the Amended MSA after the Framework Agreement Effective Date are each excluded from the Settlement Amount, and will be payable separately to this Framework Agreement in accordance with the terms of the applicable agreement.
- (c) As a consequence of the release and discharge described in Section 1.2, (1) the payment of the Settlement Amount (subject to any reductions pursuant to Section 2.4) by Heron will be in full satisfaction of the Heron Purchasing Obligations for all calendar years, other than the Remaining Heron Payment Obligations, (2) after the Settlement Amount (subject to any reductions pursuant to Section 2.4) is paid by Heron to Patheon, Heron will not owe Patheon any amounts for the Heron Purchasing Obligations under any Transaction Documents for any calendar year, other than the Remaining Heron Payment Obligations, and (3) Heron will not owe Patheon any amounts under any Transaction Documents for the time periods prior to the Framework Agreement Effective Date, other than (A) the Remaining Heron Payment Obligations, and (B) as set forth in this Framework Agreement.

1.6 Satisfaction of Patheon's Payment Obligations. As a consequence of the release and discharge described in Section 1.2, Patheon will not owe Heron any amounts under any Transaction Documents for the time periods prior to the Framework Agreement Effective Date, other than any obligation of Patheon to pay Heron amounts (1) pursuant to Section 11.2 of the Amended MSA, and (2) pursuant to the Surviving Patheon Indemnification Obligations.

1.7 The limitations set out in Section 18.4 of the Amended MSA will not apply to (i) Heron's obligations to pay Patheon the amounts set forth in this Framework Agreement, or (ii) any obligation of Patheon to pay Heron as set forth in Section 2.4(c) of this Framework Agreement.

2. **Manufacturing and Supply of Product.**

- 2.1 Heron shall purchase from Patheon, and Patheon shall manufacture and sell to Heron, Product as set forth in Exhibit B of this Framework Agreement, pursuant to the terms and conditions of the Amended MSA.
- 2.2 Heron hereby commits to purchase [***] of Product, to be manufactured in accordance with Exhibit B (the “[***]”). The [***] Purchase Price for the [***] is included in the Settlement Amount. The execution of this Framework Agreement is a non-cancellable order by Heron for the [***] which is considered to be submitted and accepted as if it was a Purchase Order submitted under the Amended MSA. The terms of the Amended MSA will apply to the [***] except as stated otherwise in this Framework Agreement.
- 2.3 Patheon's fulfilment of the [***] according to the terms of Section 2 and Exhibit B of this Framework Agreement and the terms of the Amended MSA will fully satisfy Patheon's supply commitments under the Amended MSA for all calendar years.

2.4 Reductions to the Monthly Payments.

- (a) Any (1) liability, reimbursement or credit obligations of Patheon that arise under the Amended MSA in relation to the [***] (including under Section 6.7.1 or Section 6.8 of the Amended MSA), and (2) reductions to the Monthly Payments for any quantities of Unreleased Product or any quantities of Released Product that are Non-Conforming Product as described in Section 2.6 that, in each case of (1)–(2), result in any amounts owed by Patheon to Heron, will be applied as a reduction to the Monthly Payments as follows:
- (i) Reductions for Unreleased Product or Released Non-Conforming Product.
- A. If Release #1 or Release #2 is not Released by Release Date #1 or Release Date #2 as applicable, or Release #1 or Release #2 contains Non-Conforming Product, the [***] Monthly Payment will be reduced by an amount equal to the Per Kilogram Product Payment, multiplied by the number of kilograms of Unreleased Product or Non-Conforming Product, as applicable. If the [***] Monthly Payment is reduced to €[***], any remaining credit left to be applied will next be applied against the next consecutive month's Monthly Payment and will continue in the same manner with a reduction to each next consecutive month's Monthly Payment for as many Monthly Payments as are needed for all such amounts to be credited are applied.
- B. If Release #3 is not Released by Release Date #3 or contains Non-Conforming Product, the [***] Monthly Payment will be reduced by an amount equal to the Per Kilogram Product Payment, multiplied by the number of kilograms of Unreleased Product or Non-Conforming Product, as applicable. If the [***] Monthly Payment is reduced to €[***], any remaining credit left to be applied will next be applied against the prior month's Monthly Payment and will continue in the same manner with a reduction to each prior month's Monthly Payment for as many Monthly Payments as are needed for all such amounts to be credited are applied.
- (ii) Other Reductions. Any other reduction set forth in Section 2.4(a) that is not covered by Section 2.4(a)(i) will be applied initially against the [***] Monthly Payment until the [***] Monthly Payment is reduced to €[***] or all such amounts are applied, whichever happens first. Any amounts left to be applied will next be applied against the prior month's Monthly Payment and will continue in the same manner with a reduction to each prior month's Monthly Payment for as many Monthly Payments as are needed for all such amounts to be credited are applied.
- (iii) If the Monthly Payment for a certain month on Exhibit A is €[***] or has been previously reduced to €[***] due to other credits, or if Heron has already paid that month's Monthly Payment at the time the reduction becomes applicable, that month will be skipped for purposes of applying the reduction in this Section 2.4(a), and the reduction will be applied to the next consecutive month (under Section 2.4(a)(i)(A)) or the next previous month (under Sections 2.4(a)(i)(B) and 2.4(a)(ii)) for which the amount owed from Heron to Patheon on Exhibit A is greater than €[***].
- (iv) The reductions to the Monthly Payments to be applied pursuant to this Section 2.4(a) are conditional on Heron paying the Monthly Payments as set forth in this Framework Agreement for the months prior to the earliest Monthly Payment for which the reduction would be applied.
- (b) Examples. Examples of reductions to Monthly Payments are set forth on Exhibit C.
- (c) Reimbursement from Patheon to Heron for Monthly Payment Reductions.

- (i) If (A) Section 1.4 is triggered, (B) Patheon receives the amounts owed pursuant to Section 1.4 in cleared funds (the date such payment is received by Patheon, the “Acceleration Payment Date”), and (C) there are any outstanding amounts owed from Patheon to Heron on or after the Acceleration Payment Date as a consequence of reductions to Monthly Payments under Section 2.4(a), then Patheon shall pay Heron such outstanding amounts on or before [***] after the date that the amount becomes payable.
- (ii) If, as of [***], (1) all Monthly Payments have been reduced to €[***], or all Monthly Payments (subject to any reductions pursuant to Section 2.4) have been paid by Heron, and (2) remaining credit is left to be applied pursuant to Section 2.4(a), then Patheon shall pay Heron such remaining credit on or before [***].
- (iii) If, after [***], (1) any of Release #1, Release #2 or Release #3 contains Non-Conforming Product, (2) all Monthly Payments (subject to any reductions pursuant to Section 2.4) have been paid by Heron, and (3) remaining credit is left to be applied pursuant to Section 2.4(a), then Patheon shall pay Heron such remaining credit on or before [***] after the date the Product is determined to be Non-Conforming Product pursuant to the Amended MSA.
- (iv) If, after [***], (1) there are reductions pursuant to Section 2.4(a)(ii), and (2) all Monthly Payments (subject to any reductions pursuant to Section 2.4) have been paid by Heron, then Patheon shall pay Heron such remaining reduction on or before [***] after the date such reductions have been determined pursuant to the Amended MSA.
- (v) Payments made by Patheon to Heron pursuant to this Section 2.4(c) will be made by wire transfer of immediately available funds to a bank account designated by Heron in writing following receipt of an invoice from Heron.
- (d) Other Patheon Reimbursement Obligations. Except as set forth in Section 2.4(c), the terms of the Amended MSA will apply to any liability, reimbursement or credit obligations of Patheon that arise under the Amended MSA after [***].
- (e) Heron Sole Remedy; Patheon Sole Liability. The reductions to the Monthly Payments under Section 2.4(a) will be Heron’s sole remedy and Patheon’s sole liability for any Non-Conforming Product or Unreleased Product.

2.5 [***].

- (a) Unreleased Product Arising from Defective [***]; Non-Conforming Product Arising from Defective [***]. Patheon will have no liability under the Amended MSA for any Unreleased Product or Non-Conforming Product that, in each case, arises from the use of, or inability to use, [***] or [***] (“[***]”) that does not comply with the Specification, that has expired or become obsolete, or that contains any defects or other non-conformities (“Defective [***]”). The following will apply for any Unreleased Product or Non-Conforming Product that, in each case, arises from Defective [***]:
 - (i) Heron will be required to pay the full Per Kilogram Product Payment for such Unreleased Product or Non-Conforming Product that, in each case, arises from Defective [***].
 - (ii) Heron will not be entitled to any rights or remedies under the Amended MSA or this Framework Agreement relating to any Unreleased Product or Non-Conforming Product that, in each case, arises from Defective [***], and in particular Heron will not be entitled to, (i) any reduction to the Monthly Payments under Section 2.4 or 2.6 of this Framework Agreement, or (ii) any reimbursement or credit under the Amended MSA including under Section 6.7.1 or Section 6.8 of the Amended MSA.

- (b) If any Non-Conforming Product arises from Defective [***], the Parties shall discuss possible solutions in good faith for the remaining amount of Product not yet Manufactured, including whether to continue with production.

2.6 Failure to Release. Heron shall only be responsible to pay for amounts of Product Manufactured by Patheon and Released in accordance with the terms and conditions of the Amended MSA and this Framework Agreement. Patheon will Release the quantities of Product set forth on Exhibit B by the Release Dates, so long as Patheon has received cleared funds for all Monthly Payments prior to each such Release Date as set forth in the 'Release' section on Exhibit B. If Patheon has received such cleared funds, and (i) Patheon does not Release the quantities of Product set forth on Exhibit B by each Release Date or (ii) Patheon Releases the quantities of Product set forth on Exhibit B by each Release Date but some or all of such Product is Non-Conforming Product, then the Monthly Payments shall be reduced by an amount equal to the Per Kilogram Product Payment multiplied by the number of kilograms of Product that are not Released by such Release Date or that are Non-Conforming Product, as set forth in Section 2.4(a)(i). Patheon will have no obligation to manufacture additional quantities of Product if it does not Release the full quantity of the [***].

2.7 Storage.

- (a) After Patheon has completed a Release, Patheon will store all Product from the [***] under Section 7.2 of the Amended MSA and the Warehousing Services Agreement.
- (b) Patheon will have no obligation to store Product after [***] if Heron fails to pay the fees in accordance with the Warehousing Services Agreement within [***] after Heron receives written notice from Patheon that such payment has not been received. After such [***] day period, Patheon will be entitled to dispose of any Product at Heron's cost (plus a commercially reasonable handling fee) on [***] notice to Heron. This Section 2.7 is intended to expressly supersede the second sentence of Section 2.3 in the Warehousing Services Agreement.

2.8 New Manufacturing and Supply Agreement. Any manufacture of Product after the [***] will require a new manufacturing and supply agreement to be negotiated and executed by the Parties. The Parties shall use commercially reasonable efforts to enter into a new manufacturing and supply agreement for such future supply of Product by [***]. The Parties will work together in good faith to have any MSA Ongoing Project Addendums still in effect at that time be issued pursuant to such new manufacturing and supply agreement (instead of such MSA Ongoing Project Addendums remaining issued pursuant to the Amended MSA). A failure to enter into such new manufacturing and supply agreement shall not be considered a breach of this Framework Agreement by either Party.

3. **Terminated Transaction Documents; Completed Transaction Documents; Ongoing Transaction Documents**

3.1 Terminated Transaction Documents.

- (a) The Terminated Transaction Documents (defined on Exhibit D) are hereby terminated, and are of no force or effect.
- (b) Any provisions in the Terminated Transaction Documents that would survive termination or expiration are also terminated and are of no force and effect.
- (c) Section 3.1(b) shall not affect (1) Heron's indemnification, defense and hold harmless obligations for any claims by Third Parties arising out of or resulting from the MSA Terminated Project Addendums to the extent Sections 3.8 or 19.2(c)-(d) in the Amended MSA provide for such indemnification, and (2) Patheon's indemnification, defense and hold harmless obligations for any claims by Third Parties relating to or arising from Non-Conforming Product arising out of or resulting from the MSA Terminated Project Addendums to the extent Section 19.1 in the Amended MSA provides for such indemnification.

3.2 Completed Transaction Documents.

- (a) The Parties confirm that the Completed Transaction Documents (defined on Exhibit D) are completed, previously terminated, or expired, and are of no further force or effect.
- (b) Any provisions in the Completed Transaction Documents that would survive termination or expiration are also terminated and are of no further force and effect.
- (c) Section 3.2(b) shall not affect (1) Heron's indemnification, defense and hold harmless obligations for any claims by Third Parties arising out of or resulting from the MSA Completed Project Addendums, and the MSA Additional Project Addendums to the extent Sections 3.8 or 19.2(c)-(d) in the Amended MSA provide for such indemnification, and (2) Patheon's indemnification, defense and hold harmless obligations for any claims by Third Parties relating to or arising from Non-Conforming Product arising out of or resulting from the MSA Completed Project Addendums, and the MSA Additional Project Addendums to the extent Section 19.1 in the Amended MSA provides for such indemnification.

3.3 Ongoing Transaction Documents.

- (a) Each of the Ongoing Transaction Documents (defined on Exhibit D) shall not be terminated by this Framework Agreement and shall remain in full force and effect in accordance with their terms.
- (b) Portions of the MSA Ongoing Project Addendums have already been paid by Heron. The amounts not yet paid by Heron under the MSA Ongoing Project Addendums are set forth on Exhibit I and Patheon will invoice Heron for these amounts in accordance with the terms of the applicable MSA Ongoing Project Addendum.

3.4 Transaction Documents. The Transaction Documents (defined on Exhibit D) include all of the documents executed between the Parties or their Affiliates relating to the Subject Matter. No other documents have been executed between the Parties or their Affiliates relating to the Subject Matter. "Subject Matter" means the subject matter of this Framework Agreement, or relating to (i) Product, (ii) Manufacturing, (iii) [***], (iv) Materials, (v) Drums, or (vi) storage of, stability studies for, or discontinuance of Product.

4. **Indemnification.**

- 4.1 Heron's and Patheon's obligations to indemnify, hold harmless, and defend under the Amended MSA or the Warehousing Services Agreement are not affected by this Framework Agreement for the time periods on or after the Framework Agreement Effective Date.

5. **Warehousing Services Agreement**

- 5.1 The fees under the Warehousing Services Agreement dated December 22, 2020 between the Parties (the "Warehousing Services Agreement") are excluded from the Settlement Amount and will continue to be payable separately to this Framework Agreement. The fees in the Warehousing Services Agreement will apply to any Product, Material, Drums, the [***] and any other Heron-owned materials or property (collectively, "Heron Property") stored at the Facility except in relation to Product from the [***] during the period from the date of Release until [***]. The obligations under the Warehousing Services Agreement as relates to Product and Drums shall also apply to the other items of Heron Property. Patheon will be entitled to dispose of any Heron Property at Heron's cost (plus a commercially reasonable handling fee) on [***] notice to Heron, (a) if Heron fails to pay any fees in accordance with the Warehousing Services Agreement within [***] after Heron receives written notice from Patheon that such payment has not been received, or (b) if Heron fails to pay any of the Monthly Payments (subject to any reductions pursuant to Section 2.4) when due in accordance with in this Framework Agreement, within [***] after Heron receives written notice from Patheon that such payment has not been received.

5.2 Heron hereby agrees to indemnify, defend and hold harmless Patheon and its directors, officers, employees, agents and Affiliates from all Costs (as defined in Section 10.1) of Third Parties to the extent relating to or arising from any failure by Heron to collect any Heron Property from the Facility after notice from Patheon in accordance with Section 5.1. This indemnity will not apply to the extent the Costs are arising from or caused by the negligence or wilful misconduct or breach of the Amended MSA or Warehousing Services Agreement by Patheon.

6. MSA Amendments

6.1 The MSA is hereby amended as set out in Exhibit E.

7. Payment

7.1 Definitions.

- (a) “Monthly Payment” means the amount set forth next to each specific month on Exhibit A. The aggregate of all Monthly Payments is equal to the Settlement Amount.
- (b) “Per Kilogram Product Payment” means €[***].
- (c) “[***] Purchase Price” means (i) €[***], less (ii) the aggregate of any adjustments to the Monthly Payments as set forth in Section 2.4.

7.2 Payments. Patheon shall issue invoices to Heron monthly for each Monthly Payment, in accordance with the payment schedule and other provisions set forth in Exhibit A, subject to any reductions pursuant to Section 2.4. Heron shall pay all amounts contained in such invoice within [***] from the date Heron receives such invoice. Additional terms regarding invoicing are set forth in Section 11.1 of the Amended MSA.

7.3 Taxes.

- (a) All payments due and owing under this Framework Agreement for the [***] Purchase Price and under the MSA Ongoing Project Addendums shall be subject to the tax and withholding provisions set forth in the Amended MSA.
- (b) Other than such payments for the [***] Purchase Price set forth in Section 7.3(a) and payments under the MSA Ongoing Project Addendums, all other payments due and owing under this Framework Agreement that are part of the Settlement Amount shall not be subject to the tax and withholding provisions set forth in the Amended MSA.

8. Return of Materials and Property

8.1 Return of Materials and Property.

- (a) The date on which all of the following (i)-(iii) occur is the “Materials Return Date”:
 - (i) both Parties complete all of their respective obligations under this Framework Agreement (including Heron’s payment to Patheon of the Settlement Amount subject to any reductions pursuant to Section 2.4, Patheon’s Release of the [***], and Patheon’s delivery and Heron’s collection of all Heron Property);
 - (ii) all applicable inspection periods under the Amended MSA have expired for the [***]; and
 - (iii) whichever occurs first of (A) both Parties complete all of their respective obligations under the MSA Ongoing Project Addendums, or (B) a new manufacturing and supply agreement has been entered into as set forth in Section 2.8, and the MSA Ongoing Project Addendums

are now issued pursuant to such new manufacturing and supply agreement and no longer issued pursuant to the Amended MSA.

- (b) Within [***] of the Materials Return Date, each Party shall, at the other Party's election, return or destroy (and certify to such destruction of), all Confidential Information of the other Party disclosed under this Framework Agreement; provided, however, that (i) each Party may maintain one (1) copy for archival purposes solely to confirm compliance with the provisions of this Framework Agreement, and (ii) such copy so retained shall be subject at all times to the confidentiality obligations set forth in the Amended MSA.

9. Representation and Warranties

- 9.1 Each Party hereby represents and warrants to the other Party that: (a) it has the full right, power, and corporate authority to enter into this Framework Agreement and to make the promises set forth in this Framework Agreement, including those with respect to its Affiliates; (b) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering; (c) when fully executed and delivered, this Framework Agreement will constitute a legal, valid, and binding obligation, enforceable against it in accordance with its terms; (d) there are no outstanding agreements, assignments or encumbrances in existence inconsistent with the provisions of this Framework Agreement; (e) no actions are threatened or pending before any court or governmental agency or other tribunal relating to it or its Affiliates that would materially and adversely affect its ability to perform its obligations hereunder; (f) it shall comply with all applicable laws (including all applicable anti-corruption and anti-bribery laws and regulations); and (g) neither the execution or implementation of this Framework Agreement, nor any of the terms, conditions, warranties, liability or warranty limitations or exclusions in this Framework Agreement, nor the performance by it of its obligations under this Framework Agreement, does or will (i) contravene any provision of its organizational documents, or (ii) conflict with any agreement, understanding or obligation to which it is a party.

10. Indemnification

- 10.1 Indemnification by Patheon. Patheon hereby agrees to indemnify, defend and hold harmless Heron, its Affiliates, and Heron's and its Affiliates' directors, officers, employees, agents, successors and permitted assigns (individually, a "Heron Indemnified Party", and collectively, the "Heron Indemnified Parties") from all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees (collectively the "Costs") incurred by a Heron Indemnified Party arising out of or resulting from any claim of a Third Party alleging Patheon's breach of this Framework Agreement; provided, however, that Patheon shall have no obligation to indemnify, defend or hold harmless the Heron Indemnified Parties to the extent such Costs result from, arise out of or are based on any items for which Heron is providing indemnification pursuant to Section 10.2.
- 10.2 Indemnification by Heron. Heron hereby agrees to indemnify, defend and hold harmless Patheon, its Affiliates, and Patheon's and its Affiliates' directors, officers, employees, agents, successors and permitted assigns (individually, a "Patheon Indemnified Party", and collectively, the "Patheon Indemnified Parties") from all Costs incurred by a Patheon Indemnified Party arising out of or resulting from any claim of a Third Party alleging Heron's breach of this Framework Agreement; provided, however, that Heron shall have no obligation to indemnify, defend or hold harmless the Patheon Indemnified Parties to the extent such Costs result from, arise out of or are based on any items for which Patheon is providing indemnification pursuant to Section 10.1.
- 10.3 Indemnification Procedure. The terms of Section 19.3 of the Amended MSA will apply with respect to any claim for which Heron or Patheon seeks indemnification hereunder.

- 10.4 Indemnification for Product. Indemnification for Product Manufactured or delivered (whether by Release or physical delivery to Heron) pursuant to the [***] is pursuant to the Amended MSA and not pursuant to Sections 10.1 and 10.2.

11. **Limitation of Liability**

- 11.1 No Liability for Consequential or Indirect Damages. EXCEPT AS SET FORTH IN SECTION 11.2, NEITHER PARTY NOR ITS AFFILIATES SHALL HAVE ANY LIABILITY TO THE OTHER PARTY, ITS AFFILIATES OR ANY THIRD PARTY ARISING UNDER OR IN CONNECTION WITH THIS FRAMEWORK AGREEMENT FOR: (A) ANY LOST PROFITS, LOST REVENUE, DIMINUTION IN VALUE, LOSS OF GOODWILL OR FAILURE TO REALIZE SAVINGS; OR (B) ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER LIABILITY THEREFOR IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS FRAMEWORK AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED, IS AWARE, OR SHOULD BE OR HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY OR ALL REMEDIES AVAILABLE TO THE OTHER PARTY FAIL OF THEIR ESSENTIAL PURPOSE. THIS SECTION 11.1 IS NOT INTENDED TO BE A PROHIBITION OR LIMITATION ON HERON'S OBLIGATION TO PAY THE SETTLEMENT AMOUNT AS SET FORTH HEREIN.
- 11.2 Exceptions. THE LIMITATIONS SET FORTH IN SECTION 11.1 SHALL NOT APPLY TO:
- (a) DAMAGES AND LIABILITIES ARISING FROM SECTIONS 9 OR 12; OR
 - (b) CLAIMS OF THIRD PARTIES SUBJECT TO INDEMNIFICATION UNDER SECTIONS 5.2, 10.1 OR 10.2.

12. **Covenant Not To Sue**

- 12.1 Each of Patheon and Patheon TopCo agrees, on behalf of itself and its Affiliates, not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against Heron or its Affiliates any action, suit or other proceeding concerning any Claim in any jurisdiction ("Patheon Covenant Not to Sue"); provided that Patheon, Patheon TopCo or their respective Affiliates may defend or counterclaim as to any Claim brought by, on behalf of, or in the place of, Heron or its Affiliates; and further provided that this Patheon Covenant Not to Sue (i) will not prevent any action, suit or other proceeding for breach or enforcement of the terms of this Framework Agreement, and (ii) will not apply in respect of any action, suit or other proceeding arising from or relating to a claim, including but not limited to a personal injury claim, brought by a Third Party against Heron or its Affiliates. Patheon's and Patheon TopCo's respective Affiliates will not be considered Third Parties for the purpose of this Section 12.1.
- 12.2 Heron agrees, on behalf of itself and its Affiliates, not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against Patheon, Patheon TopCo or their Affiliates any action, suit or other proceeding concerning any Claim in any jurisdiction ("Heron Covenant Not to Sue"); provided that Heron or its Affiliates may defend or counterclaim as to any Claim brought by, on behalf of, or in the place of, Patheon, Patheon TopCo or their respective Affiliates; and further provided that this Heron Covenant Not to Sue (i) will not prevent any action, suit or other proceeding for breach or enforcement of the terms of this Framework Agreement, and (ii) will not apply in respect of any action, suit or other proceeding arising from or relating to a claim, including but not limited to a personal injury claim, brought by a Third Party against Patheon, Patheon TopCo or their respective Affiliates. Heron's Affiliates will not be considered Third Parties for the purpose of this Section 12.2.

13. **Costs**

- 13.1 Heron, Patheon, and Patheon TopCo each understand and agree that if it becomes necessary to file suit to enforce this Framework Agreement, or to defend any action, suit or proceeding brought in violation of this

Framework Agreement, the prevailing party in such action shall be entitled to recover its costs of suit, including reasonable attorneys' fees, from the non-prevailing party.

- 13.2 Except as set forth in Section 13.1, Heron, Patheon, and Patheon TopCo agree that they shall each be responsible for their own fees, costs and all other expenses (including all court costs, attorneys' fees and costs) arising from or in any way related to the preparation or execution of this Framework Agreement.

14. **Governing Law and Jurisdiction; Dispute Resolution**

- 14.1 Governing Law and Jurisdiction. The governing law and jurisdiction set forth in Section 22.3 of the Amended MSA shall apply to this Framework Agreement.
- 14.2 Disputes. The Parties recognize that disputes, controversies or claims arising out of, relating to or in connection with this Framework Agreement, or the breach, enforcement, or invalidity hereof (each, a "Dispute" and collectively, "Disputes") might arise from time to time during or after the Term. It is the objective of the Parties to establish procedures to facilitate the resolution of Disputes in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow Section 22 of the Amended MSA to resolve any Dispute.

15. **Miscellaneous**

- 15.1 Relationship of the Parties. The relationship of the Parties under this Framework Agreement is that of independent contractors. Nothing contained in this Framework Agreement is intended or is to be construed so as to constitute the Parties as partners, joint ventures, or either Party as an agent or employee of the other. Except as expressly provided in this Framework Agreement, neither Party has any express or implied right under this Framework Agreement to assume or create any obligation on behalf of or in the name of the other, or to bind the other Party to any contract, agreement or undertaking with any Third Party, nor shall no conduct of the Parties be deemed to infer such right.
- 15.2 Notices. Any notice permitted or required by this Framework Agreement shall be sent by registered mail, a recognized private mail carrier service (pre-paid) or email (sent during normal working hours), and such communication shall be effective on the date received by Heron, Patheon, and Patheon TopCo, or [***] after mailing, whichever is earlier, if sent and addressed as follows, or to such other address as may later be designated by Heron, Patheon, or Patheon TopCo to Heron, Patheon, and Patheon TopCo in writing:

If to Patheon: Patheon Austria GmbH & Co KG
St. Peter-Strasse 25
4020 Linz, Austria
Attention: [***]
Email: [***]

If to Patheon TopCo: Thermo Fisher Scientific Inc.
168 Third Avenue,
Waltham, Massachusetts 02451, U.S.A.
Attention: [***]

If to Heron: Heron Therapeutics, Inc.
100 Regency Forest Drive
Suite 300
Cary, North Carolina 27518
Attention: [***]
Email: [***], with a copy to [***]

- 15.3 Assignment. Neither Party shall have the right to assign or delegate any or all of its rights or obligations under this Framework Agreement without the other Party's prior written consent.
- 15.4 Successors and Assigns. This Framework Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and permitted assigns.
- 15.5 Third Party Beneficiaries. Except as expressly set forth in this Framework Agreement, the Parties do not confer any legal, equitable or other rights or remedies of any nature whatsoever under or by reasons of this Framework Agreement upon any Person other than the Parties and their respective successors and permitted assigns.
- 15.6 No Strict Construction; Interpretation; Headings. This Framework Agreement has been prepared jointly by the Parties and shall not be strictly construed against any Party. Ambiguities, if any, in this Framework Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision. The headings and captions used in this Framework Agreement are for convenience of reference only and shall not affect its construction or interpretation. For purposes of this Framework Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation;" (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Framework Agreement as a whole; (d) the term "shall" means "will"; and (e) the term "days" refers to "calendar days" unless otherwise specified. "Business Day" means any day other than a Saturday, Sunday, or a day on which banks are authorized or required by law to be closed in the State of New York or Austria. If any payment or other obligation under this Agreement is due on a day that is not a Business Day, the due date shall be deemed delayed until the following Business Day. In this Framework Agreement, words importing the singular number, include the plural and vice versa and words importing gender include all genders. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Amended MSA. All references to sections and exhibits shall refer to sections and exhibits in this Framework Agreement unless otherwise specifically stated. References to this "Framework Agreement" shall include all exhibits attached to this Framework Agreement. References to the "MSA" include all exhibits attached to the MSA. References to the "Amended MSA" include all exhibits attached to the Amended MSA, including the Master Quality Agreement.
- 15.7 Further Assurances. The Parties shall with reasonable diligence do all acts and provide all reasonable assurances as may be required to consummate the contemplated transactions, and each Party shall provide any further documents or instruments required by the other Party as may be reasonably necessary or desirable to effect the purpose of this Framework Agreement and carry out its provisions.
- 15.8 No Admission of Liability. This Framework Agreement is entered into in connection with the compromise of disputed matters and in the light of other considerations. It is not, and shall not, be represented or construed by the Parties as an admission of liability or wrongdoing on the part of either Party or any other Person. The Parties hereby expressly deny and disclaim any fault or wrongdoing in connection with the disputed matters in connection with this Framework Agreement.
- 15.9 Reliance on Counsel. This Framework Agreement is freely and voluntarily entered into without any degree whatsoever of duress or compulsion. Counsel to the Parties have materially participated in the drafting of this Framework Agreement.
- 15.10 Non-Disparagement. The Parties agree that they will not make, or cause to be made, any statements that disparage, are inimical to, or damage the reputation of the other Party or any of their respective Affiliates. For purposes of this Framework Agreement, a "disparaging" statement is any communication, oral or written, in any medium, including electronic communications, that would tend to cause the recipient of the communication to view negatively a Party or its products or services.
- 15.11 Entire Agreement; Amendment; Order of Precedence.

- (a) This Framework Agreement and the Ongoing Transaction Documents shall constitute the full, complete, final and integrated agreement between the Parties relating to the Subject Matter and supersedes all previous written or oral negotiations, commitments or agreements concerning the Subject Matter.
- (b) This Framework Agreement may only be modified or amended by a writing signed by the Parties. This Framework Agreement may not be orally modified or amended. The failure or delay of a Party to exercise any right hereunder shall not constitute a waiver of that (or any other) right and, in addition, no single or partial failure or delay in exercising any right hereunder shall be deemed a continuing or ongoing waiver unless it is expressly stated as such in a writing signed by an authorized representative of the Party affirming such waiver.
- (c) With respect to quality matters only, in the event of any conflict between the terms of (i) this Framework Agreement, (ii) the Warehousing Services Agreement, (iii) the Master Quality Agreement, and (iv) the Amended MSA, the order of precedence shall be as follows, unless it is explicitly stated in the relevant document that a provision later in the order of precedence is intended to prevail over a provision in a document earlier in the order of precedence: (i) the Master Quality Agreement, (ii) the Amended MSA, (iii) the Warehousing Services Agreement, and (iv) this Framework Agreement. This Framework Agreement does not address quality matters.
- (d) With respect to all matters other than quality, in the event of any conflict between the terms of (i) this Framework Agreement, (ii) the Warehousing Services Agreement, (iii) the Master Quality Agreement, and (iv) the Amended MSA, the order of precedence shall be as follows, unless it is explicitly stated in the relevant document that a provision later in the order of precedence is intended to prevail over a provision in a document earlier in the order of precedence: (i) this Framework Agreement, (ii) the Amended MSA, and (iii) the Warehousing Services Agreement.
- (e) In the event of any conflict between the terms of (i) the body of this Framework Agreement, and (ii) the exhibits to this Framework Agreement, the order of precedence shall be as follows, unless it is explicitly stated in the relevant document that a provision later in the order of precedence is intended to prevail over a provision in a document earlier in the order of precedence: (i) the body of this Framework Agreement, and (ii) the exhibits to this Framework Agreement.
- (f) The preamble and recitals are incorporated herein by this reference and made a part of this Framework Agreement as if fully set forth in the body of the document.

15.12 Severability. If any term or provision of this Framework Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof and there shall be substituted for the provision at issue a valid and enforceable provision as similar as possible to the provision at issue.

15.13 Counterparts. This Framework Agreement may be executed in separate counterparts and delivered electronically and when so executed and delivered, will be an original and all the counterparts will together constitute one and the same instrument. Electronic or PDF image signatures shall be treated as original. Each Party represents and warrants that the executing signature on its behalf is duly authorized to bind that Party and its Affiliates.

15.14 Confidential Information. This Framework Agreement is hereby treated as Confidential Information as defined in the Amended MSA.

* * *

{Signature Page Follows}

IN WITNESS WHEREOF, the Parties hereto have entered into this Framework Agreement as of the Framework Agreement Effective Date.

PATHEON:

Patheon Austria GmbH & Co KG

By:

Title:

Signature:

By:

Title:

Signature:

HERON:

Heron Therapeutics, Inc.

By:

Title:

Signature:

PATHEON TOPCO:

Thermo Fisher Scientific Inc.
(for purposes of Section 12 only)

By:

Title:

Signature:

EXHIBIT A
SETTLEMENT AMOUNT

[***]

EXHIBIT B

[***]

EXHIBIT C
EXAMPLES

[***]

EXHIBIT D
TRANSACTION DOCUMENTS

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EXHIBIT E
AMENDMENTS TO THE MSA

[***]
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EXHIBIT F
STABILITY PORTIONS OF [*] PRODUCTION AND STABILITY ADDENDUM**

[***]

EXHIBIT G
[*] STABILITY ADDENDUM**

[***]

EXHIBIT H
[] STABILITY ADDENDUM**

[**]

EXHIBIT I
AMOUNTS REMAINING UNDER THE MSA ONGOING PROJECT ADDENDUMS

[***]
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[EXECUTION COPY]

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.

**OFFICE LEASE AGREEMENT
BETWEEN
USEF HCG FENTON LLC
(AS LANDLORD)
AND
HERON THERAPEUTICS, INC.
(AS TENANT)
DATED
AUGUST 22, 2025**

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BASIC LEASE INFORMATION

This Basic Lease Information is attached to and incorporated by reference to that certain Office Lease Agreement between Landlord and Tenant, as defined below.

<i>Lease Date:</i>	August 22, 2025 (“ <u>Lease Date</u> ”)
<i>Landlord:</i>	USEF HCG FENTON LLC , a Delaware limited liability company
<i>Tenant:</i>	HERON THERAPEUTICS, INC. , a Delaware corporation
<i>Building:</i>	The Building is a four (4) story steel-frame office building (which includes ground floor retail), containing approximately 50,903 rentable square feet, more or less, located at or near 25 Fenton Main Street in Cary, North Carolina 27511 on the land (the “<u>Land</u>”) described on <u>Exhibit B</u> attached hereto and incorporated herein by reference. The term “<u>Project</u>” shall collectively refer to that certain mixed-use development commonly known as “<i>Fenton</i>”, which contains office, retail, and multi-family space, including, without limitation, the Building, the Land, the driveways, the Parking Areas (as defined in <u>Section 26</u>), and similar improvements and easements associated with the foregoing or the operation thereof, including, without limitation, the Common Areas (as defined in <u>Section 7(c)</u>).
<i>Premises:</i>	Suite No. 300, containing approximately 16,837 rentable square feet, more or less (the “ <u>Premises</u> ”), on the third (3 rd) floor in the Building. The approximate rentable square footage of the Premises has been determined by using a load factor of twelve percent (12%) on the usable square footage of the Premises pursuant to the “Standard Methods of Measurement” published by the Building Owners and Managers Association International (ANSI/BOMA Z65.1-2017) (“ <u>BOMA Standards</u> ”).
<i>Term:</i>	Approximately one hundred eleven (111) full calendar months, commencing on the Commencement Date and ending at 5:00 p.m. local time on the last day of the one hundred eleventh (111 th) full calendar month following the Commencement Date, subject to adjustment and earlier termination as provided in this Lease (the “ <u>Initial Term</u> ” and, together with the Renewal Term (as defined below), if any, collectively, the “ <u>Term</u> ”).
<i>Renewal Option:</i>	Subject to and upon the terms of <u>Exhibit G</u> , attached hereto and incorporated herein by reference, Tenant has the option to extend the Initial Term for up to one (1) additional period of eighty-four (84) full consecutive calendar months, commencing immediately after the expiration of the Initial Term (the “ <u>Renewal Term</u> ”).
<i>Commencement Date:</i>	The earliest of: (a) the date that is nine (9) calendar months following the Delivery Date (as defined below); or (b) the first date on which both of the following have occurred: (i) the Tenant Improvements (as defined in <u>Exhibit D</u> attached hereto and incorporated herein by reference) in the Premises have been Substantially

Completed (as defined in **Exhibit D-1** attached hereto and incorporated herein by reference) by Tenant in accordance with the terms of this Lease, and (ii) Tenant has obtained all necessary approvals and permits from the appropriate governmental authorities as required for the legal occupancy of the Premises for the Permitted Use (as defined herein); or (c) the first date on which Tenant occupies all or any portion of the Premises for the conduct of business therein (the earliest of such dates being referred to herein as “**Commencement Date**”); provided, however, that the Commencement Date shall be accelerated by the number of days that the achievement of the Substantial Completion (as defined in **Exhibit D-1** attached hereto and incorporated herein by reference) of the Tenant Improvements (as defined in **Exhibit D** attached hereto and incorporated herein by reference) in the Premises is delayed as the result of any Delay Item(s) (as defined in **Exhibit D-1** attached hereto and incorporated herein by reference).

Landlord shall deliver the Premises to Tenant in the condition required by this Lease on the date that is one (1) Business Day following the Lease Date (the “**Delivery Date**”).

Base Rent:

Tenant shall Pay Landlord “**Base Rent**” in the following amounts for the following periods of time during the Initial Term:

Lease Months	Base Rent Rate <i>(per rentable sq. ft.)</i>	Monthly Base Rent Rate	Annual Base Rent Rate
Months 1 - 12	\$36.50	\$51,212.54	\$614,550.50
Months 13 - 24	\$[***]	\$[***]	\$[***]
Months 25 - 36	\$[***]	\$[***]	\$[***]
Months 37 - 48	\$[***]	\$[***]	\$[***]
Months 49 - 60	\$[***]	\$[***]	\$[***]
Months 61 - 72	\$[***]	\$[***]	\$[***]
Months 73 - 84	\$[***]	\$[***]	\$[***]
Months 85 - 96	\$[***]	\$[***]	\$[***]
Months 97 - 108	\$[***]	\$[***]	\$[***]
Months 109 - 111	\$[***]	\$[***]	\$[***]

Notwithstanding the foregoing Base Rent schedule, Tenant shall be entitled to an abatement of [***] percent ([***]%) of the Base Rent and the estimated Operating Costs (as defined herein) payable hereunder during the first [***] full calendar months of the Term (the “**Rent Concession Period**”), commencing upon the Commencement Date, which is equal to [***] Dollars (\$[***]) per month during the Rent Concession Period, for a total abated amount during the Rent Concession Period of [***] Dollars (\$[***]) (the “**Rent Concession**”). In the event of an Event of Default (as defined herein) by Tenant under this Lease

beyond any applicable cure period, the Rent Concession referenced above shall be revoked, null and void, and if such an Event of Default (as defined herein) is not cured within applicable grace periods hereunder and, as a result, Landlord exercises Landlord's remedies under Section 18(b) and/or Section 18(c) of this Lease, then, in addition to any and all other remedies of Landlord set forth in this Lease and/or available at law or in equity, all Base Rent and Operating Costs (as defined herein) otherwise due during the Rent Concession Period shall be amortized on a straight-line basis and any unamortized amounts of the Rent Concession at the time of an Event of Default (as defined herein) shall become immediately due and payable to Landlord. Other than as expressly set forth herein, Tenant shall be obligated to pay Landlord any and all Additional Rent, as hereinafter defined, due during the Rent Concession Period, as and when required hereunder.

Notwithstanding the foregoing or anything in this Lease to the contrary, Landlord may, at Landlord's option, to be exercised at any time, elect to pay Tenant the amount of any then-remaining Rent Concession in cash (the "**Remaining Rent Concession**"), whereupon the Rent Concession that was, pursuant to the terms of this Lease, scheduled to occur thereafter shall have no further force or effect, and as of the date of such election by Landlord, this Lease shall be deemed amended to delete the Rent Concession following the date of such election and payment by Landlord. Landlord may exercise such option by delivering written notice to Tenant, with payment of the Remaining Rent Concession to Tenant within thirty (30) days thereafter. In no event shall Landlord be obligated to provide a commission with respect to the Rent Concession or the Remaining Rent Concession, and Landlord and Tenant shall each indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed with respect to the Rent Concession or the Remaining Rent Concession by any broker or agent claiming the same by, through or under the indemnifying party.

As used herein, the term "**Lease Month**" shall mean each calendar month during the Term (and if the Commencement Date does not occur on the first (1st) day of a calendar month, the period from the Commencement Date to the first (1st) day of the next calendar month shall be included in the first (1st) Lease Month for purposes of determining the duration of the Term and the monthly Base Rent rate then-applicable for such partial month).

Rent: "**Rent**" or "**rent**" shall mean, collectively, all Base Rent, Additional Rent, Taxes, and Insurance (each as defined in the Lease or in Exhibit C attached hereto and incorporated herein by reference), and any and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease.

Letter of Credit Amount: [***] Dollars (\$[***]) (the "**Letter of Credit Amount**"), subject to and upon the terms of Section 6 hereof.

Parking: Landlord (or Landlord's designee) shall provide Tenant with four (4) unreserved parking permits/spaces per one thousand (1,000) rentable square feet of the Premises in non-exclusive Parking Areas (as defined in Section 26 hereof) in the Project, as designated and directed by Landlord (the "**Unreserved Parking Allocation**"), for the non-exclusive use by Tenant and Tenant's employees

during Normal Business Hours (as defined below), at no cost to Tenant, subject to and upon the terms hereof. See Section 26 hereof for additional terms and conditions regarding parking.

Permitted Use: General office use, and for no other purpose whatsoever, subject to the restrictions as identified in **Exhibit I** attached hereto and incorporated herein by reference.

Tenant's Proportionate Share: The proportion that the rentable square feet in the Premises bears to the greater of (1) ninety-five percent (95%) of the rentable square feet in the Project (not inclusive of the solely retail or multi-family components therein), and (2) the "weighted average leased percentage of the rentable square feet in the Project (not inclusive of the solely retail or multi-family components therein)" for any calendar year. The weighted average leased percentage of the rentable square feet in the Project (not inclusive of the solely retail or multi-family components therein) for the calendar year in question shall be determined by adding together the total leased rentable square footage totals for the Project (not inclusive of the solely retail or multi-family components therein) on the last day of each month during the calendar year in question and dividing such number by twelve (12) and then dividing the resulting number by the rentable square feet in the Project (not inclusive of the solely retail or multi-family components therein). The final number shall constitute the weighted average leased percentage of the rentable square feet in the Project (not inclusive of the solely retail or multi-family components therein) for such calendar year.

Initial Liability Insurance Amount: [***] Dollars (\$[***])

Broker/Agent: FOR TENANT: LEE & ASSOCIATES RALEIGH-DURHAM, LLC
FOR LANDLORD: HINES INTERESTS LIMITED PARTNERSHIP

<i>Tenant's Address:</i>	<u>PRIOR TO COMMENCEMENT DATE:</u>	<u>FOLLOWING COMMENCEMENT DATE:</u>
	Heron Therapeutics, Inc. 100 Regency Forest Drive, Suite 300 Cary, NC 27518 Attention: Melissa Jarel Email:[***]	Heron Therapeutics, Inc. 25 Fenton Main Street Cary, North Carolina 27511, Suite 300 Attention: Melissa Jarel Email:[***]

Landlord's Address: FOR ALL NOTICES:
USEF HCG FENTON LLC
c/o Hines Interests Limited Partnership
201 Fenton Gateway Drive, Suite 10
Cary, NC 27511
Attn: Paul Zarian
Telephone: [***]
Email: [***]

[EXECUTION COPY]

With required copies to:

USEF HCG FENTON LLC
383 17th Street, Suite 100
Atlanta, Georgia 30363
Attn: Fenton Asset Manager
Telephone: [***]

USEF HCG FENTON LLC
c/o Hines Interests Limited Partnership
201 Fenton Gateway Drive, Suite 10
Cary, NC 27511
Attn: Robert Canepa
Email: [***]

The foregoing Basic Lease Information is incorporated into and made a part of this Lease identified above. If any conflict exists between any Basic Lease Information and this Lease, then this Lease shall control.

OFFICE LEASE AGREEMENT

This OFFICE LEASE AGREEMENT (this “**Lease**”) is entered into as of the Lease Date set forth in the Basic Lease Information attached hereto, between Landlord and Tenant.

1. DEFINITIONS AND BASIC PROVISIONS. The definitions and basic provisions set forth in the Basic Lease Information (the “**Basic Lease Information**”) are incorporated herein by reference for all purposes. Additionally, the following terms shall have the following meanings when used in this Lease:

- (a) “**Affiliate**” means any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the party in question (and, as used in the foregoing clause, “**control**” means, with respect to an entity that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity).
- (b) “**Base Building Condition**” shall mean the base Building construction performed by Landlord, including the Common Area and, to the extent expressly required by terms of Section 9 below, compliance with the Disabilities Act (as defined herein), and as more particularly described on Exhibit D-2 attached hereto and incorporated herein by reference, but not including the Tenant Improvements (as defined in Exhibit D attached hereto and incorporated herein by reference), or any part thereof.
- (c) “**Building Standard**” shall mean the quantity and quality of materials, finishes, and workmanship from time to time specified as such by Landlord for the Building.
- (d) “**Building’s Structure**” means the Building’s exterior walls, roof, elevator shafts (if any), footings, foundations, structural portions of load-bearing walls, structural floors and subfloors, and all columns and beams.
- (e) “**Building’s Systems**” means the Premises’ and Building’s HVAC, life-safety (*i.e.*, sprinkler and fire-alarm), plumbing, electrical, and mechanical and automation systems.
- (f) “**Business Day(s)**” means Monday through Friday of each week, exclusive of Holidays (as defined herein).
- (g) “**Holidays**” means New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other holiday generally recognized by landlords of office space in the metropolitan Raleigh-Durham office market, as determined by Landlord in good faith.
- (h) “**including**” means including, without limitation.
- (i) “**Laws**” means all federal, state, and local laws, ordinances, rules and regulations, all court orders, governmental directives, and governmental orders and all interpretations of the foregoing as same may change from time to time, and all restrictive covenants affecting the Project, and “**Law**” shall mean any of the foregoing.

- (j) “**Normal Business Hours**” means 8:00 a.m. to 6:00 p.m. on Business Days and 8:00 a.m. to 1:00 p.m. on Saturdays, if requested by Tenant, exclusive of Holidays.
- (k) “**Rent**” or “**rent**” shall mean, collectively, all Base Rent, Additional Rent, Taxes, and Insurance (each as defined in the Lease or in **Exhibit C** attached hereto and incorporated herein by reference), and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease.
- (l) “**Tenant Party**” means any of the following persons: Tenant; any assignees claiming by, through, or under Tenant; any subtenants claiming by, through, or under Tenant; and any of their respective agents, contractors, employees, and invitees.

2. **LEASE GRANT.** Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises (as defined in the Basic Lease Information). Subject to the terms of this Lease, including, without limitation, Landlord’s express maintenance and repair obligations hereunder, if any, and **Exhibit D** and **Exhibit D-1** attached hereto and incorporated herein by reference, Tenant hereby accepts the Premises in “AS IS,” “WHERE IS” and “WITH ALL FAULTS” condition and agrees that Landlord shall have no obligation to provide any materials or labor for the Premises or to put the Premises in a certain condition or order prior to the commencement of any tenant fit-up and finish work.

3. **TENDER OF POSSESSION.**

- (a) *Intentionally Omitted.*
- (b) **Tender of Possession.** Notwithstanding any contrary provision contained herein, if Landlord is unable to tender possession of the Premises to Tenant by any certain date, including, without limitation, the Commencement Date and/or the Delivery Date, then: (a) the validity of this Lease shall not be affected or impaired thereby; (b) Landlord shall not be in default hereunder or be liable for damages therefor; and (c) Tenant shall accept possession of the Premises when Landlord tenders possession thereof to Tenant. By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises in its condition as of the date of such occupancy, subject to the performance of punch-list items that remain to be performed by Landlord, if any, pursuant to **Exhibit D-1** attached hereto and incorporated herein by reference. Within ten (10) days from receipt from Landlord, Tenant shall execute and deliver to Landlord a letter substantially in the form attached hereto as **Exhibit F** hereto confirming: (1) the Commencement Date (as defined in the Basic Lease Information) and the expiration date of the initial Term (as defined in the Basic Lease Information); (2) that Tenant has accepted the Premises as of the Delivery Date, subject to the terms and conditions of this Lease; and (3) that Landlord has performed all of its obligations with respect to the Premises (if any); however, the failure of the parties to execute such letter shall not defer the Commencement Date or otherwise invalidate this Lease. Tenant’s failure to execute such document within ten (10) days of receipt thereof from Landlord (i) shall be an Event of Default (as defined in **Section 17**) under this Lease, (ii) shall be deemed to constitute Tenant’s agreement to the contents of such document, and (iii) shall be deemed to grant authority to Landlord to sign such document as Tenant’s attorney-in-fact; provided, however, none of the foregoing items (i) through (iii) shall apply in the event Tenant responds with a good faith and

commercially reasonable objection to the contents of the document. Occupancy of the Premises by Tenant prior to the Commencement Date shall be subject to all of the provisions of this Lease excepting only those requiring the payment of Rent.

4. RENT.

- (a) Tenant shall timely pay to Landlord Rent (as defined in the Basic Lease Information), including the amounts set forth in Exhibit C attached hereto and incorporated herein by reference, without notice, demand, deduction or set-off (except as otherwise expressly provided herein), which payment shall be accompanied by all applicable state and local sales or use taxes. Unless otherwise prohibited by Law, Tenant shall make Rent payments via Automated Clearing House payment processing or other payment process requested by Landlord. The obligations of Tenant to pay Base Rent (as defined in the Basic Lease Information) and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Base Rent, adjusted as herein provided, shall be payable monthly in advance. The first (1st) monthly installment of Base Rent shall be payable together with delivery of the Letter of Credit, as the case may be, contemporaneously with the execution of this Lease; thereafter, Base Rent shall be payable on the first (1st) day of each month beginning on the first (1st) day of the second (2nd) full calendar month of the Term. The monthly Base Rent for any partial month at the beginning of the Term shall equal the product of 1/365 of the annual Base Rent in effect during the partial month and the number of days in the partial month and shall be due on the Commencement Date. Payments of Base Rent for any fractional calendar month at the end of the Term shall be similarly prorated. Tenant shall pay Additional Rent, Taxes and Insurance (each as defined in Exhibit C attached hereto and incorporated herein by reference) at the same time and in the same manner as Base Rent.
- (b) If Rent payments are paid by corporate check, then at all times that Landlord shall direct Tenant to pay Rent to a "lockbox" or other depository whereby checks issued in payment of Rent are initially cashed or deposited by a person or entity other than Landlord (albeit on Landlord's authority), then, for any and all purposes under this Lease: (i) Landlord shall not be deemed to have accepted such payment until ten (10) days after the date on which Landlord shall have actually received such funds, and (ii) Landlord shall be deemed to have accepted such payment if (and only if) within said ten (10) day period, Landlord shall not have refunded (or attempted to refund) such payment to Tenant. Nothing contained in the immediately preceding sentence shall be construed to place Tenant in an Event of Default (as defined herein) of Tenant's obligation to pay Rent if and for so long as Tenant shall timely pay the Rent required pursuant to this Lease in the manner designated by Landlord.

5. DELINQUENT PAYMENT; HANDLING CHARGES. If any installment of Base Rent, or any other sums which become owing by Tenant to Landlord under the provisions hereof, is not received within five (5) days after the due date thereof, without in any way implying Landlord's consent to such past due payment, Tenant, to the extent permitted by law, agrees to pay, in addition to said installment of Base Rent or such other sum owed, a late charge equal to the greater of (a) [***] percent ([***]%) of the installment of Base Rent or such other sums owed

and (b) [***] Dollars (\$[***]), it being understood that said late charge shall constitute liquidated damages and shall be for the purpose of reimbursing Landlord for additional costs and expenses which Landlord presently expects to incur in connection with the handling and processing of delinquent payments of Base Rent and such other sums which become owing by Tenant to Landlord hereunder. Landlord and Tenant expressly covenant and agree that in the event of any such delinquent payment by Tenant, the damages so resulting to Landlord will be difficult to ascertain precisely, and that the foregoing charge constitutes a reasonable and good faith estimate by the parties of the extent of such damages and does not constitute interest. Notwithstanding the foregoing, the foregoing late charges shall not apply to any sums which may have been advanced by Landlord to or for the benefit of Tenant pursuant to the provisions of this Lease. All past due payments required of Tenant hereunder shall bear interest from the date due until paid at the lesser of [***] percent ([***]%) per annum or the maximum lawful rate of interest (such lesser amount is referred to herein as the “**Default Rate**”). Any such late charge and interest payment shall be payable as Additional Rent under this Lease, shall not be considered a waiver by Landlord of any default by Tenant hereunder, and shall be payable immediately on demand. In no event, however, shall the charges permitted under this Section 5 or elsewhere in this Lease, to the extent they are considered to be interest under applicable Law, exceed the maximum lawful rate of interest.

6. LETTER OF CREDIT.

- (a) **Letter of Credit – General.** Contemporaneously with Tenant’s execution and delivery of this Lease, Tenant shall deliver to Landlord a clean, irrevocable letter of credit (the “**Letter of Credit**”) established in Landlord’s (and Landlord’s successors’ and assigns’) favor in the Letter of Credit Amount (as defined in the Basic Lease Information), issued by a federally insured (*i.e., by the FDIC*) banking or lending institution with a retail banking branch in the continental United States reasonably acceptable to Landlord (the “**Issuer**”) and in other form and substance reasonably acceptable to Landlord. The Letter of Credit shall specifically provide for partial draws, shall be “*Evergreen*” which shall be extended annually, without amendment, for additional one-year periods, shall have a term that is self-renewing until sixty (60) days after the expiration of the Term and shall by its terms be transferable by the beneficiary thereunder. Tenant shall be solely responsible for all cost of transferring the Letter of Credit. If Tenant fails to make any payment of Rent or other charges due to Landlord under the terms of this Lease, or is in an Event of Default, beyond any applicable notice and cure period, Landlord, at Landlord’s option, may make a demand for payment under the Letter of Credit in an amount equal to the amounts then due and owing to Landlord under this Lease. In the event that Landlord draws upon the Letter of Credit, Tenant shall present to Landlord a replacement Letter of Credit in the full Letter of Credit Amount satisfying all of the terms and conditions of this Section 6(a) within ten (10) days after receipt of notice from Landlord of such draw. Tenant’s failure to do so within such ten (10)-day period will constitute an Event of Default hereunder (Tenant hereby waiving any additional notice and grace or cure period), and upon such Event of Default Landlord shall be entitled to immediately exercise all rights and remedies available to it hereunder, at law or in equity. In the event that the Letter of Credit has an expiration date earlier than the expiration date of this Lease and Tenant has not presented to Landlord a replacement

Letter of Credit which complies with the terms and conditions of this Lease on or before thirty (30) days prior to the expiration date of any such Letter of Credit then held by Landlord, then Tenant shall be deemed in an Event of Default hereunder and Landlord, in addition to all other rights and remedies provided for hereunder, shall have the right to draw upon the Letter of Credit then held by Landlord and any such amount paid to Landlord by the Issuer of the Letter of Credit shall be held in a segregated account by Landlord as security for the performance of Tenant's obligations hereunder. Any interest earned on such amounts shall be the property of Landlord. Landlord's election to draw under the Letter of Credit and to hold the proceeds of the drawing under the Letter of Credit in a segregated account shall not be deemed a cure of any Event of Default by Tenant hereunder and shall not relieve Tenant from its obligation to present to Landlord a replacement Letter of Credit which complies with the terms and conditions of this Lease. Tenant acknowledges that any proceeds of a draw made under the Letter of Credit and thereafter held in a segregated account by Landlord may be used by Landlord to cure or satisfy any obligation of Tenant hereunder as if such proceeds were instead proceeds of a draw made under a Letter of Credit that remained outstanding and in full force and effect at the time such amounts are applied by Landlord to cure or satisfy any such obligation of Tenant. Tenant hereby affirmatively disclaims any interest Tenant has, may have, claims to have, or may claim to have in any proceeds drawn by Landlord under the Letter of Credit and held in accordance with the terms hereof. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that at the end of the Term of this Lease (whether by expiration or earlier termination hereof), and if Tenant is not then in an Event of Default under this Lease, Landlord shall return to the Issuer of the Letter of Credit or its successor (or as such Issuer may direct in writing) any remaining and unapplied proceeds of any prior draws made under the Letter of Credit, and Tenant shall have no rights, residual or otherwise, in or to such proceeds. In addition to the foregoing, Landlord will have the right to require Tenant to have a new Letter of Credit issued in accordance with the above requirements from a different Issuer if any of the following events (collectively, "**Issuer Events**") occur within ten (10) business days following receipt (or deemed receipt) from Landlord of notice of the occurrence of such Issuer Event: (i) the Tier-1 Capital Ratio (as defined below) of such Issuer subsequently falls below five percent (5%), (ii) if the Issuer becomes subject to an FDIC or similar state or federal receivership or conservatorship and the Letter of Credit is repudiated or terminated in connection therewith, (iii) the original Issuer is placed on an FDIC "*watch list*", or (iv) if Landlord analyzes such Issuer's capitalization, asset quality, earnings, and/or liquidity and in Landlord's sole and absolute discretion, disapproves of such Issuer's financial wherewithal and ability to remain as the Issuer of the Letter of Credit. As used herein, the term "**Tier-1 Capital Ratio**" shall mean, as to an Issuer, the ratio of (i) the sum of common stockholders' equity, non-cumulative perpetual preferred stock, and minority interests in consolidated subsidiaries, less intangible assets, to (ii) total assets, all as calculated pursuant to and in accordance with 12 CFR Part 325, such ratio being a measure of such bank's or institution's availability of core capital to satisfy unexpected losses.

- (b) **Burndown of Letter of Credit.** Notwithstanding the foregoing, or any contrary provision contained in this Section 6 or elsewhere in this Lease, provided that, as of the Burndown Date (as defined below), (i) this Lease is in full force and effect; (ii) Tenant is occupying one hundred percent (100%) of the Premises; and (iii) no Event of Default (as defined herein) under this Lease by Tenant has occurred prior to the Burndown Date (as defined below), the Letter of Credit Amount shall be reduced by [***] (\$[***]) (the “**Reduction Amount**”) on the date that is [***]([**]) full calendar months after the Commencement Date (the “**Burndown Date**”). Tenant shall deliver written notice to Landlord on or after the Burndown Date wherein Tenant (a) provides an updated Letter of Credit showing the Letter of Credit Amount reduced by the Reduction Amount, and (b) represents and warrants to Landlord that the conditions listed as (i) through (iii) in the immediately foregoing sentence have been met as of the Burndown Date, along with any other information as Landlord may reasonably request to confirm the accuracy of the same (the “**Burndown Notice**”).

7. **SERVICES; UTILITIES; COMMON AREAS.**

- (a) **Services.** Subject to and upon the terms hereof, Landlord shall furnish to Tenant from and after the Commencement Date: (i) water at those points of supply provided for general use of tenants of the Building as designated by Landlord on the Tenant Working Drawings (as defined in Exhibit D-1 attached hereto and incorporated herein by reference); (ii) heated and refrigerated air conditioning as appropriate, at such temperatures and in such amounts as are required by governmental authority or as Landlord reasonably determines are standard for the Building; (iii) janitorial service to the Premises on weekdays (on a schedule determined by Landlord), other than Holidays, for Building-standard installations; (iv) elevators for ingress and egress to the floor on which the Premises are located, in common with other tenants, provided that Landlord may limit the number of operating elevators during non-business hours, during repairs, and Holidays; and (v) electrical current during Normal Business Hours for equipment lighting and current for the Common Areas of the Building in the manner and to the extent deemed by Landlord to be “standard” and sufficient electric lighting and current for Tenant within its Premises in accordance with the Base Building Condition. If Tenant desires any of the services specified in Section 7(a)(ii), at a time other than Normal Business Hours, then such services shall be supplied to Tenant upon the written request of Tenant delivered to Landlord before 3:00 p.m. on the Business Day preceding such extra usage, and Tenant shall pay to Landlord the cost of such services within thirty (30) days after Landlord has delivered to Tenant an invoice therefor. The costs incurred by Landlord in providing HVAC service to Tenant at a time other than Normal Business Hours, shall be [***] (\$[***]) per hour, subject to adjustment from time to time, plus applicable start-up fees if Tenant’s request for such service is not made during Normal Business Hours. Landlord will be permitted, without prior written notice to Tenant, to interrupt such services as needed to perform repairs and maintenance or in connection with the construction of other tenants’ premises. Any above-standard services provided to Tenant shall be provided at Tenant’s expense, which charges shall be considered Additional Rent, and which Tenant shall pay promptly upon being invoiced therefor.

- (b) **Excess Utility Use.** If Tenant's use of electric current exceeds [***](***) Watts per usable square foot connected load for electrical consumption as described in Section 7(a), Tenant shall pay on demand the cost (determined in good faith by Landlord) of any such excess current and the cost of the design and installation of any additional electrical equipment (or any related meter) necessary to transform, provide and meter such additional electrical requirements subject to the approval of Landlord. Further, Landlord reserves the right to separately submeter any electrical equipment which operates twenty-four (24) hours per day at Tenant's sole cost, including the installation of a sub-fed panel if Tenant's breaker-demands exceed Tenant's pro-rata share of electricity, which pro-rata share is equal to approximately [***] percent ([***]%). Whenever heat generating machines or equipment (other than general office machines as described hereinbefore) are used in the Premises by Tenant which affect the temperature otherwise maintained by the air conditioning system or otherwise overload any utility, Landlord shall have the right to install supplemental air conditioning units or other supplemental equipment in the Premises, and the cost thereof (as determined in good faith by Landlord), including without limitation, the cost of design, installation, operation, use and maintenance, shall be paid by Tenant as a user as established by the applicable rate classification published from time to time by the local electric power company or other utility supplier. The obligation of Landlord hereunder to make available such utilities shall be subject to the rules and regulations of the supplier of such utilities and of any municipal or other governmental authority regulating the business of providing such utility service. Tenant will be billed monthly for all such additional utility service and all such charges shall be considered due upon delivery of such bill and be deemed as so much additional Rent due from Tenant to Landlord. Landlord may, upon not less than thirty (30) days' prior written notice to Tenant, discontinue any such service to the Premises, provided Landlord first arranges for a direct connection thereof through the supplier of such service. Tenant shall, however, be responsible for contracting with the supplier of such service and for paying all deposits for, and costs relating to, such service. Landlord shall use reasonable efforts to restore any service required of it that becomes unavailable; however, Landlord shall not in any way be liable or responsible to Tenant for any loss or damages or expense which Tenant may sustain or incur if either the quantity or character of any utility service is changed or is no longer available or is no longer suitable for Tenant's requirements. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of existing electrical service allocated to the Tenant in the Building or the risers or wiring installations. Any riser or risers, wiring, circuit breakers, panels or other equipment or devices required or necessary to meet Tenant's excess electrical requirements upon written request of Tenant will be installed by Landlord at the sole cost and expense of Tenant (if, in Landlord's sole judgment, the same are necessary and will not cause permanent damage or injury to the Building or the Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants). At any time when Landlord is making such additional utility service available to the Premises pursuant to this Subsection, Landlord may, at its option, upon reasonable advance notice to Tenant (except no advance notice is required in

case of an emergency) discontinue the availability of such additional utility service. If Landlord gives any such notice of discontinuance, Landlord shall make all the necessary arrangements with the public utility supplying the utilities to the Premises with respect to obtaining such additional utility service to the Premises, but Tenant will contract directly with such public utility for the supplying of such additional utility service to the Premises. Unless otherwise agreed by Landlord in writing, all electrical equipment to be installed in the Premises pursuant to this Section 7(b) shall be installed in the Premises, and not otherwise. Failure to any extent to make available, or any slow-down, stoppage or interruption of, these defined services resulting from any cause (including, but not limited to, Landlord's compliance with (a) any voluntary or similar governmental or business guideline now or hereafter published or (b) any requirements now or hereafter established by any governmental agency, board or bureau having jurisdiction over the operation and maintenance of the Building) shall not render Landlord liable in any respect for damages to either person, property, or business, nor be construed as an eviction of the Tenant or work as an abatement of Rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. Should any equipment or machinery furnished by Landlord break down or for any cause cease to function properly, Landlord shall use reasonable diligence to repair same promptly, but Tenant shall have no claim for abatement of rent or damages on account of any interruptions in service occasioned thereby or resulting therefrom.

- (c) **Common Areas.** As used herein, the term "**Common Area**" is defined for all purposes of this Lease as that part of the Project intended for the common use of all tenants, including among other facilities, the ground floor lobby, elevator lobbies and hallways/corridors on multi-tenant floors, parking areas, private streets and alleys, landscaping, curbs, loading areas, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, restrooms on multi-tenant floors and/or the lobby, the Parking Areas, and the like, but excluding: (i) space in buildings (now or hereafter existing) designated for rental for commercial purposes, as the same may exist from time to time; (ii) streets and alleys maintained by a public authority; (iii) areas within the Project which may from time to time not be owned by Landlord (unless subject to a cross-access easement or agreement benefiting the area which includes the Building); and (iv) areas leased to a single-purpose user where access is restricted. In addition, although the roof of the Building is not literally part of the Common Area, it will be deemed to be so included for purposes of: (i) Landlord's ability to prescribe rules and regulations regarding same; and (ii) its inclusion for purposes of Operating Costs reimbursements. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, as well as the dimensions, identities, locations and types of any buildings, signs or other improvements in the Project. For example, and without limiting the generality of the immediately preceding sentence, Landlord may from time to time substitute for any parking area other areas reasonably accessible to the tenants of the Building, which areas may be elevated, surface or underground. Tenant, and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, its subtenants, licensees and concessionaires, shall have the non-exclusive right to use the Common Area as constituted from time to time, such

use to be in common with Landlord, other tenants in the Building, and other persons permitted by Landlord to use the same, and subject to rights of governmental authorities, easements, other restrictions of record, and such reasonable rules and regulations governing use as Landlord may from time to time prescribe. For example, and without limiting the generality of Landlord's ability to establish rules and regulations governing all aspects of the Common Area, Tenant agrees as follows:

- (i) Tenant shall not solicit business within the Common Area nor take any action which would interfere with the rights of other persons to use the Common Area.
- (ii) Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to hold private events, make repairs or alterations or to prevent the public from obtaining prescriptive rights.

8. ALTERATIONS; REPAIRS; MAINTENANCE; SIGNS.

(a) Alterations & Cosmetic Alterations.

- (i) Definitions of Alterations and Cosmetic Alterations. Tenant shall not make any alterations, additions, improvements, and/or any other modifications to the Premises (collectively, the "**Alterations**") without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed; provided however, that, notwithstanding the foregoing, or any contrary provision contained herein, it shall not be deemed unreasonable if Landlord withholds Landlord's consent to any Alterations for any one (1) or more of the following reasons (and Landlord may reasonably withhold Landlord's consent to any Alterations for any one or more of the following reasons): (a) the proposed Alterations will not comply with all applicable Laws; (b) the proposed Alterations will not equal or exceed the then-current Building standard; (c) the proposed Alterations not exceed or adversely affect the capacity, maintenance, operating cost or integrity of the Building's structure and/or any of the Building's heating, ventilating, air conditioning, plumbing, mechanical, electrical, communications, and/or other systems, in Landlord's sole but commercially reasonable discretion; (d) the proposed Alterations would alter the exterior of the Building in any way; and/or (e) the proposed Alterations would violate any agreement which affects the Building and/or which otherwise binds Landlord. Notwithstanding the foregoing, Landlord hereby agrees that the following shall not be deemed to be "**Alterations**" hereunder: (i) non-structural cosmetic improvements to the Premises which (W) do not affect any of the Building's Systems and/or the structural strength of the Building and/or any structural components of the Building; and (X) do not require penetrations into the floor, ceilings or walls (*provided, however, that the restriction in the immediately foregoing item (X) shall not apply to: (1) alterations, improvements, and/or any other modifications to ceilings with respect to ceiling tiles or sheetrock ceilings installed by Tenant within the Premises, and/or (2) alterations, improvements, and/or any other*

modifications to walls with respect to interior walls in the Premises—i.e., those walls within the Premises which are not shared, in whole or in part, with other tenants, the Common Areas of the Building, and/or the curtain wall of the Building—that are not fire-rated partitions); and (Y) are not visible from the exterior of the Premises and/or the Building, or any respective portions thereof; and (Z) do not cost more than [***] Dollars (\$[***]) in the aggregate or individually during any twelve (12) month period during the Term (the foregoing item (i), being collectively, referred to herein as “**Cosmetic Alterations**”); and (ii) the installation of unattached, movable trade fixtures in the Premises which may be installed without drilling, cutting or otherwise defacing the Premises.

- (ii) General Requirements for Cosmetic Alterations. Tenant shall only use a properly licensed contractor to construct any and all Cosmetic Alterations and shall obtain all applicable building permits if required by applicable Law. In connection with any and all Alterations and any and all Cosmetic Alterations, as the case may be, Tenant shall comply with the provisions of Section 8(c) below regarding the appointment of a mechanics lien agent, as well as all other terms and provisions of this Lease.
- (iii) General Requirements for Alterations. Tenant shall only use a properly licensed contractor to construct any and all Alterations and shall obtain all applicable building permits if required by applicable Law. Tenant shall furnish complete plans and specifications of any and all Alterations to Landlord for Landlord’s prior written approval at the time Tenant requests Landlord’s consent to any and all Alterations. Notwithstanding anything contained to the contrary in this Lease, no alterations, penetrations, or other modifications (*including the initial improvements*) may be made to the ceiling beams, columns, ceiling system, panels, and/or steel frame structure within or above the Premises, nor may Tenant deface or otherwise alter or modify the steel frame structure within or above the Premises in any way whatsoever. Subsequent to obtaining Landlord’s consent and approval by Landlord of Tenant’s plans and prior to commencement of any and all Alterations, Tenant shall deliver to Landlord any building permit required by applicable Law and a copy of the executed construction contract(s). Tenant shall reimburse Landlord within ten (10) days after the rendition of a bill for all of Landlord’s actual out-of-pocket costs incurred in connection with any and all Alterations, including any and all management (subject to the limits set forth herein), engineering, outside consulting, and construction fees incurred by or on behalf of Landlord for the review and approval of Tenant’s plans and specifications for such Alterations, and for the monitoring of construction of such Alterations, plus an administrative fee of [***] percent ([***]%) of the hard and softs costs of such Alterations. With respect to any and all such Alterations costing [***] Dollars (\$[***]) or less, if Tenant requests that Landlord perform such Alterations, then such Alterations shall be subject to an administrative fee of [***] percent ([***]%) of the total “*hard costs*” of such Alterations (the “**Alterations Administration Fee**”), which Alterations Administration Fee shall be

payable by Tenant to Landlord within ten (10) Business Days after Tenant's receipt of invoice therefor. With respect to any and all such Alterations costing more than [***] Dollars (\$[***]), such Alterations shall be subject to a fee payable by Tenant to Landlord and stipulated as follows: (A) in the event that Landlord (or Landlord's designee) shall act as the construction manager for the supervision of the construction of such Alterations, then Landlord (or Landlord's designee) shall be paid a construction management fee of [***] percent ([***]%) of the total "*hard costs*" of such Alterations (the "**Alterations Construction Management Fee**"), which Alterations Construction Management Fee shall be payable by Tenant to Landlord within ten (10) Business Days after Tenant's receipt of invoice therefor; and (B) if Tenant elects to hire a third party as the construction manager for such Alterations, then Landlord shall receive a supervisory fee or [***] percent ([***]%) of the total "*hard costs*" of such Alterations (the "**Alterations Supervisory Fee**"), which Alterations Supervisory Fee shall be payable by Tenant to Landlord within ten (10) Business Days after Tenant's receipt of invoice therefor. If Landlord consents to the making of any Alterations, then such Alteration shall be made by Tenant, at Tenant's sole cost and expense, by a licensed contractor approved in writing by Landlord in writing, in advance, from Landlord's pre-approved list of contractors, or otherwise approved by Landlord in writing, in advance, in Landlord's sole discretion. Tenant shall require its contractor for any and all Alterations to maintain insurance in such amounts and in such form as Landlord may require, in Landlord's commercially reasonable discretion

- (iv) ***Additional Requirements for Alterations and Cosmetic Alterations.*** Without Landlord's prior written consent, Tenant shall not use any portion of the Common Areas either within or without the Project in connection with the making of any Alterations and/or any Cosmetic Alterations, as the case may be. If any Alterations d/or any Cosmetic Alterations, as the case may be, which Tenant causes to be constructed result in Landlord being required to make any alterations, repairs, and/or improvements to other portions of the Project in order to comply with any applicable Laws or address impacts thereto, then Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in making such alterations, repairs, and/or improvements. Any and all Alterations and/or Cosmetic Alterations (except for any of Tenant's moveable items of personal property and/or any of Tenant's trade fixtures which are not affixed to the Premises or otherwise built into the Premises), as the case may be, made by Tenant shall become the property of Landlord upon installation, and shall remain on and be surrendered with the Premises upon the expiration or sooner termination of this Lease, unless Landlord requires the removal of such Alterations as evidenced by written notice to Tenant at the time that Landlord approves the applicable Alterations. If Landlord requires the removal of any such Alterations (as evidenced by written notice from Landlord to Tenant at the time that Landlord approves the applicable Alterations regarding any such required removal(s)), then Tenant shall, at

Tenant's sole cost and expense, forthwith and with all due diligence (*but in any event, not later than ten (10) days after the expiration or earlier termination of this Lease*) remove all or any portion(s) of any Alterations made by Tenant which are designated by Landlord to be removed (*including without limitation stairs, bank vaults, and cabling, if applicable*), and repair and restore the Premises in a good and workmanlike manner to their original condition, reasonable wear and tear excepted. All construction work done by Tenant within the Premises shall be performed in a good and workmanlike manner with new materials of first-class quality, lien-free and in compliance with all Laws, and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Project. Tenant agrees to indemnify, defend and hold Landlord harmless against any loss, liability or damage resulting from such work, and Tenant shall, if requested by Landlord, furnish a bond or other security satisfactory to Landlord against any such loss, liability or damage. The foregoing indemnity shall survive the expiration or earlier termination of this Lease for a period of twelve (12) full calendar months. Landlord's consent to or approval of any alterations, additions or improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with any or all applicable Laws, and Tenant shall be solely responsible for ensuring all such compliance. All voice, data, video, audio and other low voltage control transport system cabling and/or cable bundles installed in the Building by Tenant or its contractor shall be (A) plenum rated and/or have a composition makeup suited for its environmental use in accordance with NFPA 70/National Electrical Code; (B) labeled every ten (10) feet with the Tenant's name and origination and destination points; (C) installed in accordance with all EIA/TIA standards and the National Electric Code; and (D) installed and routed in accordance with a routing plan showing "as built" or "*as installed*" configurations of cable pathways, outlet identification numbers, locations of all wall, ceiling and floor penetrations, riser cable routing and conduit routing (if applicable), and such other information as Landlord may request. The routing plan shall be available to Landlord and its agents at the Building upon request. Tenant shall reimburse Landlord for Landlord's costs associated with Landlord's review of materials for any proposed Tenant alteration, addition or improvement, plus an administrative fee of [***] percent ([***]%).

(b) ***Intentionally omitted.***

(c) **Repairs; Maintenance.**

- (i) By Landlord. Landlord shall, subject to reimbursement as set forth in **Exhibit C** attached hereto and incorporated herein by reference, keep and maintain in good repair and working order and make repairs to and perform maintenance upon: (1) structural elements of the Building; (2) standard mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the

Building generally; (3) Common Areas; (4) the roof of the Building; (5) exterior windows of the Building; and (6) elevators serving the Building. Landlord shall not be liable for any failure to make any such repairs or to perform any maintenance unless such failure shall persist for a period of ten (10) days after written notice of the need of such repairs or maintenance is given to Landlord by Tenant (provided, however, that if such repairs cannot reasonably be completed within ten (10) days despite Landlord's best efforts, then Landlord shall not be liable so long as Landlord continues to make good faith, commercially reasonable efforts to diligently prosecute the completion of the same), in which event, after the expiration of such ten (10)-day period (as may be extended pursuant to the foregoing, Tenant shall be entitled to a day-for-day abatement of Base Rent until the applicable repairs are made. If any of the foregoing maintenance or repair is necessitated due to the acts or omissions of any Tenant Party, and subject to the any waiver of subrogation as provided in this Lease, Tenant shall pay the costs of such repairs or maintenance to Landlord within thirty (30) days after receipt of an invoice, together with an administrative charge in an amount equal to [***] percent ([***]%) of the cost of the repairs. Landlord shall not be liable to Tenant for any interruption of Tenant's business or inconvenience caused due to any work performed in the Premises or in the Building pursuant to Landlord's rights and obligations under this Lease, provided that Landlord shall use commercially reasonable efforts (but at no material cost to Landlord) to ensure that Landlord's construction or maintenance activities in or proximate to the Building (*but not including, in any event, the construction or other activities in connection with the expansion of the Project, including, without limitation, the construction of "Phase II" of the Project, and/or any portion(s) thereof*) do not unreasonably interfere with Tenant's business operations in the Premises during Normal Business Hours. To the extent allowed by law, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

- (ii) By Tenant. Tenant shall, at its sole cost and expense, promptly perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease and shall keep the Premises in good condition and repair, ordinary wear and tear excepted. Tenant's repair obligations include, without limitation, repairs to, or replacements of: (1) floor covering and/or raised flooring; (2) interior partitions; (3) doors; (4) the interior side of demising walls; (5) electronic, phone and data cabling and related equipment (collectively, "**Cable**") that is installed by or for the benefit of Tenant and located in the Premises or other portions of the Building (to the extent the service providers of such Cable are not expressly obligated to maintain and/or repair such Cable pursuant to the terms of a valid, current written agreement between Landlord and such Cable service provider(s)); (6) supplemental air conditioning units, private showers and kitchens, including hot water heaters, plumbing, dishwashers, ice machines and similar facilities serving Tenant exclusively; (7) light bulbs and tubes and light fixtures; (8) phone rooms used exclusively by Tenant; (9) Alterations performed by contractors retained by or

on behalf of Tenant, including related HVAC balancing; and (10) all of Tenant's furnishings, trade fixtures, equipment and inventory. Landlord reserves the right to perform any of the foregoing maintenance or repair obligations or require that such obligations be performed by a contractor approved by Landlord, provided that Landlord shall be solely responsible for the costs of such maintenance and repairs unless Landlord is entitled to the Self-Help Reimbursement as set forth below. All work shall be performed in accordance with the rules and procedures described in Section 8(a). If Tenant fails to make any repairs to the Premises for more than fifteen (15) days after notice from Landlord (although notice shall not be required if there is an emergency, or if the area to be repaired is visible from the exterior of the Building), Landlord may, in addition to any other remedy available to Landlord, make the repairs, and Tenant shall pay the reasonable cost of the repairs to Landlord within thirty (30) days after receipt of an invoice, together with an administrative charge in an amount equal to [***] percent ([***]%) of the cost of the repairs (the "**Self-Help Reimbursement**"). At the expiration of this Lease, Tenant shall surrender the Premises in good condition, excepting reasonable wear and tear, losses required to be restored by Landlord, and any other Casualty, subject to and upon the terms hereof. All personal property of Tenant, including goods, wares, merchandise, inventory, trade fixtures and other personal property of Tenant, shall be stored at the sole risk of Tenant. Unless caused by Landlord's gross negligence or willful misconduct, Landlord or its agents shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other places resulting from dampness or any other cause whatsoever, or from the act or negligence of any other tenant or any officer, agent, employee, contractor or guest of any such tenant. It is generally understood that mold spores are present essentially everywhere and that mold can grow in most any moist location. Emphasis is properly placed on prevention of moisture and on good housekeeping and ventilation practices. Tenant acknowledges the necessity of housekeeping, ventilation, and moisture control (especially in kitchens, janitor's closets, bathrooms, break rooms and around outside walls) for mold prevention. In signing this Lease, Tenant has first inspected the Premises and certifies that it has not observed mold, mildew or moisture within the Premises. Tenant agrees to immediately notify Landlord if it observes mold/mildew and/or moisture conditions (from any source, including leaks), and allow Landlord to evaluate and make recommendations and/or take appropriate corrective action. Tenant relieves Landlord from any liability for any bodily injury or damages to property caused by or associated with moisture or the growth of or occurrence of mold or mildew on the Premises. In addition, execution of this Lease constitutes acknowledgement by Tenant that control of moisture and mold prevention are integral to its Lease obligations. Tenant shall adopt and implement the moisture and mold control guidelines set forth in the rules and regulations of the Building.

- (iii) *Performance of Work.* All work described in this Section 8 shall be performed only by contractors and subcontractors approved in writing by Landlord from Landlord's pre-approved list, or as otherwise approved by Landlord in writing, in advance, in Landlord's sole discretion. Tenant shall cause all contractors and subcontractors to procure and maintain insurance coverage against such risks, in such amounts, and with such companies as Landlord may reasonably require, but in no event less than: (i) Commercial General Liability insurance on an occurrence basis in amounts not less than [***] Dollars (\$[***]) naming Landlord, Landlord's property management company and AFFINIUS CAPITAL LLC (formerly known as USAA Real Estate Company), as additional insureds; (ii) completed operations coverage; (iii) workers' compensation insurance in amounts required by statute; and (iv) Business Automobile Liability insurance on an occurrence basis in amounts not less than [***] Dollars (\$[***]). Tenant shall provide Landlord with insurance certificates for such contractors and subcontractors prior to commencement of any work. Tenant shall provide Landlord with the identities, mailing addresses and telephone numbers of all persons performing work or supplying materials prior to beginning such construction and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable Laws. All such work shall be performed in accordance with all Laws and in a good and workmanlike manner so as not to damage the Building (including the Premises, the Building's Structure and the Building's Systems). All such work which may affect the Building's Structure or the Building's Systems, at Landlord's election, must be performed by Landlord's usual contractor for such work or a contractor approved by Landlord. All work affecting the roof of the Building must be performed by Landlord's roofing contractor or a contractor approved by Landlord and no such work will be permitted if it would void or reduce the warranty on the roof.
- (d) **Mechanic's Liens.** Notwithstanding any term or provision herein to the contrary, if either (i) required by applicable Law, or (ii) the cost of the Alterations or other work is in excess of [***] Dollars (\$[***]), Tenant shall appoint a lien agent (as defined in NCGS-44A-7, naming the Tenant in the "*Owner Information*" section and the Premises in the "*Project Property*" section of the Appointment of Lien at www.LiensNC.com), and Tenant shall provide to Landlord such mechanics lien agent entry number as assigned by LiensNC.com, prior to the earlier of (1) the date any work is commenced within the Premises by or on behalf of any Tenant Party, (2) Landlord paying any allowance money to Tenant relative to the Premises, including, without limitation, the Tenant Improvement Allowance (as defined in **Exhibit D** attached hereto and incorporated herein by reference), (3) Tenant entering into a contract with a contractor relative to the Premises, and (4) the date any building permit is obtained relative to the Premises. All work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party shall be deemed authorized and ordered by Tenant only, and Tenant shall not permit any mechanic's liens to be filed against the Premises or the Project in connection therewith. Upon completion of any such work, Tenant shall deliver to Landlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. If such a

lien is filed, then Tenant shall, within ten (10) days after Landlord has delivered notice of the filing thereof to Tenant (or such earlier time period as may be necessary to prevent the forfeiture of the Premises, Project or any interest of Landlord therein or the imposition of a civil or criminal fine with respect thereto), either: (1) pay the amount of the lien and cause the lien to be released of record; or (2) diligently contest such lien and deliver to Landlord a bond or other security reasonably satisfactory to Landlord. If Tenant fails to timely take either such action, then Landlord may pay the lien claim, and any amounts so paid, including expenses and interest, shall be paid by Tenant to Landlord within ten (10) days after Landlord has invoiced Tenant therefor. Landlord and Tenant acknowledge and agree that their relationship is and shall be solely that of “*landlord-tenant*” (thereby excluding a relationship of “*owner-contractor*,” “*owner-agent*” or other similar relationships). Accordingly, all materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracting with Tenant, any contractor or subcontractor of Tenant or any other Tenant Party for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises, at any time from the date hereof until the end of the Term, are hereby charged with notice that they look exclusively to Tenant to obtain payment for same. Nothing herein shall be deemed a consent by Landlord to any liens being placed upon the Premises, Project or Landlord’s interest therein due to any work performed by or for Tenant or deemed to give any contractor or subcontractor or materialman any right or interest in any funds held by Landlord to reimburse Tenant for any portion of the cost of such work. Tenant shall indemnify, defend and hold harmless Landlord, its property manager, USAA Real Estate Company, any subsidiary or affiliate of the foregoing, and their respective officers, directors, shareholders, partners, employees, managers, contractors, attorneys and agents (collectively, the “**Indemnitees**”) from and against all claims, demands, causes of action, suits, judgments, damages and expenses (including attorneys’ fees) in any way arising from or relating to the failure by any Tenant Party to pay for any work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party. The foregoing indemnity shall survive termination or expiration of this Lease.

- (e) **Signs.** Landlord shall, at its sole cost and expense, provide Tenant with Building Standard signage on the lobby electronic directory board and directional signage on multi-tenant floors and, at Landlord’s sole cost and expense, initial suite signage on the floor of the Premises. Any subsequent changes initiated by Tenant shall be at Tenant’s sole cost. Landlord shall determine the size, type, location and material specifications of all signage. Tenant shall not place or permit to be placed any signs upon: (i) the roof of the Building; or (ii) the Common Areas; (iii) any area visible from the exterior of the Premises without Landlord’s prior written approval, which approval shall be granted or withheld by Landlord in its sole discretion; or (iv) upon or suspended from any ceiling panels, beams or columns. Upon request of Landlord, Tenant shall immediately remove any sign, advertising material or lettering which Tenant has placed or permitted to be placed upon the exterior or interior surface of any door or window or at any point inside the Premises, which in Landlord’s reasonable opinion, is of such a nature as to not be in keeping with the standards of the Building, and if Tenant fails to do so, Landlord may without liability remove the

same at Tenant's expense. Tenant shall comply with such regulations as may from time to time be promulgated by Landlord governing signs, advertising material or lettering of all tenants in the Building. The Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting or replacement of the Building fascia surface or other portion of the Building where signs are attached. If Tenant fails to do so, Landlord may have the sign removed and the cost of removal, plus [***] percent ([***]%) as an administrative fee, shall be payable by Tenant within ten (10) days of invoice.

(f) *Intentionally Omitted.*

9. **PERMITTED USE.** Tenant shall continuously occupy and use the Premises only for the Permitted Use (as set forth in the Basic Lease Information) and, at Tenant's sole cost and expense, shall comply with all Laws relating to the use, condition, access to, and occupancy of the Premises (including, without limitation, those which may require Tenant to temporarily cease operations and/or reduce its use of the Premises) and will not commit waste, overload the Building's Structure or the Building's Systems or subject the Premises to any use that would damage the Premises. Tenant, at its sole cost and expense, shall obtain and keep in effect during the term, all permits, licenses, and other authorizations necessary to permit Tenant to use and occupy the Premises for the Permitted Use in accordance with applicable Law. The population density within the Premises as a whole shall at no time exceed one (1) person for each one hundred twenty-five (125) rentable square feet in the Premises. Notwithstanding anything in this Lease to the contrary, as between Landlord and Tenant: (a) Tenant shall bear the risk of complying with Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time (collectively, the "**Disabilities Acts**") in the Premises; and (b) Landlord shall bear the risk of complying with the Disabilities Acts in the Common Areas (subject to reimbursement as set forth in Exhibit C attached hereto and incorporated herein by reference), other than compliance that is necessitated by the use of the Premises for other than the Permitted Use or as a result of any alterations or additions made by Tenant (which risk and responsibility shall be borne by Tenant). Tenant shall not use any substantial portion of the Premises for a "call center", any other telemarketing use, or any credit processing use. In addition, the Premises shall not be used for any purpose which creates strong, unusual, or offensive odors, fumes, dust or vapors; which emits noise or sounds that are objectionable due to intermittence, beat, frequency, shrillness, or loudness; which is associated with indecent or pornographic matters; or which involves political or moral issues (such as abortion issues). Tenant shall conduct its business and control each other Tenant Party so as not to create any nuisance or unreasonably interfere with other tenants or Landlord in its management of the Building. Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity or place any equipment in or about the Premises or the Building, which will invalidate the insurance coverage in effect or increase the rate of fire insurance or other insurance on the Premises or the Building. If any invalidation of coverage or increase in the rate of fire insurance or other insurance occurs or is threatened by any insurance company due to activity conducted from the Premises, or any act or omission by Tenant, or its agents, employees, representatives, or contractors, such statement or threat shall be conclusive evidence that the increase in such rate is due to such act of Tenant or the contents or equipment in or about the Premises, and, as a result thereof, Tenant shall be liable for such increase and such increase shall be considered Additional Rent payable with the next monthly installment of Base Rent due under

this Lease, and Landlord's acceptance of such amount shall not waive any of Landlord's other rights. In no event shall Tenant introduce or permit to be kept on the Premises or brought into the Building any dangerous, noxious, radioactive or explosive substance.

10. ASSIGNMENT AND SUBLETTING.

- (a) **Transfers.** Tenant shall not, without the prior written consent of Landlord: (1) assign, transfer, mortgage, pledge, hypothecate or otherwise encumber this Lease or any estate or interest herein, whether directly or by operation of law; (2) permit any other entity to become Tenant hereunder by merger, consolidation, or other reorganization; (3) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of an ownership interest in Tenant so as to result in a change in the current control of Tenant (except that such Transfer shall be permitted if conducted pursuant to item (iii) below (*i.e., if it qualifies as a "Permitted Transfer" under item (iii) below, subject to and upon the terms hereof*)); (4) sublet any portion of the Premises; (5) grant any license, concession, or other right of occupancy of any portion of the Premises; or (6) permit the use of the Premises by any parties other than Tenant (any of the events listed in Section 10(a)(1) through Section 10(a)(6), being a "**Transfer**"). Notwithstanding any provision to the contrary, Tenant may assign this Lease or sublet the Premises without Landlord's consent to one of the following entities (collectively, the "**Permitted Transferees**") in connection with one of the following transactions (collectively, the "**Permitted Transfers**"): (i) to an Affiliate (as defined in the Basic Lease Information) of Tenant; (ii) to any corporation or other entity resulting from a merger, acquisition, consolidation or reorganization of or with Tenant; (iii) in connection with the sale of all or substantially all of the assets of Tenant, so long as Tenant provides evidence to Landlord in writing that such assignment or sublease complies with the criteria set forth in (i), (ii) or (iii) above and provided the following conditions are met: (1) the Tangible Net Worth, as defined below, of the transferee is equal to or greater than the greater of Tenant's Tangible Net Worth on the date of this Lease and Tenant's Tangible Net Worth immediately prior to the effective date of the transfer, (2) if Tenant remains in existence as a separate legal entity following the transfer, it shall not be released from liability under this Lease, (3) the transferee shall assume in a writing delivered to Landlord all of Tenant's obligations under this Lease effective upon the consummation of the transfer, and (4) Tenant shall give written notice to Landlord of the proposed transfer at least fifteen (15) days in advance of the consummation thereof. For purposes of this Section 10, "**Tangible Net Worth**" means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied ("**GAAP**"), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises.
- (b) **Consent Standards.** Landlord shall not unreasonably withhold its consent to any assignment or subletting of the Premises, provided that Tenant is not then in an Event of Default under this Lease and the proposed transferee: (1) is creditworthy; (2) has a good reputation in the business community and is of a quality typically found in Class A office buildings in the Raleigh-Durham office market; (3) will use the

Premises for the Permitted Use (*thus, excluding without limitation, uses for credit processing and telemarketing*), and will not use the Premises in any manner that would conflict with any exclusive use agreement or other similar agreement entered into by Landlord with any other tenant of the Building; (4) will not use the Premises or the Project in a manner that would materially increase the pedestrian or vehicular traffic to the Premises or the Project or create an unreasonable load on the Building; (5) is not a governmental entity, or subdivision or agency thereof; (6) is not another occupant of the Building; and (7) is not a person or entity with whom Landlord is then, or has been within the six (6)-month period prior to the time Tenant seeks to enter into such assignment or subletting, negotiating to lease space in the Building as evidenced by a written “letter of intent,” “request for production”, or any other written proposal and/or similar documentation or correspondence, or any Affiliate of any such person or entity; otherwise, Landlord may withhold its consent in its sole discretion. Further, Landlord may withhold its consent if (x) Landlord has the same amount of space available at that time or within six (6) months of request to sublease, (y) the sublease is for less than the market rates for the Building or (z) such sublease would be to a number of subtenants that would require dividing the Premises in an unacceptable manner.

- (c) **Request for Consent.** If Tenant requests Landlord’s consent to a Transfer, except Permitted Transfers, then, at least thirty (30) days prior to the effective date of the proposed Transfer, Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer, copies of the proposed pertinent documentation, and the following information about the proposed transferee: name and address; reasonably satisfactory information about its business and business history; its proposed use of the Premises; banking, financial, and other credit information; and general references sufficient to enable Landlord to determine the proposed transferee’s creditworthiness and character. Concurrently with Tenant’s notice of any request for consent to a Transfer, Tenant shall pay to Landlord a fee of [***] Dollars (\$[***) to defray Landlord’s expenses in reviewing such request including, without limitation, Landlord’s attorneys’ fees incurred in connection with considering any request for consent to a Transfer. Landlord shall respond with its consent or rejection to the proposed Transfer no later than fifteen (15) days after receiving Tenant’s written request therefor (so long as Tenant has provided Landlord all required information and related documentation in connection such proposed Transfer as required hereunder at the time of Tenant’s written request for Landlord’s consent to such proposed Transfer).
- (d) **Conditions to Consent.** If Landlord consents to a proposed Transfer, then the proposed transferee shall deliver to Landlord a written agreement whereby it expressly assumes Tenant’s obligations hereunder; however, any transferee of less than all of the space in the Premises shall be liable only for obligations under this Lease that are properly allocable to the space subject to the Transfer for the period of the Transfer. No Transfer shall release Tenant from its obligations under this Lease, but rather Tenant and its transferee shall be jointly and severally liable therefor. Landlord’s consent to any Transfer shall not be deemed consent to any subsequent Transfers. If an Event of Default occurs while the Premises or any part thereof are subject to a Transfer, then Landlord, in addition to its other remedies, may collect

directly from such transferee all rents becoming due to Tenant and apply such rents against Rent. Tenant authorizes its transferees to make payments of rent directly to Landlord upon receipt of notice from Landlord to do so following the occurrence of an Event of Default hereunder. All rents paid to Tenant by an assignee or subtenant shall be received by Tenant in trust for Landlord and shall be forwarded to Landlord without offset or reduction of any kind. Tenant shall pay for the cost of any demising walls or other improvements necessitated by a proposed subletting or assignment (provided that the foregoing shall not waive any approval right that Landlord may have with respect to such improvements pursuant to another provision of this Lease).

- (e) **Attornment by Subtenants.** Each sublease by Tenant hereunder shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and each subtenant by entering into a sublease is deemed to have agreed that in the event of termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, either terminate the sublease or take over all of the right, title and interest of Tenant, as sublandlord, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be: (1) liable for any previous act or omission of Tenant under such sublease; (2) subject to any counterclaim, offset or defense that such subtenant might have against Tenant; (3) bound by any previous modification of such sublease or by any rent or additional rent or advance rent which such subtenant might have paid for more than the current month to Tenant, and all such rent shall remain due and owing, notwithstanding such advance payment; (4) bound by any security or advance rental deposit made by such subtenant which is not delivered or paid over to Landlord and with respect to which such subtenant shall look solely to Tenant for refund or reimbursement; or (5) obligated to perform any work in the subleased space or to prepare it for occupancy, and in connection with such attornment, the subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such attornment. Each subtenant or licensee of Tenant shall be deemed, automatically upon and as a condition of its occupying or using the Premises or any part thereof, to have agreed to be bound by the terms and conditions set forth in this Section 10(e). The provisions of this Section 10(e) shall be self-operative, and no further instrument shall be required to give effect to this provision.
- (f) **Cancellation.** Landlord may, within fifteen (15) days after submission of Tenant's written request for Landlord's consent to an assignment or subletting, cancel this Lease as to the portion of the Premises proposed to be sublet or assigned as of the date the proposed Transfer is to be effective. If Landlord cancels this Lease as to any portion of the Premises, then this Lease shall cease for such portion of the Premises, Tenant shall pay to Landlord all Rent accrued through the cancellation date relating to the portion of the Premises covered by the proposed Transfer, and Rent shall be reduced proportionately based on the remaining square footage in the Premises. Thereafter, Landlord may lease such portion of the Premises to the prospective transferee (or to any other person) without liability to Tenant. For the avoidance of doubt, Landlord's cancellation right set forth in this Section 10(f) shall not apply with respect to a Permitted Transfer to a Permitted Transferee in accordance with the terms hereof.

- (g) **Additional Compensation.** If the aggregate rental, bonus or other consideration paid by a transferee for any such space exceeds the sum of (i) Tenant's Rent to be paid to Landlord for such space during such period and (ii) Tenant's costs and expenses actually incurred in connection with such Transfer, including reasonable brokerage fees, reasonable costs of finishing or renovating the space affected and reasonable cash rental concessions, which costs and expenses are to be amortized over the term of the Transfer, then [***] percent ([***]%) of such excess shall be paid to Landlord within fifteen (15) days after such amount is earned by Tenant. Such arrearage amounts in the case of a sublease shall be calculated and adjusted (if necessary) on a calendar year (or partial calendar year) basis, and there shall be no cumulative adjustment for the Term. Landlord shall have the right to audit Tenant's books and records relating to the Transfer. Tenant authorizes its transferees to make payments of Rent and any other sums due and payable directly to Landlord upon receipt of notice from Landlord to do so. Any attempted Transfer by Tenant in violation of the terms and covenants of this Section 10 shall be void and shall constitute a default by Tenant under this Lease.
- (h) **Rent from Assignment or Sublease.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall not (i) sublet or assign or enter into other arrangements such that the amounts to be paid by the sublessee or assignee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the sublessee or assignee, (ii) sublet or assign the Premises or this Lease to any person that could be treated as a related party tenant with respect to Landlord which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as "*rent from real property*" for purposes of Code Section 856(c) or (iii) sublet or assign the Premises or this Lease in any other manner or otherwise derive any income which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as to fail to qualify as "*rent from real property*" for purposes of Code Section 856(c). The requirements of this Section 10(h) shall likewise apply to any further subleasing by any subtenant.

11. INSURANCE; WAIVERS; SUBROGATION; INDEMNITY.

- (a) **Tenant's Insurance.** Effective as of the earlier of: (1) the date Tenant enters or occupies the Premises; or (2) the Commencement Date, and continuing throughout the Term, Tenant shall maintain the following insurance policies:
- (i) ***Commercial General Liability Insurance.*** Commercial General Liability Insurance in amounts of no less than [***] Dollars (\$[***]) per occurrence for bodily injury and property damage, [***] Dollars (\$[***]) each person or organization for personal and advertising injury, [***] Dollars (\$[***]) general aggregate, and [***] Dollars (\$[***]) products and completed operations aggregate covering: (A) premises/operations liability, (B) products/completed operations liability, (C) personal and advertising injury liability, (D) independent contractors' liability, and (E) broad form contractual liability. Such policy shall: (1) be primary and non-contributory

to any insurance maintained by Landlord or Landlord's property management company with respect to the use and occupancy of the Premises including all operations conducted thereon; (2) include severability of interests or cross liability provisions; (3) be endorsed to add Landlord and Landlord's property management company as additional insureds using Insurance Services Office ("**ISO**") form CG 20 26 07 04 or a substitute equivalent form approved in writing by Landlord; (4) include terrorism coverage up to the full per occurrence and aggregate limits available under the policy; and (5) insure other activities that Landlord deems necessary, such as insurance for liquor liability. Limits can be satisfied through the maintenance of a combination of primary and umbrella policies. Tenant may maintain such insurance on a multi-location basis provided that the aggregate limits or sublimits on each policy are dedicated to the Premises and thereby not subject to dilution by claims occurring at other locations.

- (ii) ***Automobile Liability Insurance.*** Automobile Liability Insurance covering the ownership, maintenance, and operations of any automobile or automotive equipment, whether such auto is owned, hired, and non-owned. Tenant shall maintain insurance with a combined single limit for bodily injury and property damage of not less than the equivalent of [***] Dollars (\$[***) per accident. Limits can be satisfied through the maintenance of a combination of primary and umbrella policies. Such insurance shall cover Tenant against claims for bodily injury, including death resulting therefrom, and damage to the property of others caused by accident regardless of whether such operations are performed by Tenant, Tenant's agents, or by any one directly or indirectly employed by any of them. Tenant's automobile liability insurance shall be endorsed to add Landlord and Landlord's property management company as additional insureds.
- (iii) ***Commercial Property Insurance.*** Commercial Property Insurance covering at full replacement cost value the following property in the Premises: (A) inventory; (B) FF&E (unattached furniture, fixtures, and equipment); (C) Alterations, improvements and betterments made by the Tenant including but not necessarily limited to all permanently attached fixtures and equipment; and (D) any other property in which the Tenant retains the risk of loss including electronic data processing equipment, employee personal property or other property owned or leased by Tenant. Such property insurance shall include: (1) coverage against such perils as are commonly included in the special causes of loss form, with no exclusions for wind and hail, vandalism and malicious mischief, and endorsed to add the perils of earthquake, flood, and terrorism; (2) business income coverage providing for the full recovery of loss of rents and continuing expenses on an actual loss sustained basis for a period of not less than twelve (12) months; (3) an "*agreed amount*" endorsement waiving any coinsurance requirements; and (4) a loss payable endorsement providing that Tenant, Landlord, and Landlord's Mortgagee (as hereinafter defined) shall be a loss payee on the policy with regard to the loss of rents coverage. "**Full replacement value,**"

as used herein, means the cost of repairing, replacing, or reinstating, including demolishing, any item of property, with materials of like kind and quality in compliance with, (and without, an exclusion pertaining to application of), any law or building ordinance regulating repair or construction at the time of loss and without deduction for physical, accounting, or any other depreciation, in an amount sufficient to meet the requirements of any applicable co-insurance clause and to prevent Tenant from being a co-insurer.

- (iv) ***Builders' Risk Insurance.*** Builders' Risk Insurance on an "*all risk*" form that does not exclude the perils of flood, earthquake, and terrorism covering on a completed value basis all work incorporated in the Building and all materials and equipment in or about the Premises in connection with construction activities where Tenant notifies Landlord of its intent to undertake a substantial rebuild of the existing structure and Landlord determines that such coverage is necessary. Limits and terms to coverage are to be determined by Landlord upon notification by Tenant.
- (v) ***Workers Compensation Insurance.*** Workers Compensation Insurance covering statutory benefits in the state where the Premises is located. This policy shall include "other states" insurance, so as to include all states not named on the declarations page of the insurance policy, except for the monopolistic states. Tenant is required to carry this insurance regardless of eligibility for waiver or exemption of coverage under any applicable state statute. Such insurance shall include an employers' liability coverage part with limits that shall be not less than [***] Dollars (\$[***]) each accident for bodily injury by accident and [***] Dollars (\$[***]) each employee and policy limit for bodily injury by disease.
- (vi) ***Umbrella Liability Insurance.*** Umbrella liability insurance in excess of the underlying coverage listed in Sections 11(a)(i), 11(a)(ii), and 11(a)(v) above, with limits of not less than [***] Dollars (\$[***]) per occurrence / [***] Dollars (\$[***]) general aggregate or such other amounts as Landlord may reasonably require upon not less than six (6) months' prior written notice. Such policy shall: (1) be primary and non-contributory to any insurance maintained by Landlord or Landlord's property management company; (2) include severability of interests or cross liability provisions; and (3) be endorsed to add Landlord and Landlord's property management company as additional insureds.
- (vii) ***Pollution Legal Liability Insurance.*** Pollution legal liability insurance with limits not less than [***] Dollars (\$[***]) per occurrence and [***] Dollars (\$[***]) general aggregate and a deductible or self-insured retention of no more than [***] Dollars (\$[***]). Policy must provide coverage for bodily injury, property damage, and cleanup resulting from pollution conditions including mold or other similar fungi arising out of or exacerbated by Tenant's activities. The policy may not contain an exclusion or limitation for legionella or mold. The policy shall cover owned and

non-owned disposal sites and shall provide transportation coverage for loading and unloading.

- (viii) **Other Requirements.** Such other insurance or any changes or endorsements to the insurance required herein, including increased limits of coverage, as Landlord, or any mortgagee or lessor of Landlord, may reasonably require from time to time. Tenant's commercial general liability insurance, automobile liability insurance and, all other insurance policies, where such policies permit coverage for Landlord as an additional insured, shall provide primary coverage to Landlord and shall not require contribution by any insurance maintained by Landlord, when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance Landlord's policy will be excess over Tenant's policy. Tenant shall furnish to Landlord certificates of such insurance, and where applicable with the additional insured endorsements in forms CG 20 26 07 04 and 20 37 07 04 (or other equivalent forms approved in writing by Landlord), and such other evidence satisfactory to Landlord of the maintenance of all insurance coverages required hereunder at least ten (10) days prior to the earlier of the Commencement Date or the date Tenant enters or occupies the Premises, and at least fifteen (15) days prior to each renewal of said insurance, and Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least thirty (30) days before cancellation, non-renewal or a material change of any such insurance policies. All such insurance policies shall be in form and issued by companies licensed to do business in the state where the Premises is located, rated by AM Best as having a financial strength rating of "A-" or better and a financial size category of "IX" or greater, or otherwise reasonably satisfactory to Landlord. If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of [***] percent ([***]%) of such cost. It is expressly understood and agreed that the foregoing minimum limits of liability and coverages required of Tenant's insurance shall not reduce or limit the obligation of Tenant to indemnify Landlord as provided in this Lease. All policies required herein shall use occurrence-based forms. Any and all of the premiums, deductibles and self-insured retentions associated with the policies providing the insurance coverage required herein shall be assumed by, for the account of, and at the sole risk of Tenant. Deductibles or self-insured retentions may not exceed [***] Dollars (\$[***]) without the prior written approval of Landlord.

- (b) **Landlord's Insurance.** Throughout the Term of this Lease, Landlord shall carry commercial general liability and casualty insurance with respect to the Building in amounts deemed reasonable and customary by Landlord for similar buildings in the area.

- (c) **Waiver of Subrogation.** Notwithstanding anything to the contrary herein, to the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant shall each agree to waive any right to recover against the other party (and the other party's agents, officers, directors and employees) on account of any and all claims it may have against the other party (and the other party's agents, officers, directors and employees) with respect to the insurance actually maintained, or required to be maintained hereunder, under Sections 11(a)(i) through 11(a)(vi), inclusive, and to the extent proceeds are realized from such insurance coverage that are applied to such claims. Each policy described in this Lease shall contain a waiver of subrogation endorsement that provides that the waiver of any right to recovery shall not invalidate the policy in any way.
- (d) **Tenant's Indemnity.** Subject to Section 11(c), Tenant shall indemnify, defend and hold harmless Landlord and the Indemnitees from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) and all losses and damages arising from: (1) any injury to or death of any person or the damage to or theft, destruction, loss, or loss of use of any property or inconvenience (a "**Loss**") arising from any occurrence in the Premises, the use of the Common Areas by any Tenant Party, or the installation, operation, maintenance, repair or removal of any of Tenant's equipment; or (2) Tenant's failure to perform its obligations under this Lease, IN EACH CASE EVEN THOUGH CAUSED OR ALLEGED TO BE CAUSED BY THE NEGLIGENCE OR FAULT OF LANDLORD OR ITS AGENTS (OTHER THAN A LOSS ARISING FROM THE SOLE OR GROSS NEGLIGENCE OF LANDLORD OR ITS AGENTS), AND EVEN THOUGH ANY SUCH CLAIM, CAUSE OF ACTION, OR SUIT IS BASED UPON OR ALLEGED TO BE BASED UPON THE STRICT LIABILITY OF LANDLORD OR ITS AGENTS. THIS INDEMNITY IS INTENDED TO INDEMNIFY LANDLORD AND ITS AGENTS AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE OR FAULT AS PROVIDED ABOVE WHEN LANDLORD OR ITS AGENTS ARE JOINTLY, COMPARATIVELY, CONTRIBUTIVELY, OR CONCURRENTLY NEGLIGENT WITH TENANT. The indemnities set forth in this Section 11(d) shall survive termination or expiration of this Lease and shall not terminate or be waived, diminished or affected in any manner by any abatement or apportionment of Rent under any provision of this Lease. If any proceeding is filed for which indemnity is required hereunder, Tenant agrees, upon request therefor, to defend Landlord in such proceeding at its sole cost utilizing counsel satisfactory to Landlord in its sole discretion.
- (e) **Landlord's Liability; Landlord's Indemnity.** Landlord shall not be liable or responsible for any loss or damage to any property or death or injury to any person occasioned by theft, fire, act of God, terrorism, public enemy, criminal conduct of third parties, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other tenants of the Building or any other matter, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Building, or failure to make repairs, or from any cause whatever except Landlord's gross negligence or willful misconduct. Subject to

Section 11(c), Landlord shall indemnify, defend, protect, and hold harmless Tenant from any and all third party claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable attorneys' fees) and all losses and damages arising from any injury to or death of any person or the damage to or theft, destruction, loss, or loss of use of any property or inconvenience arising from any occurrence in the Common Areas (specifically excluding the Premises) to the extent caused by the gross negligence or willful misconduct of Landlord, except to the extent caused by the negligent act or omission or willful misconduct of Tenant and/or any Tenant Party.

12. SUBORDINATION; ATTORNMEN; NOTICE TO LANDLORD'S MORTGAGEE.

- (a) **Subordination.** This Lease shall be subordinate to any deed to secure debt, mortgage, or other security instrument (each, as renewed, modified, and/or extended from time to time, a "**Mortgage**"), or any ground lease, master lease, or primary lease (each, as renewed, modified, and/or extended from time to time, a "**Primary Lease**"), that now or hereafter covers all or any part of the Premises (the mortgagee under any such Mortgage, beneficiary under any such deed to secure debt, or the lessor under any such Primary Lease is referred to herein as a "**Landlord's Mortgagee**"). Any Landlord's Mortgagee may elect at any time, unilaterally, to make this Lease superior to its Mortgage, Primary Lease, or other interest in the Premises by so notifying Tenant in writing. Further, any Landlord's Mortgagee may elect to require Tenant to pay all Rent directly to such Landlord's Mortgagee by sending a written demand to Tenant. Landlord's Mortgagee shall have the right to revoke the requirement that Rent be paid to such Landlord's Mortgagee upon delivery of notice to Tenant. The provisions of this Section shall be self-operative and no further instrument of subordination shall be required; however, in confirmation of such subordination, Tenant shall execute and return to Landlord (or such other party designated by Landlord) within ten (10) days after written request therefor such documentation, in recordable form if required, as a Landlord's Mortgagee may reasonably request to evidence the subordination of this Lease to such Landlord's Mortgagee's Mortgage or Primary Lease (including a subordination, non-disturbance and attornment agreement) or, if the Landlord's Mortgagee so elects, the subordination of such Landlord's Mortgagee's Mortgage or Primary Lease to this Lease. In the event a Mortgage encumbers the Building as of the Lease Date (the "**Current Mortgage**"), Landlord shall obtain for Tenant from the current Landlord's Mortgagee of such Current Mortgage (the "**Current Mortgagee**") a subordination, non-disturbance and attornment agreement in the form attached hereto as **Exhibit K** and incorporated herein by reference (subject to modifications as may be mutually agreed upon by Tenant, Landlord, and Current Mortgage, the "**Current Mortgagee SNDA**"). Tenant shall pay all costs billed by the Current Mortgagee and/or otherwise incurred by Landlord in connection with the Current Mortgagee SNDA.
- (b) **Attornment.** Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of

sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

- (c) **Notice to Landlord's Mortgagee.** Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder.
- (d) **Landlord's Mortgagee's Protection Provisions.** If Landlord's Mortgagee shall succeed to the interest of Landlord under this Lease, Landlord's Mortgagee shall not be: (1) liable for any act or omission of any prior lessor (including Landlord); (2) bound by any rent or additional rent or advance rent which Tenant might have paid for more than one (1) month in advance to any prior lessor (including Landlord), and all such rent shall remain due and owing, notwithstanding such advance payment; (3) bound by any security or advance rental deposit made by Tenant which is not delivered or paid over to Landlord's Mortgagee and with respect to which Tenant shall look solely to Landlord for refund or reimbursement; (4) bound by any termination, amendment or modification of this Lease made without Landlord's Mortgagee's consent and written approval, except for those terminations, amendments and modifications permitted to be made by Landlord without Landlord's Mortgagee's consent pursuant to the terms of the loan documents between Landlord and Landlord's Mortgagee; (5) subject to the defenses which Tenant might have against any prior lessor (including Landlord); and (6) subject to the offsets which Tenant might have against any prior lessor (including Landlord) except for those offset rights which (A) are expressly provided in this Lease, (B) relate to periods of time following the acquisition of the Building by Landlord's Mortgagee, and (C) Tenant has provided written notice to Landlord's Mortgagee and provided Landlord's Mortgagee a reasonable opportunity to cure the event giving rise to such offset event. Landlord's Mortgagee shall have no liability or responsibility under or pursuant to the terms of this Lease or otherwise after it ceases to own an interest in the Building. Nothing in this Lease shall be construed to require Landlord's Mortgagee to see to the application of the proceeds of any loan, and Tenant's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing any loan.

13. RULES AND REGULATIONS. Tenant shall comply with the rules and regulations of the Building which are attached hereto as **Exhibit E** and incorporated herein by reference. Landlord may, from time to time, change such rules and regulations for the safety, care, or cleanliness of the Building and related facilities, provided that such changes are applicable to all tenants of the Building, will not unreasonably interfere with Tenant's use of the Premises and are enforced by Landlord in a non-discriminatory manner. Tenant shall be responsible for the compliance with such rules and regulations by each Tenant Party.

14. CONDEMNATION.

- (a) **Total Taking.** If the entire Building or Premises are taken by right of eminent domain or conveyed in lieu thereof (each, a “**Taking**”), this Lease shall terminate as of the date of the Taking. For the avoidance of doubt, government actions for the purpose of protecting public safety or otherwise requiring the Building and/or businesses to close shall not be deemed a condemnation or Taking, and this Section 14 shall not apply thereto.
- (b) **Partial Taking - Tenant’s Rights.** If any part of the Building becomes subject to a Taking and such Taking will prevent Tenant from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Taking for a period of more than two hundred forty (240) days, then Tenant may terminate this Lease as of the date of such Taking by giving written notice to Landlord within thirty (30) days after the Taking, and Rent shall be apportioned as of the date of such Taking. If Tenant does not terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Premises rendered untenable by the Taking.
- (c) **Partial Taking - Landlord’s Rights.** If any material portion, but less than all, of the Building becomes subject to a Taking, or if Landlord is required to pay any of the proceeds arising from a Taking to a Landlord’s Mortgagee, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within thirty (30) days after such Taking, and Rent shall be apportioned as of the date of such Taking. If Landlord does not so terminate this Lease, then this Lease will continue, but if any portion of the Premises has been taken, Rent shall abate as provided in the last sentence of Section 14(b).
- (d) **Award or Compensation for a Taking.** If any Taking occurs, then Landlord shall receive the entire award or other compensation for the Land, the Building, and other improvements taken; however, Tenant may separately pursue a claim (to the extent it will not reduce Landlord’s award) against the condemnor for the value of Tenant’s personal property which Tenant is entitled to remove under this Lease, moving costs, loss of business, and other claims it may have.

15. FIRE OR OTHER CASUALTY.

- (a) **Repair Estimate.** If the Premises or the Building are damaged by fire or other casualty (a “**Casualty**”), Landlord shall use good faith efforts to deliver to Tenant within sixty (60) days after such Casualty a good faith estimate (the “**Damage Notice**”) of the time needed to repair the damage caused by such Casualty. For the avoidance of doubt, government actions for the purpose of protecting public safety or otherwise requiring the Building and/or businesses to close shall not be deemed a Casualty, and this Section 15 shall not apply thereto but shall only apply in the event of a casualty which degrades the physical or structural integrity of the Premises or the Building.
- (b) **Tenant’s Rights.** If a material portion of the Premises is damaged by Casualty such that Tenant is prevented from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Casualty and

Landlord estimates that the damage caused thereby cannot be repaired within two hundred forty (240) days after the occurrence of the Casualty (the “**Repair Period**”) or if Landlord fails to commence, diligently prosecute and complete its restoration or repairs within the Repair Period, then, in either event, Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant or the expiration of the Repair Period, as the case may be.

- (c) **Landlord’s Rights.** If a Casualty damages the Premises or a material portion of the Building and: (1) Landlord estimates that the damage to the Premises cannot be repaired within the Repair Period; (2) the damage to the Premises exceeds [***] percent ([***]%) of the replacement cost thereof (excluding foundations and footings), as estimated by Landlord, and such damage occurs during the last two (2) years of the Term; (3) regardless of the extent of damage to the Premises, Landlord makes a good faith determination that restoring the Building would be uneconomical; or (4) Landlord is required to pay any insurance proceeds arising out of the Casualty to a Landlord’s Mortgagee, then Landlord may terminate this Lease by giving written notice of its election to terminate within thirty (30) days after the Damage Notice has been delivered to Tenant, provided that Tenant shall be given at least sixty (60) days to vacate the Premises.
- (d) **Repair Obligation.** If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty; however, other than Building Standard leasehold improvements Landlord shall not be required to repair or replace any Alterations and/or any Cosmetic Alterations, and/or any other betterments within the Premises (which shall be promptly and with due diligence repaired and restored by Tenant at Tenant’s sole cost and expense) or any furniture, equipment, trade fixtures or personal property of Tenant or others in the Premises or the Building, and Landlord’s obligation to repair or restore the Premises shall be limited to the extent of the insurance proceeds actually received by Landlord for the Casualty in question. If this Lease is terminated under the provisions of this Section 15, Landlord shall be entitled to the full proceeds of the insurance policies providing coverage for all Alterations, Cosmetic Alterations, improvements and betterments in the Premises (and, if Tenant has failed to maintain insurance on such items as required by this Lease, Tenant shall pay Landlord an amount equal to the proceeds Landlord would have received had Tenant maintained insurance on such items as required by this Lease).
- (e) **Abatement of Rent.** If the Premises are damaged by Casualty, Rent for the portion of the Premises rendered untenantable by the damage shall be abated on a reasonable basis from the date of damage until the completion of Landlord’s repairs (or until the date of termination of this Lease by Landlord or Tenant as provided above, as the case may be), unless a Tenant Party caused such damage and the Rent is not reimbursable by Landlord’s required insurance, in which case, Tenant shall continue to pay Rent without abatement.

16. PERSONAL PROPERTY TAXES. Tenant shall be liable for all taxes levied or assessed against personal property, furniture, or fixtures placed by Tenant in the Premises or in or on the Building or Project. If any taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, then Tenant shall pay to Landlord, within thirty (30) days following written request therefor, the part of such taxes for which Tenant is primarily liable hereunder.

17. EVENTS OF DEFAULT. Each of the following occurrences shall be an "**Event of Default**" hereunder:

- (a) **Payment Default.** Tenant's failure to pay Rent within five (5) calendar days after the same is due, unless such failure is cured by Tenant within five (5) days after written notice from Landlord, provided, however in no event shall Landlord be required to give notice of late Rent more than once in any twelve (12) month period, and the second time in any twelve (12) month period that any payment of Rent is not paid within five (5) calendar days after the same is due shall constitute an automatic Event of Default hereunder;
- (b) **Abandonment.** Tenant fails to take initial occupancy or abandons the Premises or any substantial portion thereof, or fails to continuously operate its business in the Premises, abandonment being defined as Tenant's vacation of the Premises and failure to meet one (1) or more lease obligations;
- (c) **Estoppel/Financial Statement/Commencement Date Letter.** Tenant fails to provide: (i) any estoppel certificate after Landlord's written request therefor pursuant to Section 27(e); (ii) any financial statement after Landlord's written request therefor pursuant to Section 27(q); or (iii) the Confirmation of Commencement Date in the form of **Exhibit F** as required by Section 3, and such failure shall continue for five (5) calendar days after Landlord's second (2nd) written notice thereof to Tenant;
- (d) **Insurance.** Tenant fails to procure, maintain and deliver to Landlord evidence of the insurance policies and coverages as required under Section 11(a);
- (e) **Mechanic's Liens.** Tenant fails to pay and release of record, or diligently contest and bond around, any mechanic's lien filed against the Premises or the Project for any work performed, materials furnished, or obligation incurred by or at the request of Tenant, within the time and in the manner required by Section 8(c);
- (f) **Other Defaults.** Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease and the continuance of such failure for a period of thirty (30) calendar days or more after Landlord has delivered to Tenant written notice thereof; and
- (g) **Insolvency.** The filing of a petition by or against Tenant (the term "**Tenant**" shall include, for the purpose of this Section 17(g), any guarantor of Tenant's obligations hereunder): (1) in any bankruptcy or other insolvency proceeding; (2) seeking any relief under any state or federal debtor relief law; (3) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's

interest in this Lease; or (4) for the reorganization or modification of Tenant's capital structure; however, if such a petition is filed against Tenant, then such filing shall not be an Event of Default unless Tenant fails to have the proceedings initiated by such petition dismissed within sixty (60) calendar days after the filing thereof.

18. REMEDIES. Upon the occurrence of any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

- (a) Landlord may continue this Lease in full force and effect, and proceed to collect all Rent when due; and/or
- (b) Landlord may terminate this Lease or Tenant's right of possession of the Premises, in either of which events Tenant shall immediately surrender the Premises to Landlord. If Tenant shall fail to do so, Landlord may, without further notice and without prejudice to any other remedy Landlord may have, enter upon the Premises, without notice, and expel or remove Tenant and Tenant's property without being liable for any claim for trespass or damages therefor. Upon any such termination of Tenant's right of possession, Tenant shall remain liable to Landlord, due and payable monthly as and when due, the Rent and any other amounts which are owing by Tenant for the balance of the Term. Upon any such termination of this Lease, Tenant shall remain liable to Landlord for damages, due and payable monthly on the day Rent would have been payable hereunder, in an amount equal to the Rent and any other amounts which would have been owing by Tenant for the balance of the Term of this Lease, had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Premises by Landlord, after deducting all of Landlord's costs and expenses (including, without limitation, leasing commissions, tenant improvements, advertising expenses and professional fees) incurred in connection with or in any way related to the termination of this Lease, eviction of Tenant and such reletting except to the extent such costs arise from improving the Premises to a condition materially better than the condition of the Premises as of the Commencement Date or, at Landlord's option, the Lease Date, in Landlord's sole but commercially reasonable discretion; and/or
- (c) Upon a termination of this Lease, Landlord may declare the entire amount of Rent to be paid by Tenant, and other sums which in Landlord's reasonable determination would become due and payable during the remainder of the Term, discounted to present value by using a reasonable discount rate selected by Landlord, to be due and payable immediately. Upon such acceleration of such amounts, Tenant agrees to pay the same at once, together with all Rent and other amounts theretofore due, less the market value of the Premises for the remainder of the Term, as determined by Landlord (taking into consideration the probable costs of marketing and reletting the Premises, then-current rental rates, probable rental rates for the remainder of the Term, probable concession packages, the probability of reletting the Premises and the probable amount of time which will elapse before the Premises are relet), at Landlord's address as provided herein; provided however, that such payment shall not constitute a penalty or forfeiture but shall constitute liquidated damages for Tenant's failure to comply with the terms and provisions of this Lease (Landlord and

Tenant agreeing that Landlord's actual damages in such an event are impossible to ascertain and that the amount set forth above is a reasonable estimate thereof). The acceptance of such payment by Landlord shall not constitute a waiver of rights or remedies to Landlord for any failure of Tenant thereafter occurring to comply with any term, provision, condition or covenant of this Lease; and/or

- (d) Landlord may enter the Premises as the agent of Tenant without the requirement of resorting to the summary ejectment procedures set forth in Chapter 42 of the North Carolina General Statutes and without being liable for any claim for trespass or damages therefor, and, in connection therewith, rekey the Premises, remove Tenant's property therefrom and store the same at Tenant's expense, without being liable for any damage thereto, and relet the Premises as the agent of Tenant, by commercially reasonable means, for any term Landlord deems proper, and receive the rent therefor. Tenant shall pay Landlord on demand any deficiency that may arise by reason of such reletting, but Tenant shall not be entitled to any surplus so arising. Tenant shall reimburse Landlord for all costs and expenses (including, without limitation, advertising expenses and professional fees) incurred in connection with or in any way related to the eviction of Tenant and reletting the Premises, and for the amount of any other Rent which would have been due of Tenant to Landlord hereunder if not for certain concessions granted by Landlord to Tenant. Landlord, in addition to but not in lieu of or in limitation of any other right or remedy provided to Landlord under the terms of this Lease or otherwise (but only to the extent such sum is not reimbursed to Landlord in conjunction with any other payment made by Tenant to Landlord), shall have the right to be immediately repaid by Tenant the amount of all sums expended by Landlord and not repaid by Tenant in connection with preparing or improving the Premises to Tenant's specifications and any and all costs and expenses incurred in renovating or altering the Premises to make it suitable for reletting; and/or
- (e) As agent of Tenant, Landlord may cure any default or do whatever Tenant is obligated to do under this Lease, including, but not limited to, entering the Premises, without being liable to prosecution or any claims for damages, in order to accomplish this purpose. Tenant agrees to reimburse Landlord immediately upon demand for any expenses (plus interest at the Default Rate) which Landlord may incur in thus effecting compliance with this Lease on behalf of Tenant. Said sum, together with interest thereon, shall be additional Rent. Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by the negligence of Landlord or otherwise.
- (f) Without any showing of need or the presence of any statutory or common law grounds, all of which requirements are hereby expressly waived, Landlord may have a receiver appointed to take possession of the Premises and relet all or any portion thereof, in accordance with this Section 18. Tenant shall pay to Landlord on demand all costs Landlord incurs in connection therewith.
- (g) Notwithstanding anything in this Lease to the contrary, Landlord shall use commercially reasonable efforts to relet the Premises on such terms as Landlord in its sole discretion may determine (including a term different from the Term, rental concessions, and alterations to, and improvement of, the Premises); however, Landlord shall not be obligated to expend funds in connection with reletting the

Premises, nor to relet the Premises before leasing other portions of the Building, and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord's leasing criteria. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder.

- (h) Landlord may draw upon all or part of the Security Deposit, as provided in Section 6 hereof.

19. PAYMENT BY TENANT; NON-WAIVER; CUMULATIVE REMEDIES.

- (a) **Payment by Tenant.** Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in: (1) obtaining possession of the Premises; (2) removing and storing Tenant's or any other occupant's property; (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant (but not materially better than the condition of the Premises as of the Commencement Date or, at Landlord's option, the Lease Date, in Landlord's sole but commercially reasonable discretion); (4) if Tenant is dispossessed of the Premises and this Lease is not terminated, reletting all or any part of the Premises (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting); (5) performing Tenant's obligations which Tenant failed to perform; and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the Event of Default. To the full extent permitted by Law, Landlord and Tenant agree the federal and state courts of the state in which the Premises are located shall have exclusive jurisdiction over any matter relating to or arising from this Lease and the parties' rights and obligations under this Lease.
- (b) **No Waiver.** Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term. Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.
- (c) **Cumulative Remedies.** Any and all remedies set forth in this Lease: (1) shall be in addition to any and all other remedies Landlord may have at law or in equity; (2) shall be cumulative; and (3) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future.
- (d) **No Designation.** If Tenant is in arrears in payment of Rent, Tenant waives its right, if any, to designate the items to which any payments made by Tenant are to be

credited, and Landlord may apply any payments made by Tenant to such items as Landlord sees fit, irrespective of any designation or request by Tenant as to the items to which any such payments shall be credited.

- (e) **No Counterclaims.** Tenant shall not interpose any counterclaim (other than a compulsory counterclaim) in any summary proceeding commenced by Landlord to recover possession of the Premises and shall not seek to consolidate such proceeding with any action which may have been or will be brought by Tenant or any other person or entity.

20. INTENTIONALLY OMITTED.

21. SURRENDER OF PREMISES. No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. At the expiration or termination of this Lease, Tenant shall deliver to Landlord the Premises with all improvements located therein in good repair and condition, free of Hazardous Materials placed on the Premises during the Term, broom-clean, reasonable wear and tear (and condemnation and Casualty damage, as to which Section 14 and Section 15 shall control) excepted and shall deliver to Landlord all keys and access cards to the Premises. Provided that Tenant has performed all of its obligations hereunder, Tenant shall remove all unattached trade fixtures, furniture, and personal property placed in the Premises or elsewhere in the Building by Tenant (but Tenant may not remove any such item which was paid for, in whole or in part, by Landlord or any wiring or cabling unless Landlord requires such removal). Additionally, at Landlord's option (provided that such option is timely exercised in accordance with Section 8(a) hereof, if applicable), Tenant shall (not later than ten (10) days after the expiration or earlier termination of this Lease) remove such Alterations, additions (including stairs and bank vaults), improvements, trade fixtures, personal property, equipment, wiring, conduits, cabling and furniture as Landlord may request. Tenant shall repair all damage caused by such removal. All items not so removed shall, at Landlord's option, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord at Tenant's cost without notice to Tenant and without any obligation to account for such items; any such disposition shall not be considered a strict foreclosure or other exercise of Landlord's rights in respect of the security interest granted under Section 20. The provisions of this Section 21 shall survive the expiration or earlier termination of this Lease.

22. HOLDING OVER. In the event Tenant remains in possession of the Premises after the expiration or termination of this Lease without the execution of a new lease, then Tenant, at Landlord's option, shall be deemed to be occupying the Premises as a tenant at sufferance at a rental equal to [***] percent ([***]%) of the then-applicable monthly Rent for all periods thereafter, and shall otherwise remain subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a tenancy at sufferance, including without limitation the payment of all other Rent. No holding over by Tenant after the expiration or earlier termination of this Lease shall be construed to extend or renew the Term of this Lease or in any other manner be construed as permission by Landlord to hold over. If, at any point during any such holding over of Tenant after the expiration or earlier termination of this Lease, (A) Landlord provides Tenant with written notice (the "**Holdover Notice**") identifying (i) a prospective tenant to whom Landlord

wishes lease all or any part of the Premises, effective at any time after the expiration or earlier termination of this Lease (each, a “**Potential Tenant**”), and (ii) the Delivery Date and/or commencement date of the lease to such Potential Tenant; and (B) Tenant remains in possession of the Premises on the date that is thirty (30) days after Tenant’s receipt of such Holdover Notice, then Tenant shall indemnify Landlord (i) from and against any and all claims for damages by any such Potential Tenant, and any other tenant to whom Landlord may have leased all or any part of the Premises thereafter, and (ii) for all other losses, costs, and expenses—including, without limitation, reasonable attorneys’ fees and any and all consequential damages—incurred by or on behalf of Landlord by reason of and/or otherwise in connection with such holding over.

23. CERTAIN RIGHTS RESERVED BY LANDLORD. Landlord shall have the following rights:

- (a) **Building Operations.** To decorate and to make inspections, repairs, alterations, additions, changes, or improvements, whether structural or otherwise, in and about the Project, or any part thereof; to enter upon the Premises (after giving Tenant at least 24 hours advance notice thereof, which may be oral notice, except in cases of real or apparent emergency, in which case no notice shall be required) and, during the continuance of any such work, to temporarily close doors, entryways, public space, and corridors in the Building; to interrupt or temporarily suspend Building services and facilities; to change the name of the Building; and to change the arrangement and location of entrances or passageways, doors, and doorways, corridors, elevators, stairs, restrooms, or other public parts of the Building;
- (b) **Security.** To take such reasonable security measures as Landlord deems advisable (provided, however, that any such security measures are for Landlord’s own protection, and Tenant acknowledges that Landlord is not a guarantor of the security or safety of any Tenant Party and that such security matters are the responsibility of Tenant), including evacuating the Building for cause, suspected cause, or for drill purposes; temporarily denying access to the Building; and closing the Building after Normal Business Hours and on Sundays and Holidays, subject, however, to Tenant’s right to enter when the Building is closed after Normal Business Hours under such reasonable regulations as Landlord may prescribe from time to time;
- (c) **Repairs and Maintenance.** Subject to the notice requirement set forth in Section 23(a) above, to enter the Premises at all reasonable hours to perform Landlord’s repair and maintenance obligations and rights under this Lease; and
- (d) **Prospective Purchasers and Lenders.** Subject to the notice requirement set forth in Section 23(a) above, to enter the Premises at all reasonable hours to show the Premises to prospective purchasers or lenders; and
- (e) **Prospective Tenants.** Subject to the notice requirement set forth in Section 23(a) above, at any time during the last twelve (12) months of the Term (or earlier if Tenant has notified Landlord in writing that it does not desire to renew the Term or if Tenant has vacated or abandoned the Premises) or at any time following the occurrence of an Event of Default, to enter the Premises at all reasonable hours to show the Premises to prospective tenants.

24. INTENTIONALLY OMITTED.

25. HAZARDOUS MATERIALS.

- (a) During the Term of this Lease, Tenant shall comply with all Environmental Laws (as defined in Section 25(i) below) applicable to the operation or use of the Premises, will cause all other persons occupying or using the Premises to comply with all such Environmental Laws, will immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance. Notwithstanding the foregoing, in no event shall Tenant be responsible for any costs involved with complying with Environmental Laws with regard to the Premises to the extent that the cost of compliance arose from events occurring prior to the Lease Date, or is otherwise not caused by or otherwise arising from or related to any act or omission of Tenant and/or any Tenant Party and/or otherwise in connection with Tenant's use and occupancy of the Premises.
- (b) Tenant shall not generate, use, treat, store, handle, release or dispose of, or permit the generation, use, treatment, storage, handling, release or disposal of Hazardous Materials (as defined in Section 25(i), hereof) on the Premises, or the Project, or transport or permit the transportation of Hazardous Materials to or from the Premises or the Project except for limited quantities of household cleaning products and office supplies used or stored at the Premises and reasonably required in connection with the routine operation and maintenance of the Premises, and in compliance with all applicable Environmental Laws.
- (c) At any time and from time to time during the Term of this Lease, Landlord may perform, at Landlord's sole cost and expense, an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm chosen by Landlord, indicating the presence or absence of Hazardous Materials caused or permitted by Tenant and the potential cost of any compliance, removal or remedial action in connection with any such Hazardous Materials on the Premises. Tenant shall grant and hereby grants to Landlord and its agents access to the Premises and specifically grants Landlord an irrevocable non-exclusive license to undertake such an assessment.
- (d) Tenant will immediately advise Landlord in writing of any of the following: (1) any pending or threatened Environmental Claim (as defined in Section 25(i) below) against Tenant relating to the Premises or the Project; (2) any condition or occurrence on the Premises or the Project that (a) results in noncompliance by Tenant with any applicable Environmental Law, or (b) could reasonably be anticipated to form the basis of an Environmental Claim against Tenant or Landlord or the Premises; (3) any condition or occurrence on the Premises or any property adjoining the Premises that could reasonably be anticipated to cause the Premises to be subject to any restrictions on the ownership, occupancy, use or transferability of the Premises under any Environmental Law; and (4) the actual or anticipated taking of any removal or remedial action by Tenant in response to the actual or alleged presence of any Hazardous Material on the Premises or the Project. All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or

removal or remedial action and Tenant's response thereto. In addition, Tenant will provide Landlord with copies of all communications regarding the Premises with any governmental agency relating to Environmental Laws, all such communications with any person relating to Environmental Claims, and such detailed reports of any such Environmental Claim as may reasonably be requested by Landlord.

- (e) Tenant shall not use the Premises, or permitted the Premises to be used, for any use except for the Permitted Use.
- (f) Tenant agrees to indemnify, defend and hold harmless the Indemnitees from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including reasonable attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against such Indemnitees directly or indirectly based on, or arising or resulting from (a) the actual or alleged presence of Hazardous Materials on the Project which is caused or permitted by Tenant or a Tenant Party and (b) any Environmental Claim relating in any way to Tenant's operation or use of the Premises (the "**Hazardous Materials Indemnified Matters**"). The provisions of this **Section 25** shall survive the expiration or sooner termination of this Lease.
- (g) To the extent that the undertaking in the preceding paragraph may be unenforceable because it is violative of any law or public policy, Tenant will contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Hazardous Materials Indemnified Matters incurred by the Indemnitees.
- (h) All sums paid and costs incurred by Landlord with respect to any Hazardous Materials Indemnified Matter shall bear interest at the Default Rate from the date so paid or incurred until reimbursed by Tenant, and all such sums and costs shall be immediately due and payable on demand.
- (i) As used herein, the term "**Hazardous Materials**" means: (i) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and radon gas; (ii) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (iii) any other substance exposure which is regulated by any governmental authority; (b) "**Environmental Law**" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control

Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; (c) “**Environmental Claims**” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law or any Environmental Permit, including without limitation (i) any and all Environmental Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

26. PARKING. Landlord shall provide Tenant with a certain number of parking permits based on the Unreserved Parking Allocation, as defined in the Basic Lease Information, at no cost to Tenant or Tenant’s employees, subject to and upon the terms hereof (collectively, “**Parking Permits**” and, each individually, a “**Parking Permit**”). Each Parking Permit constitutes a nonexclusive license for an individual employee of Tenant to park one (1) automobile on a non-reserved basis in a non-reserved parking space in the Parking Areas, as defined below. Each Parking Permit shall be registered to a specific employee of Tenant and may not be used by any party other than the employee of Tenant to whom it is registered. Landlord and Tenant agree that the non-reserved Parking Permits shall be provided to Tenant and Tenant’s employees at no charge. Tenant shall have the right to park in the Parking Areas in common with other tenants and/or users of the Building and/or the Project. Tenant agrees not to overburden the Parking Areas and agrees to cooperate with Landlord and other tenants and/or users of the Building and/or the Project in the use of the Parking Areas, provided that in no event shall Tenant using the Parking Permits as permitted by the Unreserved Parking Allocation constitute Tenant overburdening the Parking Areas. Landlord reserves the right, in Landlord’s absolute and sole but reasonable discretion, to determine whether the Parking Areas, and/or any portion(s) thereof, are becoming overburdened and to reallocate and assign Parking Permits among Tenant and other tenants and/or users of the Building and/or the Project, and/or to reconfigure the Parking Areas, and/or any portion(s) thereof, and to modify the existing ingress to and egress from the Parking Areas, and/or any portion(s) thereof, as Landlord shall deem appropriate, in Landlord’s sole but reasonable discretion; provided, however, that Landlord shall not be permitted to reduce the Unreserved Parking Allocation. To the extent Landlord offers visitor parking in the Parking Areas, visitors will be provided access. To the extent Landlord installs an access code and/or card reader and/or barcode scanning system in the Parking Areas, visitors will be provided said access via such system and Tenant will be responsible for providing the access information to its visitors. At no time will Tenant utilize the access information for its employees, agents, or other non-visitors. Landlord may establish a rate structure for any such visitor parking at such time(s), at any time and from time to time, as visitor parking is provided in the Parking Areas, in Landlord’s sole but commercially reasonable discretion. Landlord shall have the right to control access to the Parking Areas, remove improperly parked automobiles and require that the designated automobile display

decals or other evidence of its right to use the Parking Areas. Landlord may designate an independent contractor to operate the Parking Areas, by lease or otherwise, which will have the right to exercise Landlord's rights hereunder, and Landlord shall have no liability whatsoever for the acts or omissions of such contractor. As used herein the term "**Parking Areas**" shall mean (i) the initial surface parking at the Project and/or (ii) those certain parking garages either existing or to be constructed at the Project by or on behalf of Landlord, in each and every case, to be non-exclusive to the office or retail tenants and/or users of the Project, and otherwise as directed by Landlord. Landlord, its agents, contractors, designees, and employees (collectively "**Garage Management**") shall have the right to: (w) adopt requirements or procedures pertaining to parking, including parking stickers, access cards or any other devices or forms of identification, (x) assign specific areas or spaces, and reserve spaces for disabled persons, and other tenants, customers of tenants, or other parties, (y) restrict or prohibit parking of commercial vehicles, and (z) charge for customer or visitor parking in the Parking Areas based on market rates established by Garage Management from time to time. Garage Management shall have the right to close portions of the parking areas in order to make repairs or perform maintenance services, or to alter, modify, re-stripe or renovate the same, or if required by casualty, condemnation, act of God or governmental requirement, or any other reason. As a condition to the use of such parking spaces, Landlord may require that Tenant and/or each individual using such parking spaces comply with such further reasonable documentation and rules and regulations as Garage Management may reasonably require. Garage Management shall have the right to establish or modify the methods used to control parking in the Parking Areas including, without limitation the installation of certain control devices or the hiring of parking attendants. Neither Garage Management nor Landlord shall be liable for any damage to or any theft of any vehicle or any contents therefrom while in or about the Parking Areas or the Project. Tenant and its employees shall park their cars only in those portions of the Parking Areas designated for Tenant's use and for which Tenant has Parking Permits, whether that designation be made by Garage Management or Landlord. Tenant shall furnish Landlord with its employees' license numbers within fifteen (15) days after taking possession of the Premises, and Tenant shall thereafter notify Landlord of any changes within five (5) Business Days after such change occurs. If Tenant or its employees park their cars in parking areas not designated for Tenant's use, then Garage Management may charge Tenant a reasonable amount per day for each day or partial day per car parked in such areas. All amounts due under the provisions of this paragraph shall be payable by Tenant within ten (10) days after demand and if such sums are not timely paid, Garage Management or Landlord may suspend Tenant's parking in the Parking Areas. Garage Management shall have the right to tow away from the Parking Areas at Tenant's expense any car or cars belonging to Tenant's employees and/or to attach violation stickers or notices to such cars which are in violation of this **Section 26**. The parking spaces available for use by the public may require payment of a parking charge to a parking meter or other similar device and may limit the number of hours that a vehicle may be parked without payment of additional parking charges. Notwithstanding anything to the contrary contained herein, other than maintaining, repairing, and lighting the Parking Areas and performing fiduciary functions with respect thereto (*e.g., paying taxes and insurance*), Landlord shall not provide any services with respect to the Parking Areas.

27. **MISCELLANEOUS.**

- (a) **Landlord Transfer.** Landlord may transfer any portion of the Building and any of its rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer, provided that the assignee assumes Landlord's obligations hereunder in writing.
- (b) **LANDLORD'S LIABILITY.** THE LIABILITY OF LANDLORD (AND ITS PARTNERS, SHAREHOLDERS OR MEMBERS) TO TENANT (OR ANY PERSON OR ENTITY CLAIMING BY, THROUGH OR UNDER TENANT) FOR ANY DEFAULT BY LANDLORD UNDER THE TERMS OF THIS LEASE OR ANY MATTER RELATING TO OR ARISING OUT OF THE OCCUPANCY OR USE OF THE PREMISES AND/OR OTHER AREAS OF THE BUILDING OR PROJECT SHALL BE LIMITED TO TENANT'S ACTUAL DIRECT, BUT NOT CONSEQUENTIAL (OR OTHER SPECULATIVE), DAMAGES THEREFOR AND SHALL BE RECOVERABLE ONLY FROM THE INTEREST OF LANDLORD IN THE BUILDING, AND LANDLORD (AND ITS PARTNERS, SHAREHOLDERS OR MEMBERS) SHALL NOT BE PERSONALLY LIABLE FOR ANY DEFICIENCY. ADDITIONALLY, TO THE EXTENT ALLOWED BY LAW, TENANT HEREBY WAIVES ANY STATUTORY LIEN IT MAY HAVE AGAINST LANDLORD OR ITS ASSETS, INCLUDING WITHOUT LIMITATION, THE BUILDING.
- (c) **Force Majeure.** Other than for Tenant's obligations under this Lease that can be performed by the payment of money (e.g., payment of Rent and maintenance of insurance) and Tenant's obligations pursuant to **Exhibit D** and **Exhibit D-1** attached hereto and incorporated herein by reference, whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes beyond the control of such party (whether foreseen or unforeseen), including, without limitation, strikes, riots, terrorism, acts of God, shortages of labor or materials, war, laws, regulations or restrictions, inability or delays in receiving applicable building or construction permits, inspection delays, pandemics, endemics, epidemics, public health emergencies, or any other causes of any kind whatsoever which are beyond the control of such party, whether or not related to the foregoing enumerated causes. Tenant further acknowledges and agrees that supervening events which render performance for Tenant unprofitable, less profitable or more difficult shall not excuse Tenant from the timely payment of Rent or any other amount due under this Lease.
- (d) **Brokerage.** Neither Landlord nor Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Lease, other than as set forth in the Basic Lease Information. Landlord shall pay such fees that are payable only to Tenant's Broker named in the Basic Lease Provisions pursuant to the terms and conditions of a separate agreement regarding such fees. Tenant shall indemnify, defend and hold Landlord harmless from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any

broker or agent claiming the same by, through, or under Tenant. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

- (e) **Estoppel Certificates.** From time to time, Tenant shall furnish to any party designated by Landlord, within ten (10) days after Landlord has made a request therefor, a certificate signed by Tenant confirming and containing such factual certifications and representations as to this Lease as Landlord may reasonably request.
- (f) **Notices.** All notices and other communications given pursuant to this Lease shall be in writing and shall be: (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address specified in the Basic Lease Information; (2) hand delivered to the intended addressee; (3) sent by a nationally recognized overnight courier service; or (4) sent by email transmission during Normal Business Hours followed by a copy of such notice sent in another manner permitted hereunder. All notices shall be effective upon the earlier to occur of actual receipt, one (1) Business Day following deposit with a nationally recognized overnight courier service, or three (3) days following deposit in the United States mail. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.
- (g) **Separability.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
- (h) **Amendments; Binding Effect.** This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease is for the sole benefit of Landlord and Tenant, and, other than Landlord's Mortgagee, no third party shall be deemed a third party beneficiary hereof.
- (i) **Quiet Enjoyment.** Provided Tenant has performed all of its obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise, subject to the terms and conditions of this Lease.
- (j) **No Merger.** There shall be no merger of the leasehold interest hereby created with Landlord's fee interest in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee interest in the leasehold Premises or any interest in such fee interest.

- (k) No Offer. The submission of this Lease to Tenant shall not be construed as an offer, and Tenant shall not have any rights under this Lease unless Landlord executes a copy of this Lease and delivers it to Tenant.
- (l) Entire Agreement. This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to the other with respect to this Lease or the obligations of Landlord or Tenant in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.
- (m) Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.
- (n) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are located (the "State").
- (o) Recording. Tenant shall not record this Lease, or any memorandum of this Lease, without the prior written consent of Landlord, which consent may be withheld or denied in the sole and absolute discretion of Landlord, and any recordation by Tenant without Landlord's prior written consent shall be a material breach of this Lease and constitute an automatic Event of Default on behalf of Tenant hereunder. Following the Lease Date, upon Tenant's written request to Landlord, Landlord shall execute a memorandum of lease, in the form attached hereto as Exhibit J (the "MOL"), and Landlord shall deliver Landlord's executed copy thereof to Tenant for recording, at Tenant's sole cost and expense, in the Office of the Register of Deeds of Wake County, North Carolina (the "Registry"). For the avoidance of doubt, Landlord may not withhold its consent with respect to recording the MOL in the Registry. Upon the expiration or sooner termination of this Lease or Tenant's right of possession of the Premises, Tenant (or Tenant's successor-in-interest hereunder, as applicable) shall, at Tenant's sole cost and expense, cancel and terminate the MOL of record and, in connection therewith, Tenant covenants and agrees to promptly execute, acknowledge, and deliver to Landlord any and all instruments and/or other documents as shall be reasonably requested by Landlord and/or as otherwise may be necessary to effectively cancel and terminate the MOL of record in the Registry. If Tenant fails to so execute, acknowledge, deliver to Landlord any and all such instruments and/or or other documents within ten (10) days of Tenant's receipt of a request therefor from Landlord, and/or if Tenant otherwise fails to effectively cancel and terminate the MOL of record by recording an effective cancellation or termination of such MOL of record in the Registry within ten (10) days of the expiration or sooner termination of this Lease or Tenant's right of possession of the Premises, then, in any such case, Tenant hereby irrevocably appoints Landlord (or

Landlord's successor-in-interest hereunder, as applicable) as Tenant's attorney-in-fact solely for the purpose of executing, acknowledging, and delivering such instruments and/or other documents for and in the name of Tenant without subjecting Landlord to liability of any kind whatsoever with respect thereto and Tenant shall reimburse Landlord for any and all out-of-pocket costs and expenses in connection therewith within thirty (30) days of Tenant's receipt of a demand therefor from Landlord. Upon the request of either party hereto, from time to time during the Term of this Lease, such MOL shall be amended to reflect the actual Commencement Date, the length of the Term, and/or any subsequent material modifications to this Lease agreed to by Landlord and Tenant in writing. In the event of any conflict between the terms of this Lease and the terms of such MOL, the terms of this Lease shall govern and control. The obligations of Tenant in this Section 27(o) shall survive the expiration or sooner termination of this Lease or Tenant's right of possession of the Premises.

- (p) Joint and Several Liability. If Tenant is comprised of more than one (1) party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All unperformed obligations of Tenant hereunder not fully performed at the end of the Term shall survive the end of the Term, including payment obligations with respect to Rent and all obligations concerning the condition and repair of the Premises.
- (q) Financial Reports. Within fifteen (15) days after Landlord's request therefor, Tenant will furnish Tenant's most recent two (2) years and year-to-date audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared for some or all of such statements, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements. If Tenant is a publicly traded corporation, Tenant may satisfy its obligations hereunder by providing to Landlord Tenant's most recent annual and quarterly reports. Tenant will discuss its financial statements with Landlord and, following the occurrence of an Event of Default hereunder, will give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements. Landlord will not disclose any aspect of Tenant's financial statements that Tenant designates to Landlord as confidential except: (1) to Landlord's Mortgagee or prospective mortgagees or purchasers of the Building; (2) to Landlord's advisors and consultants; (3) in litigation between Landlord and Tenant; and (4) if required by court order. Tenant shall not be required to deliver the financial statements required under this Section 27(q) more than once in any twelve (12) month period unless requested by Landlord's Mortgagee or a prospective buyer or lender of the Building or an Event of Default occurs.
- (r) Landlord's Fees. Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees, within thirty (30) days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be

obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

- (s) **Telecommunications.** Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to and within the Building, for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems ("**Telecommunications Services**"), for part or all of Tenant's telecommunications within the Building and from the Building to any other location without Landlord's prior written consent. All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Laws and Landlord's policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to any Tenant Party in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services. Tenant agrees that, to the extent any Telecommunications Services are interrupted, curtailed or discontinued, Landlord shall have no obligation or liability with respect thereto and it shall be the sole obligation of Tenant at its own expense to obtain substitute service. Except to the extent arising from the intentional or grossly negligent acts of Landlord or Landlord's agents or employees, Landlord shall have no liability for damages arising from, and Landlord does not warrant that Tenant's use of any Lines will be free from the following (collectively, the "**Line Problems**"): (a) any eavesdropping or wire-tapping by unauthorized parties, (b) any failure of any Lines to satisfy Tenant's requirements, or (c) any shortages, failures, variations, interruptions, disconnections, loss or damage caused by the installation, maintenance, replacement, use or removal of Lines by or for other tenants or occupants at the property. Under no circumstances shall any Line Problems be deemed an actual or constructive eviction of Tenant, render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damage arising from any Line Problems. Any and all Telecommunications Services equipment installed in the Tenant's Premises or elsewhere in the Building by or on behalf of Tenant, including telecommunications lines ("**Lines**"), or other facilities for Telecommunications Services reception or transmittal, shall be removed prior to the expiration or earlier termination of this Lease, by Tenant at its sole cost or, at Landlord's election, by Landlord at Tenant's sole cost, with the cost thereof to be paid as additional Rent. Landlord shall have the right, however, upon written notice to Tenant given no later than thirty (30) days prior to the expiration or earlier termination of this Lease (except that the notice period shall extend to thirty (30) days beyond the date of termination of this Lease if it is terminated by either party due to a default by the other), to require Tenant to abandon and leave in place, without additional payment to Tenant or credit against Rent, any and all Telecommunications Services, Lines and related infrastructure, or

selected components thereof, whether located in the Tenant's Premises or elsewhere in the Building. In the event that Electronic Services equipment, Lines and facilities or satellite and antennae equipment of any type installed by or at the request of Tenant within the Tenant's Premises, on the roof, or elsewhere within or on the Building causes interference to equipment used by another party, Tenant shall cease using such equipment, Lines and facilities or satellite and antennae equipment until the source of the interference is identified and eliminated and Tenant shall assume all liability related to such interference. Tenant shall cooperate with Landlord and other parties, to eliminate such interference promptly. In the event that Tenant is unable to do so, Tenant will substitute alternative equipment which remedies the situation. If such interference persists, Tenant shall, at Landlord's sole discretion, remove such equipment.

(t) **Representations and Warranties.**

- (i) Tenant represents and warrants to, and covenants with, Landlord that neither Tenant nor any of its respective constituent owners or affiliates currently are, or shall be at any time during the Term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the "**Anti-Terrorism Laws**"), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "**Executive Order**") and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "**USA Patriot Act**").
- (ii) Tenant covenants with Landlord that neither Tenant nor any of its respective constituent owners or affiliates is or shall be during the Term hereof a "*Prohibited Person*," which is defined as follows: (A) a person or entity that is listed in the Annex to, or is otherwise subject to, the provisions of the Executive Order; (B) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (C) a person or entity with whom Landlord is prohibited from dealing with or otherwise engaging in any transaction by any Anti-Terrorism Law, including without limitation the Executive Order and the USA Patriot Act; (D) a person or entity who commits, threatens or conspires to commit or support "terrorism" as defined in Section 3(d) of the Executive Order; (E) a person or entity that is named as a "specially designated national and blocked person" on the then-most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>, or at any replacement website or other replacement official publication of such list; and (F) a person or entity who is affiliated with a person or entity listed in items (A) through (E), above.
- (iii) At any time and from time-to-time during the Term, Tenant shall deliver to Landlord, within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Landlord evidencing and confirming Tenant's compliance with this Section 27(t).

- (u) **Confidentiality.** Tenant acknowledges that the terms and conditions of this Lease are to remain confidential for Landlord's benefit, and may not be disclosed by Tenant to anyone, by any manner or means, directly or indirectly, without Landlord's prior written consent. The consent by Landlord to any disclosures shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future disclosure.
- (v) **Authority.** Tenant (if a corporation, partnership or other business entity) hereby represents and warrants to Landlord that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Tenant is authorized to do so.
- (w) **Green Building Requirements.** Tenant acknowledges that the Building may be, or at some date in the future could be, certified under the LEED rating system. Tenant, at no material cost to Tenant, shall cooperate with Landlord to comply with Landlord's sustainability practices.
- (x) **Party in Interest/Prohibited Transactions.** Tenant acknowledges that certain restrictions under the Internal Revenue Code, 26 U.S.C. Section 1 et seq. (the "**Code**") may apply to distributions made by Landlord to its members, beneficiaries and participants. Accordingly, Tenant represents and warrants to Landlord that (a) Tenant is neither an employer, employing agency, member, beneficiary or participant; (b) Tenant has not made any contribution or contributions to Landlord; (c) neither an employer, employing agency, member, beneficiary nor participant, nor any person who has made any contribution to Landlord, nor any combination thereof, is related to Tenant by any relationship described in Section 267(b) of the Code; (d) neither Landlord nor its affiliates, related entities, agents, officers, directors or employees (collectively "**Landlord Affiliates**") has received or will receive, directly or indirectly, any payment consideration or other benefit from, nor does any Landlord Affiliate have any agreement or arrangement with, Tenant or any person or entity affiliated with Tenant, relating to the transactions contemplated by this Lease except as expressly set forth in this Lease; and (e) except for publicly traded shares of stock or other publicly traded ownership interests, no Landlord Affiliate has any direct or indirect ownership interest in Tenant or any person or entity affiliated with Tenant.
- (y) ***INTENTIONALLY OMITTED.***
- (z) **REIT Qualification.** Landlord and Tenant agree that all Rent payable by Tenant to Landlord shall qualify as "rents from real property," within the meaning of Section 856(d) of the Code and the U.S. Department of Treasury Regulations promulgated thereunder (the "**Regulations**"). In the event that Landlord, in its sole and absolute discretion, determines that there is any risk that all or part of any Rent shall not qualify as "*rents from real property*" for the purposes of Section 856(d) of the Code and the Regulations promulgated thereunder, Tenant agrees (i) to reasonably cooperate with Landlord by entering into such amendment or amendments as Landlord deems necessary to qualify all Rents as "*rents from real property*," and (ii) to permit an assignment of this Lease; provided, however, that any adjustments required pursuant to this Section 27(z) shall be made so as to produce the equivalent Rent (in economic terms) payable prior to such adjustment.

- (aa) **Time.** Time is of the essence with respect to (i) Tenant's obligations under this Lease, and (ii) Tenant's exercise of any expansion, renewal, extension or other rights granted to Tenant.
- (bb) **Counterparts; Electronic Signatures; pdf. Delivery.** This Lease may be executed by the parties hereto in separate counterparts either by using DocuSign or manual signatures (or both at either party's option), and may be delivered in separate counterparts by electronic ("**email**") delivery in "portable document format" ("**pdf**"). Each counterpart, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Lease by pdf shall be as effective as delivery of a manually executed counterpart of this Lease and shall be given full legal effect in accordance with applicable laws.
- (cc) **List of Exhibits.** All exhibits and attachments attached hereto are incorporated herein by this reference.

<u>Exhibit A</u>	—	Outline of Premises
<u>Exhibit B</u>	—	Description of the Land
<u>Exhibit C</u>	—	Additional Rent, Taxes, and Insurance
<u>Exhibit D</u>	—	Tenant Improvement Allowance
<u>Exhibit D-1</u>	—	Construction of Initial Leasehold Improvements
<u>Exhibit D-2</u>	—	Description of Base Building Condition: Core and Shell Office Building Outline Specifications
<u>Exhibit E</u>	—	Building Rules and Regulations
<u>Exhibit F</u>	—	Form of Confirmation of Commencement Date Letter
<u>Exhibit G</u>	—	Renewal Option
<u>Exhibit H</u>	—	<i>Intentionally Omitted</i>
<u>Exhibit I</u>	—	Use Restrictions
<u>Exhibit J</u>	—	Form MOL

28. INTENTIONALLY OMITTED.

29. RIGHT OF FIRST REFUSAL. Subject to and upon the terms hereof, and further subject to any and all Superior Rights (as defined below), as further set forth below, and subject to and upon the terms and conditions of this Section 29, Landlord grants to Tenant the one-time right of first refusal (the "**First Refusal Right**") to lease the First Refusal Space (as defined below), at any time during the Term, to the extent that any such space is or becomes available during the Term hereof. The First Refusal Right shall be on and subject to the following terms and conditions:

- (a) **Conditions of First Refusal Right.** The First Refusal Right is not effective or exercisable by Tenant, and Landlord shall have no obligation to provide any written notice (including, without limitation, a Third Party Offer Notice (as defined below)) or otherwise perform any other obligation under this Section 29 with respect to the First Refusal Right and/or the First Refusal Space (as defined below): (1) during the existence of any Event of Default by Tenant under this Lease beyond any applicable

notice and cure period; and/or (2) in the event that Tenant and/or a Permitted Transferee is not in occupancy of the entirety of the Premises.

- (b) **First Refusal Space.** As used herein, the term the “**First Refusal Space**” shall mean any contiguous, vacant office space on [***].
- (c) **Third Party Offer; Offer Space.** Should Landlord receive from a prospective third-party tenant an offer to lease the First Refusal Space or any premises within the building containing all or a portion of the First Refusal Space that Landlord is willing to accept, or should Landlord give a prospective third-party tenant an offer to lease the First Refusal Space or any premises within the Building containing all or a portion of the First Refusal Space, which offer Landlord anticipates the prospective third-party tenant will accept (the “**Third Party Offer**”), then Landlord agrees to promptly so notify Tenant in writing of the relevant economic terms of the Third Party Offer (each, individually, a “**Third Party Offer Notice**”). If the Third Party Offer contains space in addition to the First Refusal Space, then, if Tenant accepts the Third Party Offer, Tenant shall be required to lease all of the space that is the subject of the Third Party Offer (including, without limitation, any and all such space in addition to the First Refusal Space) (collectively, the “**Offer Space**”). For clarification, if the Offer Space identified in a Third Party Offer contains contiguous space in addition to the First Refusal Space (or any portion thereof), and Tenant timely accepts such Third Party Offer as provided in this Section 29, then Tenant shall be required to lease all of such Offer Space.
- (d) **Acceptance Period; ROFR Acceptance Notice.** Tenant shall have a period of five (5) days after Tenant’s receipt (or deemed receipt) of the Third Party Offer Notice from Landlord to Tenant within which to exercise the First Refusal Right (the “**Acceptance Period**”) by delivery to Landlord of written notice (i) indicating Tenant’s election to exercise of the First Refusal Right, and (ii) agreeing to lease all of the Offer Space identified in such Third Party Offer, subject to and upon all the terms and conditions as set forth in the Third Party Offer Notice (each, individually, a “**ROFR Acceptance Notice**”) on or before the last day of the Acceptance Period. If Tenant fails, or otherwise declines, to duly and timely deliver a ROFR Acceptance Notice to Landlord as and when required herein, then, in any such event, the First Refusal Right shall automatically lapse, and be of no further force or effect, and Landlord shall have no further obligation to provide any written notice (*including, without limitation, a Third Party Offer Notice*) to Tenant or otherwise perform any other obligation under this Section 29 with respect to the First Refusal Right and/or the First Refusal Space (*or any portion(s) thereof*), and Landlord shall be free, at Landlord’s option, in Landlord’s sole discretion, to lease the First Refusal Space.
- (e) **Offer Space Amendment.** If Tenant duly and timely delivers a ROFR Acceptance Notice to Landlord as and when required herein, then, within ten (10) Business Days after Landlord’s receipt of Tenant’s ROFR Acceptance Notice, Landlord shall deliver to Tenant a draft of a written amendment to this Lease adding the Offer Space identified in such Third Party Offer Notice to the Premises, which amendment shall subject such Offer Space to the terms and provisions of this Lease, except that all of the terms and conditions of the Third Party Offer Notice —*including, without limitation, the Base Rent for the Offer Space, the lease term for the Offer Space, rent*

abatement for the Offer Space (if any), any improvement allowance relating to such Offer Space (if any), and any other terms contained in the Third Party Offer Notice—shall be as set forth in the Third Party Offer Notice. Landlord and Tenant shall mutually agree upon and execute such amendment within ten (10) Business Days after Landlord's delivery of the draft to Tenant.

- (f) **Condition of Offer Space.** Tenant shall accept the Offer Space in the condition as provided in the Third Party Offer Notice *(including any improvement allowance provided for therein, if any)*.
- (g) **Initial Improvements to Offer Space.** Tenant's initial improvements to the Offer Space (if any) shall be designed and installed in accordance with Landlord's and Tenant's mutual written agreement at the time this First Refusal Right is exercised by Tenant, subject to the terms of the Third Party Offer Notice for the Offer Space, as applicable.
- (h) **Expiration of First Refusal Right.** If Tenant fails, or otherwise declines, to duly and timely exercise the First Refusal Right as and when required herein, then, in any such event, the First Refusal Right shall automatically lapse, and be of no further force or effect, and Landlord shall have no further obligation to provide any written notice *(including, without limitation, a Third Party Offer Notice)* to Tenant or otherwise perform any other obligation under this Section 29 with respect to the First Refusal Right and/or the First Refusal Space *(or any portion(s) thereof)*, and Landlord shall be free, at Landlord's option, in Landlord's sole discretion, to lease the First Refusal Space substantially in accordance with the terms of the Third Party Offer Notice. Once all or any portion of the First Refusal Space has been leased by Tenant in accordance with the terms hereof and/or to any other tenant or third party, Tenant's First Refusal Right shall no longer apply to the First Refusal Space (and/or to the applicable portion(s) thereof, as the case may be).
- (i) **Superior Rights.** Notwithstanding any contrary provision contained herein, the First Refusal Right and any and all of Tenant's rights under this Section 29 are and shall be subject and subordinate to: (1) the rights and options of any and all other tenants or occupants (and their respective successors or assigns) and/or any other prospective tenants or occupants (and their respective successors or assigns) in the Building or elsewhere in the Project as of the Lease Date as such rights and/or options exist on the Lease Date, including, without limitation, the rights and options of [***] pursuant to that certain Office Lease Agreement between Landlord and Burns, as tenant, dated as of January 29, 2024; (2) the existing rights and options of any and all other third parties, as such rights and/or options exist on the Lease Date; and (3) Landlord's right to renew or extend the term of the lease of any then-current tenant or occupant of the Offer Space, or any portion(s) thereof, regardless of whether or not such right is expressly specified in the terms such lease (the immediately foregoing items (1), (2), and (3) being collectively and individually referred to herein as, the "**Superior Rights**"), as applicable. Accordingly, Landlord shall not be obligated to give Tenant a Third Party Offer Notice respecting a Third Party Offer prior to or in conjunction with the exercise of any such rights or options in connection with any Superior Rights. Furthermore, Landlord shall have the right to renew or extend the lease of an existing tenant (and/or prospective tenant as of the Lease Date) of all or any portion

of the First Refusal Space without Tenant's First Refusal Right being triggered and, therefore, without Landlord first being required to submit any Third Party Offer Notice to Tenant, and any such lease with any such tenant shall be superior to, but shall not have the effect of terminating, Tenant's rights under this Section 29. Tenant acknowledges and agrees that Landlord may make simultaneous offers to lease all or any portion of the First Refusal Space to Tenant and to any tenant, occupant, or other third party holding Superior Rights, and thus, if the tenant, occupant, or other third party holding such Superior Rights elects to accept such offer from Landlord, then Landlord will not be bound by Landlord's offer to Tenant. This Section 29 shall in no event constitute a covenant or guarantee by Landlord that the First Refusal Space, or any portion thereof, will be available for lease by Tenant at any time.

- (j) **Additional Conditions to the First Refusal Right.** The First Refusal Right granted to Tenant under this Section 29, and any and all other rights granted to Tenant under this Section 29 if any, are is personal to the original named Tenant hereunder as of the Lease Date, and any assignee pursuant to a Permitted Transfer, and in the event of any assignment of this Lease or sublease by Tenant (other than a Permitted Transfer that is an assignment to a Permitted Transferee in accordance with the terms herein), Tenant's First Refusal Right to lease the First Refusal Space shall thenceforth automatically lapse and be void and of no further force or effect, and Landlord shall have no further obligation to provide any written notice (*including, without limitation, a Third Party Offer Notice*) to Tenant or otherwise perform any other obligation under this Section 29 with respect to the First Refusal Right and/or the First Refusal Space (*or any portion(s) thereof*), and Landlord shall be free, at Landlord's option, in Landlord's sole discretion, to lease the First Refusal Space.
- (k) **Parking.** On the date Tenant's lease of the Offer Space commences, Tenant shall be entitled to receive an additional an additional four (4) unreserved parking spaces/permits per one thousand (1,000) rentable square feet of such Offer Space.

30. INTENTIONALLY OMITTED.

31. EARLY OCCUPANCY. If and to the extent permitted by applicable laws, rules, and ordinances, Landlord shall provide Tenant with access to the Premises prior to the earlier of: (i) substantial completion of the Tenant Improvements (as defined in Exhibit D attached hereto and incorporated herein by reference) or (ii) the Commencement Date (as may be modified from time to time) in order to install furniture, fixtures, equipment, cabling, store equipment and personal property and otherwise prepare the Premises for occupancy, which right shall expressly exclude making any structural modifications to the Premises. During any such entry prior to the Commencement Date: (a) Tenant shall comply with all terms and conditions of this Lease, other than the obligation to pay Rent; (b) Tenant shall not interfere with Landlord's completion of the of any Landlord work (if any), as applicable, and/or with the Substantial Completion of the Tenant Improvements; (c) Tenant shall cause its personnel, agents, and contractors to comply with the terms and conditions of Landlord's rules of conduct (which Landlord agrees to furnish to Tenant upon Tenant's written request therefor); and (d) Tenant shall not begin operation of Tenant's business in the Premises. Tenant acknowledges and agrees that Tenant shall be responsible for obtaining any and all applicable permits and inspections relating to any such entry by Tenant.

Tenant further agrees that it shall be responsible for ensuring that its personal property is protected from dust and other debris, and in no event shall Landlord be responsible for any damage to any of Tenant's personal property installed pursuant to this Section 31. During any such early occupancy, subject to the terms of this Section 31, Landlord, at no cost to Tenant or charge to Tenant's consultant's, contractors and subcontractors, shall provide to Tenant and its third-party contractor/subcontractors use of temporary restroom facilities, elevators, loading docks, parking, temporary electricity, water, and related facilities and utilities at the Building as may be reasonably necessary to enable Tenant and its third-party contractor/subcontractors to perform the work described in this Section 31, provided, however, that in no event shall Tenant, or its third-party contractors/subcontractors interfere with the use and enjoyment of the Building by any other tenant therein.

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

[EXECUTION COPY]

This Lease is executed as of the Lease Date.

LANDLORD:

USEF HCG FENTON LLC,
a Delaware limited liability company

By: USEF HCG FENTON VENTURE LLC,
its Sole Member

By: HCG FENTON LLC,
its Administrative Manager

By: HINES FENTON MM LLC,
its Managing Member

By: HINES FENTON ASSOCIATES LP,
its Sole Member

By: HINES INVESTMENT MANAGEMENT HOLDINGS LIMITED PARTNERSHIP,
its General Partner

By: HIMH GP LLC,
its General Partner

By: HINES REAL ESTATE HOLDINGS LIMITED PARTNERSHIP,
its Sole Member

By: JCH INVESTMENTS, INC.,
its General Partner

By: /s/ Paul Zarian
Name: Paul Zarian
Title: Senior Managing Director

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[Landlord's Signature Page to Office Lease Agreement]

[SIGNATURES CONTINUE FROM PREVIOUS PAGE]

TENANT:

HERON THERAPEUTICS, INC.,
a Delaware corporation

By: /s/ Ira Duarte
Name: Ira Duarte
Title: Chief Financial Officer

[Tenant’s Signature Page to Office Lease Agreement]

EXHIBIT A
TO
OFFICE LEASE AGREEMENT
(OUTLINE OF PREMISES)

[***]

EXHIBIT B
TO
OFFICE LEASE AGREEMENT
(DESCRIPTION OF THE LAND)

[]**

EXHIBIT C
TO
OFFICE LEASE AGREEMENT
(ADDITIONAL RENT, TAXES, AND INSURANCE)

[***]

C-1

EXHIBIT D
TO
OFFICE LEASE AGREEMENT
(TENANT IMPROVEMENT ALLOWANCE)

[**]

D-1

EXHIBIT D-1
TO
OFFICE LEASE AGREEMENT
(CONSTRUCTION OF INITIAL LEASEHOLD IMPROVEMENTS)

[**]

EXHIBIT D-2
TO
OFFICE LEASE AGREEMENT

**(DESCRIPTION OF BASE BUILDING CONDITION: CORE AND SHELL OFFICE BUILDING OUTLINE
SPECIFICATIONS)**
[**]

EXHIBIT E
TO
OFFICE LEASE AGREEMENT
(BUILDING RULES AND REGULATIONS)

[***]

EXHIBIT F
TO
OFFICE LEASE AGREEMENT
(FORM OF CONFIRMATION OF COMMENCEMENT DATE)

CONFIRMATION OF COMMENCEMENT DATE

_____, 20__

Re: Office Lease Agreement (the “**Lease**”) dated July ____, 2025, between **USEF HCG FENTON LLC**, a Delaware limited liability company (“**Landlord**”), and **HERON THERAPEUTICS, INC.**, a Delaware corporation (“**Tenant**”). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

Ladies and Gentlemen:

Landlord and Tenant agree as follows:

1. **Condition of Premises.** Landlord has delivered the Premises to Tenant in the condition required under the Lease, and Landlord has performed all of its obligations under the Lease with respect to the Premises (if any), and Tenant has accepted the Premises upon the delivery thereof by Landlord subject to the terms and conditions of the Lease. Furthermore, Tenant acknowledges that the Premises are suitable for the Permitted Use and that the rentable square footage of the Premises is approximately 16,837 rentable square feet, more or less.
2. **Commencement Date.** The Commencement Date of the Lease is _____, 20__.
3. **Expiration Date.** The Term is scheduled to expire on the last day of the ____ full calendar month of the Term, which date is _____, 20__.
4. **Rentable Square Footage.** The rentable square footage of the Premises is _____ rentable square feet.
5. **Contact Person.** Tenant’s contact person in the Premises is:

Attention:
Telephone:
Email:
6. **Ratification.** Tenant hereby ratifies and confirms its obligations under the Lease, and represents and warrants to Landlord that it has no defenses thereto. Additionally, Tenant further confirms and ratifies that, as of the date hereof, (a) the Lease is and remains in good standing and in full force and effect, and (b) Tenant has no claims, counterclaims, set-offs or defenses against Landlord arising out of the Lease or in any way relating thereto or arising out of any other transaction between Landlord and Tenant.
7. **Binding Effect; Governing Law.** Except as modified hereby, the Lease shall remain in full effect and this letter shall be binding upon Landlord and Tenant and their respective successors and assigns. If any

[EXECUTION COPY]

inconsistency exists or arises between the terms of this letter and the terms of the Lease, the terms of this letter shall prevail. This letter shall be governed by the laws of the state in which the Premises are located.

Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us.

Sincerely,

LANDLORD:

USEF HCG FENTON LLC,
a Delaware limited liability company

By: USEF HCG FENTON VENTURE LLC,
its Sole Member

By: HCG FENTON LLC,
its Administrative Manager

By: HINES FENTON MM LLC,
its Managing Member

By: HINES FENTON ASSOCIATES LP,
its Sole Member

By: HINES INVESTMENT MANAGEMENT HOLDINGS LIMITED PARTNERSHIP,
its General Partner

By: HIMH GP LLC,
its General Partner

By: HINES REAL ESTATE HOLDINGS LIMITED PARTNERSHIP,
its Sole Member

By: JCH INVESTMENTS, INC.,
its General Partner

By:
Name: Paul Zarian
Title: Senior Managing Director

[Tenant's Signature Page Follows]

AGREED AND ACCEPTED:

TENANT:

HERON THERAPEUTICS, INC.,
a Delaware corporation

By:
Name:
Title:

[Tenant’s Signature Page to Confirmation of Commencement Date]

EXHIBIT G
TO
OFFICE LEASE AGREEMENT
(RENEWAL OPTION)

[**]

G-1

EXHIBIT H
TO
OFFICE LEASE AGREEMENT
(INTENTIONALLY OMITTED)

H-1

EXHIBIT I
TO
OFFICE LEASE AGREEMENT
(USE RESTRICTIONS)

[**]

EXHIBIT J
TO
OFFICE LEASE AGREEMENT
(FORM MEMORANDUM OF LEASE)

Prepared by and after recording return to:

Moore & Van Allen, PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

MEMORANDUM OF LEASE

by and between

USEF HCG FENTON LLC,
a Delaware limited liability company
(as “*Landlord*”)

and

HERON THERAPEUTICS, INC.,
a Delaware corporation
(as “*Tenant*”)

dated as of _____, 2025

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this “Memorandum”) is made as of the _____ day of _____, 202__, by and between USEF HCG FENTON LLC, a Delaware limited liability company (“Landlord”), and HERON THERAPEUTICS, INC., a Delaware corporation (“Tenant”).

WITNESSETH:

WHEREAS, Landlord is the owner of that certain real property located in Cary, North Carolina, as more fully described on Exhibit A attached hereto and made a part hereof (the “Property”); and

WHEREAS, Landlord and Tenant have entered into that certain Office Lease Agreement, dated as of August _____, 2025 (the “Lease”), for the lease of that certain space known as Suite 300, containing approximately 16,837 rentable square feet, more or less (the “Premises”), located on the third (3rd) floor of that certain building located at or near 25 Fenton Main Street, Cary, North Carolina 27511, on terms more fully set forth therein; and

WHEREAS, the parties hereto desire to execute and record a memorandum of the Lease as set forth in this Memorandum.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

- 1. TENANT. The name of Tenant is HERON THERAPEUTICS, INC., a Delaware corporation.
- 2. LANDLORD. The name of Landlord is USEF HCG FENTON LLC, a Delaware limited liability company.
- 3. ADDRESSES.

i. Tenant’s address is: Prior to Commencement Date:
Heron Therapeutics, Inc.
100 Regency Forest Drive, Suite 300
Cary, NC 27518
Attention: Melissa Jarel
After Commencement Date:
Heron Therapeutics, Inc.
25 Fenton Main Street
Cary, North Carolina 27511, Suite 300
Attention: Melissa Jarel

ii. Landlord’s address is: USEF HCG FENTON LLC
c/o Hines Interests Limited Partnership
201 Fenton Gateway Drive, Suite 10
Cary, NC 27511
Attn: Paul Zarian
With required copies to:
USEF HCG FENTON LLC
383 17th Street, Suite 100
Atlanta, Georgia 30363
Attn: Fenton Asset Manager
J-3

and

USEF HCG FENTON LLC
c/o Hines Interests Limited Partnership
201 Fenton Gateway Drive, Suite 10
Cary, NC 27511
Attn: Robert Canepa

4. **DATE OF LEASE.** The Lease is dated effective as of August _____, 2025 (the "**Lease Date**").
5. **PREMISES; DESCRIPTION OF PROPERTY.** The Premises consists of that certain space known as Suite 300, containing approximately 16,837 rentable square feet, more or less (the "**Premises**"), located on the third (3rd) floor of that certain building located at or near 25 Fenton Main Street, Cary, North Carolina 27511. The Property on which the Premises is located is more fully described on **Exhibit A** attached hereto and made a part hereof by reference.
6. **TERM.** The term of the Lease shall be for a maximum of one hundred eleven (111) full calendar months, commencing on the Commencement Date (as defined in the Lease) and ending at 5:00 p.m. local time on the last day of the one hundred eleventh (111th) full calendar month following the Commencement Date, subject to adjustment and earlier termination as provided in the Lease (the "**Initial Term**"), and subject to Tenant's option to extend the Initial Term of the Lease for up to one (1) additional period of eighty-four (84) full consecutive calendar months, commencing immediately after the expiration of the Initial Term, subject to and upon the terms of the Lease.
7. **INCORPORATION BY REFERENCE; CONFLICTS.** All provisions of the Lease are hereby incorporated herein by reference. To the extent that any of the terms hereof conflict with the terms of the Lease, the terms of the Lease shall control. The foregoing recitals are hereby incorporated herein by reference as if fully set forth herein and the parties hereto acknowledge and agree that such recitals are true and accurate as of the date hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGE(S)]

[EXECUTION COPY]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed as of the ____ day of _____, 2025.

LANDLORD:

USEF HCG FENTON LLC,
a Delaware limited liability company

By: USEF HCG FENTON VENTURE LLC,
its Sole Member

By: HCG FENTON LLC,
its Administrative Manager

By: HINES FENTON MM LLC,
its Managing Member

By: HINES FENTON ASSOCIATES LP,
its Sole Member

By: HINES INVESTMENT MANAGEMENT HOLDINGS LIMITED PARTNERSHIP,
its General Partner

By: HIMH GP LLC,
its General Partner

By: HINES REAL ESTATE HOLDINGS LIMITED PARTNERSHIP,
its Sole Member

By: JCH INVESTMENTS, INC.,
its General Partner

By:
Name: Paul Zarian
Title: Senior Managing Director

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that **PAUL ZARIAN**, as the *Senior Managing Director* of JCH INVESTMENTS, INC., as the *General Partner* of HINES REAL ESTATE HOLDINGS LIMITED PARTNERSHIP, as the *Sole Member* of HIMH GP LLC, as the *General Partner* of HINES INVESTMENT MANAGEMENT HOLDINGS LIMITED PARTNERSHIP, as the *General Partner* of HINES FENTON ASSOCIATES LP, as the *Sole Member* of HINES FENTON MM LLC, as the *Managing Member* of HCG FENTON LLC, as the *Administrative Manager* of USEF HCG FENTON VENTURE LLC, as the *Sole Member* of **USEF HCG FENTON LLC, a Delaware limited liability company**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this ____ day of _____, 2025.

Signature of Notary Public
Printed Name: _____
My Commission Expires: _____

[NOTARIAL SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[EXECUTION COPY]

TENANT:

HERON THERAPEUTICS, INC.,
a Delaware corporation

By:
Name:
Title:

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that _____, as the _____ of **HERON THERAPEUTICS, INC.,** a Delaware corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said corporation

Witness my hand and official stamp or seal, this ____ day of _____, 2025.

Signature of Notary Public
Printed Name: _____
My Commission Expires: _____

[NOTARIAL SEAL]

[EXECUTION COPY]

EXHIBIT A
TO
MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF THE PROPERTY

[***]

J-7

EXHIBIT K
TO
OFFICE LEASE AGREEMENT
(FORM CURRENT MORTGAGEE SNDA)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**This instrument was prepared by and
when recorded should be returned to:**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the ____ day of _____, 20__, by and among **HERON THERAPEUTICS, INC.**, a Delaware corporation (“**Tenant**”) and **NEW YORK LIFE INSURANCE COMPANY**, a New York mutual insurance company (“**Lender**”), the principal address of which is 51 Madison Avenue, New York, New York 10010, and **USEF HCG FENTON LLC**, a Delaware limited liability company (“**Borrower**” or “**Landlord**”).

RECITALS:

A. Lender has agreed to make a mortgage loan (the “**Loan**”) to Borrower in the amount of \$[***] to be secured by, among other things, a deed of trust (and together with any modification, reinstatement, extension, renewal, supplement, consolidation or replacement of such deed of trust, any advance or re-advance with interest thereon and any other deed of trust on the property encumbered by such deed of trust that may hereafter be held by

Lender, collectively, (the "**Mortgage**") on the real property legally described in **Exhibit A** attached hereto (the "**Premises**");

B. Tenant is the present tenant under an Office Lease Agreement dated August _____ 2025, between Landlord and Tenant, demising a portion of the Premises (said lease and all amendments now or hereafter executed with respect thereto, collectively, the "**Lease**");

C. The Loan terms require that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Mortgage and that Tenant attorn to Lender; and

D. In return, pursuant to, and subject to this Agreement, Lender is agreeable to not disturbing Tenant's possession of the portion of the Premises demised by the Lease (the "**Demised Premises**"), so long as Tenant is not in default under the Lease, beyond any applicable notice and cure period set forth in the Lease.

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

AGREEMENTS:

1. **SUBORDINATION**. The Lease, and the rights of Tenant in, to and under the Lease and the Demised Premises are hereby subjected and subordinated to the lien of the Mortgage.

2. **TENANT NOT TO BE DISTURBED**. In the event of foreclosure of the Mortgage or upon a sale of the Premises pursuant to a trustee's power of sale contained therein and provided that Tenant (a) is not in default under the Lease beyond any applicable notice and cure period set forth in the Lease and (b) has not prepaid the rent, except monthly, in advance, as provided by the terms of the Lease, (y) Lender will not join Tenant in the foreclosure proceedings, unless required by law for a valid foreclosure, but in such event, no judgment foreclosing the Lease will be sought and any trustee's sale will be made subject to the Lease and this Agreement and (z) Lender will not disturb the use and occupancy of Tenant under the Lease.

3. **TENANT TO ATTORN TO LENDER**.

- (a) In the event of foreclosure of the Mortgage, upon a sale of the Premises pursuant to a trustee's power of sale contained therein or upon a transfer of the Premises by a deed in lieu of foreclosure (each and collectively, the "**Exercise of Remedies**"), then so long as Tenant is not in default under the Lease beyond any applicable notice and cure period set forth in the Lease (other than such default which Lender, in its sole discretion, elects to disregard for the purposes of this sentence), the Lease (subject to Section 4 below) shall continue in full force and effect as a direct lease between the successor owner of the Premises (such successor owner, including Lender, if Lender becomes the successor owner, "**Successor Owner**") and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease.
- (b) Upon any Exercise of Remedies, Tenant shall attorn to and recognize Successor Owner as landlord under the Lease and shall be automatically bound by all of the obligations imposed on tenant by the Lease. Such attornment and recognition shall be self-operative, without the need for any further documentation. Nevertheless, Tenant shall execute and deliver to Successor Owner such further assurances and other documents confirming the foregoing as Successor Owner may reasonably request, including a new lease as set forth in Section 11.
- (c) Tenant waives the provisions (i) contained in the Lease or any other agreement relating thereto and (ii) of any statute or rule of law now or hereafter in effect which, in either case, may give or purport to give it any right or election to terminate or otherwise adversely

affect the Lease and the obligations of Tenant thereunder by reason of any Exercise of Remedies.

4. **LIMITATIONS.** Notwithstanding the foregoing, Successor Owner shall not in any event be:

- (a) liable for any act or omission of any prior landlord (including Landlord);
- (b) obligated to cure any defaults of any prior landlord (including Landlord) which occurred prior to the time that Successor Owner succeeded to the interest of such prior landlord under the Lease;
- (c) subject to any offsets or defenses which Tenant may be entitled to assert against any prior landlord (including Landlord);
- (d) bound by any payment of rent or additional rent by Tenant to any prior landlord (including Landlord) for more than one month in advance;
- (e) bound by any amendment or modification of the Lease made without the written consent of Lender or other Successor Owner; and
- (g) liable or responsible for, or with respect to, the retention, application and/or return to Tenant of any security deposit paid to any prior landlord (including Landlord), whether or not still held by such prior landlord, unless and until Successor Owner has actually received for its own account, as landlord, the full amount of such security deposit.

5. **ACKNOWLEDGMENT OF ASSIGNMENT OF LEASE AND RENT.** Tenant acknowledges that the rent and all other sums due under the Lease (collectively, the “**Rent**”) have been assigned or will be assigned to Lender as security for the Loan. In the event that Lender notifies Tenant of a default under the Mortgage and demands that Tenant pay the Rent to Lender or Lender’s designee, Tenant will honor such demand. By its execution hereof, Borrower expressly consents to the foregoing.

6. **LIMITED LIABILITY.** Tenant acknowledges that in all events, the liability of Lender and Successor Owner shall be limited and restricted to their respective interests in the Premises and shall in no event exceed such interests.

7. **LENDER’S RIGHT TO NOTICE OF DEFAULT AND OPTION TO CURE.** Tenant will give written notice to Lender of any default by Landlord under the Lease (the “**Default Notice**”), by mailing a copy of the Default Notice by certified mail, postage prepaid, addressed as set forth below (or to such other address as may be specified from time to time by Lender to Tenant).

To Lender: NEW YORK LIFE INSURANCE COMPANY
c/o New York Life Real Estate Investors
51 Madison Avenue
New York, New York 10010-1603
Attention: Senior Director – Loan Management
Loan No.: [***]

If a default under the Lease would entitle Tenant to cancel the Lease or abate the Rent, then such cancellation or abatement will not be effective unless Tenant has provided Lender with the Default Notice and the cure period required by this Section. Lender shall have the right, but not the obligation, to cure any default by Landlord under the Lease by the later of (a) the expiration of the cure period applicable to Landlord and (b) thirty (30) days after Lender’s receipt of the Default Notice. However, if Lender cannot reasonably remedy a non-monetary default without obtaining possession of the Premises, then provided that Lender promptly advises Tenant of its intention to cure the default and promptly and diligently prosecutes

[EXECUTION COPY]

the necessary proceedings to secure such possession, Lender shall have a reasonable period of time after it obtains possession of the Premises to cure such default.

8. **SUCCESSORS AND ASSIGNS.** The provisions of this Agreement are binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties to this Agreement.

9. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Agreement may execute this Agreement by signing any such counterpart.

10. **GOVERNING LAW.** This Agreement shall be construed and enforced according to the law of the state in which the Premises are located, other than such law with respect to conflicts of law.

11. **NEW LEASE.** Upon an Exercise of Remedies, at the request of Successor Owner, Tenant will enter into a new lease of the Premises with Successor Owner upon the same terms and conditions as the Lease, which new lease shall cover any unexpired term of the Lease existing prior to the Exercise of Remedies.

12. **CONFLICT.** This Agreement supersedes any inconsistent provisions of the Lease, and may not be amended or modified except by an agreement in writing executed by all parties to this Agreement.

13. **NO MODIFICATION.** Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Mortgage, except as specifically set forth herein.

14. **NON-DISTURBANCE.** Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

15. **MISCELLANEOUS.** Time is of the essence with respect to all obligations under this Agreement. This Agreement may be modified only by an instrument in writing executed by the party against whom enforcement is sought. Any waivers granted hereunder must be in writing. This Agreement contains the entire agreement between Lender and Tenant relating to the subject matter hereof and supersedes entirely any and all prior written or oral agreements with respect thereto. The unenforceability or invalidity of any provision of this Agreement as to any party or circumstance shall not render that provision unenforceable or invalid as to any other party or circumstance and all provisions hereof, in all other respects, shall remain valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed these presents, under seal, as of the day and year first above written.

[SIGNATURE PAGES TO FOLLOW]

TENANT:

HERON THERAPEUTICS, INC.,
a Delaware corporation

By: _____
(Signature)

(Printed Name of Signatory)

Its:

(Title)

[Corporate Seal]

____ County,
State of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

name(s) of principal(s)

Date: _____

(official signature of Notary)

_____, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: _____

LENDER:

NEW YORK LIFE INSURANCE COMPANY,
a New York mutual insurance company

By: _____
(Signature)

(Printed Name)

Its:

(Title)

[SEAL]

_____ County, State of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

name(s) of principal(s)

Date: _____

(official signature of Notary)

_____, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: _____

[EXECUTION COPY]

The terms of the above Agreement are hereby consented, agreed to and acknowledged.

BORROWER:

USEF HCG FENTON LLC,
a Delaware limited liability company

By: USEF HCG FENTON VENTURE LLC,
its Sole Member

By: HCG FENTON LLC,
its Administrative Manager

By: HINES FENTON MM LLC,
its Managing Member

By: HINES FENTON ASSOCIATES LP,
its Sole Member

By: HINES INVESTMENT MANAGEMENT HOLDINGS LIMITED PARTNERSHIP,
its General Partner

By: HIMH GP LLC,
its General Partner

By: HINES REAL ESTATE HOLDINGS LIMITED PARTNERSHIP,
its Sole Member

By: JCH INVESTMENTS, INC.,
its General Partner

By: _____[SEAL]

Name: Paul Zarian

Title: Senior Managing Director

[EXECUTION COPY]

_____ County,
State of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

name(s) of principal(s)

Date: _____

(official signature of Notary)

_____, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: _____

EXHIBIT A
TO
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

(DESCRIPTION OF REAL PROPERTY)

[**]

CERTAIN INFORMATION IN THIS EXHIBIT HAS BEEN EXCLUDED IN ACCORDANCE WITH ITEM 601(B)(10) OF REGULATION S-K BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE OF INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. REDACTIONS ARE MARKED [*].**

**AMENDMENT NO. 6
TO
CO-PROMOTION AGREEMENT**

This Amendment No. 6 to the Co-Promotion Agreement (this “*Amendment*”) is made and entered into as of August 15, 2025 (the “*Amendment Effective Date*”), by and between Heron Therapeutics, Inc., a Delaware corporation (“*Heron*”) and Crosslink Network, LLC, a Georgia limited liability company (“*Co-Promoter*”). Heron and Co-Promoter may each be referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties entered into and are the current parties to that certain Co-Promotion Agreement, with an effective date of January 5, 2024, as amended (collectively, 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. Exhibit D, Section 3(a)(i)(1)(A). Section 3(a)(i)(1)(A) within Exhibit D of the Agreement is hereby deleted in its entirety and replaced with the following:
[***]

2. Exhibit D, Section 3(b). Section 3(b) within Exhibit D of the Agreement is hereby deleted in its entirety and replaced with the following:
[***]

3. 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.

HERON THERAPEUTICS, INC.

/s/ Craig Collard

Name: Craig Collard

Title: Chief Executive Officer

CROSSLINK NETWORK, LLC

/s/ Richard Haury

Name: Richard Haury

Title: SrVP/General Counsel

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: November 4, 2025

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: November 4, 2025

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 September 30, 2025 (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: November 4, 2025

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.
