

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **April 17, 2025**

Channel Therapeutics Corporation
(Exact name of registrant as specified in its charter)

Nevada (State or other jurisdiction of incorporation)	001-41964 (Commission File Number)	86-3335449 (IRS Employer Identification No.)
4400 Route 9 South, Suite 1000 Freehold, NJ (Address of registrant's principal executive office)		07728 (Zip code)

Registrant's telephone number, including area code: **(877) 265-8266**

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

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

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

Emerging growth company ☒

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

Item 1.01. Entry into a Material Definitive Agreement

Merger Agreement

On April 16, 2025, Channel Therapeutics Corporation, a Nevada corporation (“Channel”), CHRO Merger Sub Inc., a Delaware corporation and wholly owned subsidiary of Channel (the “Merger Sub”), and LNHC, Inc., a Delaware corporation (“LNHC”), and solely for the purposes of Article III thereof, Ligand Pharmaceuticals Incorporated, a Delaware corporation and the parent of LNHC (“Ligand”) entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into LNHC, with LNHC continuing as a wholly-owned subsidiary of Channel and the surviving corporation of the merger (the “Merger”). The Merger is intended to qualify for federal income tax purposes as a tax-free reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), or, in the event that the former stockholders of LNHC and certain other persons are in “control” of Channel immediately after the Merger (within the meaning of Section 368(c) of the Code), the Merger is also intended to qualify as a non-taxable exchange of shares of LNHC capital stock for Channel common stock, par value \$0.0001 per share (the “Common Stock”), within the meaning of Section 351(a) of the Code.

Subject to the terms and conditions of the Merger Agreement, at the effective time of the Merger (the “Effective Time”), each then outstanding share of LNHC capital stock will be converted into the right to receive a number of shares of Series A Convertible Preferred Stock, par value \$0.0001 per share (the “Series A Preferred Stock”) of Channel (subject to the payment of cash in lieu of fractional shares) calculated in accordance with the Merger Agreement (the ratio of such conversion, the “Exchange Ratio”). The Exchange Ratio represents the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock that will be received for each LNHC share outstanding immediately prior to the Merger. It is calculated by dividing the shares of Common Stock (derived from the post-closing shares of Common Stock and the LNHC allocation percentage based on the relative valuations of \$67 million for LNHC and \$15 million for Channel) by the total number of LNHC shares outstanding.

Based on current capitalization, upon the closing of the Merger, after giving effect to the PIPE Financing (as defined below), on a pro forma basis and based upon the number of shares of Common Stock expected to be issued in the Merger, Channel securityholders as of immediately prior to the Merger are expected to own approximately 7.7% of the outstanding shares of capital stock of Channel, Ligand, including its participation in the PIPE Financing, is expected to own approximately 55.1% of the outstanding shares of capital stock of Channel, and the other PIPE Investors (as defined below) are expected to own approximately 37.2% of the outstanding shares of capital stock of Channel, in each case, on a fully-diluted basis, calculated using the treasury stock method, subject to certain assumptions, including, but not limited to, a valuation for LNHC equal to \$67 million and a valuation for Channel equal to \$15 million, in each case as further described in the Merger Agreement. For purposes of calculating the Exchange Ratio, shares of Common Stock underlying Channel stock options outstanding as of immediately prior to the closing of the Merger with an exercise price of less than the volume weighted average closing trading price of a share of Common Stock on The NYSE American LLC (the “NYSE American”) for the five consecutive trading days ending five trading days immediately prior to the closing of the Merger will be deemed to be outstanding, and, such shares will be calculated using the treasury stock method.

Each of Channel and LNHC has agreed to customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants relating to (i) obtaining the requisite approvals of their respective stockholders, (ii) non-solicitation of alternative acquisition proposals, (iii) the conduct of their respective businesses during the period between the date of signing the Merger Agreement and the closing of the Merger and (iv) Channel using its commercially reasonable efforts to maintain the existing listing of the Common Stock on the NYSE American and Channel causing the shares of Common Stock issuable upon conversion of the Series A Preferred Stock to be issued in connection with the Merger to be approved for listing on the NYSE American at or prior to the Effective Time.

The consummation of the Merger is subject to certain closing conditions, including, among other things, (i) the Merger Agreement having been approved by means of written consents by the requisite stockholders of LNHC and Channel, (ii) the issuance of the Common Stock and the amendment to Channel’s articles of incorporation to change the name of Channel to “Pelthos Therapeutics Inc.” having been approved and ratified, respectively, by means of the written consent by the requisite consent of the Channel stockholders under applicable law and the NYSE American regulations, (iii) no governmental entity of competent jurisdiction having enacted, issued, promulgated, enforced or entered any order, executive order, stay, decree, judgment or injunction (preliminary or permanent) or statute, rule or regulation which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger, (iv) the approval of the listing of the additional shares of Common Stock issuable upon conversion of the Series A Preferred Stock on the NYSE American having been obtained and the shares of Common Stock issuable upon conversion of the Series A Preferred Stock to be issued in the Merger pursuant to the Merger Agreement having been approved for listing, subject to official notice of issuance, on the NYSE American; (v) entry into the Royalty Agreements (as defined in therein), and (vi) the PIPE Financing having been consummated or being consummated concurrently with the closing of the Merger or immediately before the closing of the Merger in accordance with the terms of the Securities Purchase Agreement (as defined below). Each party’s obligation to consummate the Merger is also subject to other specified customary conditions, including the representations and warranties of the other party being true and correct as of the date of the Merger Agreement and as of the closing date of the Merger, generally subject to an overall material adverse effect qualification, the performance in all material respects by the other party of its obligations under the Merger Agreement required to be performed on or prior to the date of the closing of the Merger, and the absence of any material adverse effect affecting the other party that is continuing on the closing date.

The Merger Agreement contains certain termination rights of each of Channel and LNHC, including, subject to compliance with the applicable terms of the Merger Agreement, the right of each party to terminate the Merger Agreement if the other party exercises its “fiduciary out” prior to receiving the requisite stockholder consent. All fees and expenses incurred in connection with the Merger Agreement and the other transactions contemplated by the Merger Agreement will be paid by the party incurring such expenses, whether or not the Merger is consummated. Notwithstanding the foregoing, Channel and LNHC will equally share (i) all fees and expenses of the exchange agent and (ii) all fees and expenses, other than accountants’ and attorneys’ fees, incurred with respect to the printing filing and mailing of an information statement and any amendments or supplements thereto.

Immediately following the Merger, the board of directors of the combined company will consist of Mr. Scott Plesha, Mr. Peter Greenleaf, Mr. Matt Pauls, Mr. Todd Davis, Mr. Richard Baxter, Dr. Richard Malamut and Mr. Ezra Friedberg.

Immediately following the Merger, the executive management team of the combined company is expected to consist of members of the LNHC and CHRO executive management teams prior to the Merger, including Scott Plesha as Chief Executive Officer and Francis Knuettel II as Chief Financial Officer.

Securities Purchase Agreement

On April 16, 2025, Channel entered into a securities purchase agreement (the “Securities Purchase Agreement” and together with the Merger Agreement, the “Transaction Agreements”) with LNHC, and certain investors, which includes Nomis Bay Ltd (“Nomis Bay”) and Ligand (collectively, the “PIPE Investors”), pursuant to which the PIPE Investors have agreed to subscribe for and purchase in cash an aggregate of approximately 50,100 of shares of Series A Preferred Stock, at a price per share equal to \$1,000 (the “Purchase Price”) (such transaction, the “PIPE Financing” and together with the Merger, the “Transactions”). The PIPE Financing is expected to close immediately prior to the closing of the Merger. The gross proceeds from the PIPE Financing are expected to be approximately \$50.1 million, which amount will include the cancellation of any outstanding amounts under certain bridges notes provided by certain of the PIPE Investors, before paying estimated expenses. The closing of the PIPE Financing is conditioned upon the closing of the Merger, entry into the Royalty Agreements (as defined in the Securities Purchase Agreement), as well as certain other conditions. The Series A Preferred Stock and the shares of Common Stock issuable upon conversion of the Series A Preferred Stock issued in the PIPE Financing will be issued pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), and the resale of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock will be registered pursuant to a resale registration statement (the “Registration Statement”).

Channel also agreed to defend, indemnify and hold harmless the PIPE Investors and their respective stockholders, partners, members, officers, directors, employees, direct or indirect investors, and any of their agents or other representatives against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (including reasonable attorneys' fees) arising out of or relating to: (i) any misrepresentation or breach of any representation or warranty made by Channel or its subsidiaries, (ii) any breach of any covenant, agreement or obligation owed by Channel or its subsidiaries, or (iii) any cause of action, suit, proceeding or claim brought by a third party, including any derivative action, that arises out of or relates to (A) the execution, delivery, performance or enforcement of the Purchase Agreement and related transaction documents, (B) any transaction financed or to be financed in whole or in part with the proceeds of the PIPE Financing, or (C) the status of such PIPE Investor either as an investor in Channel pursuant to the transactions contemplated by the Purchase Agreement or as a party to the Purchase Agreement and related transaction documents.

Lock-Up Agreements

Concurrently with the execution of the Securities Purchase Agreement, each of (i) Channel's and LNHC's executive officers and directors, (ii) certain investors who have entered the Securities Purchase Agreement, (iii) a certain investment company and (iv) Nomis Bay and Ligand, have entered into lock-up agreements (collectively, the "Lock-Up Agreements"), pursuant to which such parties have agreed not to, except in limited circumstances, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or Preferred Stock, from the closing of the Merger until December 31, 2025, subject to certain exceptions set forth in each of the Lock-Up Agreements.

Registration Rights Agreement

At the closing of the PIPE Financing, Channel will enter into a registration rights agreement (the "Registration Rights Agreement") with LNHC and the PIPE Investors pursuant to which the PIPE Investors will be entitled to certain resale registration rights with respect to shares of Common Stock underlying the Series A Preferred Stock issued to the PIPE Investors. Pursuant to the Registration Rights Agreement, Channel will be required to prepare and file the Registration Statement with the Securities and Exchange Commission (the "SEC") within the later of the 30th calendar day after the closing date of the PIPE Financing and 15 calendar days after the due date (which shall include any extensions granted by a timely-filed Form 12b-25) of the next periodic report required pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Channel shall use its reasonable best efforts to cause the registration statement to be declared effective by the SEC the earlier of the (A) 120th calendar day after the closing date of the PIPE Financing (or the 150th calendar day if subject to a full review by the SEC) and the (B) 5th business day after the date Channel is notified (orally or in writing, whichever is earlier) by the SEC that such applicable registration statement will not be reviewed or will not be subject to further review.

Stockholder Approval of Transaction

In connection with the Transaction, Channel obtained the written consent of the majority of its stockholders on April 16, 2025, to, among other things, (i) adopt the Merger Agreement and approve the Merger and the other transactions contemplated by the Merger Agreement, (ii) authorize, adopt and approve the Certificate of Designations of Rights and Preferences (the "Certificate of Designations") of the Series A Preferred Stock, (iii) approve the PIPE Financing, (iv) authorize the preparation, execution and filing of one or more registration statements with the SEC to register for resale the maximum number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock issuable to the PIPE Investors pursuant to the Securities Purchase Agreement, (v) authorize, adopt and approve in all respects the issuances of shares of the Series A Preferred Stock to be paid by Channel in the Merger and the Series A Preferred Stock to be issued in connection with the PIPE Financing pursuant to the terms of the Merger Agreement and the Securities Purchase Agreement, (vi) amend the articles of incorporation of Channel to change the name of Channel to "Pelthos Therapeutics Inc.", (vii) authorize, adopt and approve an amended and restated Channel Therapeutics Corporation 2023 Equity Incentive Plan, (viii) approve, if necessary, a grant of discretionary authority to the board of directors of Channel (the "Board") to, without further stockholder approval, effect a reverse stock split of Channel's and outstanding Common Stock within a range of between 1-for-5 and 1-for-25 (the "Reverse Stock Split") by filing an amendment to Channel's articles of incorporation, as amended, with the Secretary of State of the State of Nevada, with the final determination of whether to proceed, the effective time, and the exact ratio of the Reverse Stock Split to be determined by the Board ((i) through (viii) are collectively referred to herein as the "Proposals"). Each of the Proposals was approved by Channel stockholders owning an aggregate of 3,996,296 shares of Common Stock, which represents 65.47% of the total issued and outstanding shares of Common Stock as of April 16, 2025.

Certificate of Designations

The following description of the principal terms of the Series A Preferred Stock, which are set forth in a Certificate of Designations.

General. Pursuant to the Series A Certificate of Designations, the Company will authorize 150,000 shares of Series A Preferred Stock and each share of Series A Preferred Stock shall have a stated value of \$1,000 per share. At the consummation of the PIPE Financing, we will issue 50,100 shares of our Series A Preferred Stock. When issued, the Series A Preferred Stock will be fully paid and non-assessable.

Dividends. The holders of Series A Preferred Stock will be entitled to dividends, on an as-if converted basis, equal to and in the same form as dividends actually paid on shares of Common Stock, when and if actually paid.

Conversion at Option of Holder. Each holder of Series A Preferred Stock may convert all, or any part, of the outstanding Series A Preferred Stock, at any time at such holder's option, into shares of our Common Stock at the fixed "Conversion Price" of \$1.00, which is subject to proportional adjustment upon the occurrence of any stock split, stock dividend, stock combination and/or similar transactions.

Voluntary Adjustment Right. Subject to the rules and regulations of the NYSE American, we have the right, at any time, with the written consent of certain holders of the Series A Preferred Stock, to lower the fixed conversion price to any amount and for any period of time deemed appropriate by our board of directors.

Purchase Rights. If at any time the Company grants, issues or sells any options, convertible securities, or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "Purchase Rights"), then each holder of Series A Preferred Stock will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Series A Preferred Stock held by such holder immediately prior to the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights; subject to certain limitations on beneficial ownership.

Voting Rights. The holders of the Series A Preferred Stock shall have the right to vote together with the holders of Common Stock, as a single class, in an amount equal to the voting power of such aggregate number of shares of Common Stock then issuable upon conversion of such shares of Series A Preferred Stock, subject to certain limitations on beneficial ownership (or as otherwise required by applicable law).

The preceding summaries of the Merger Agreement, the Securities Purchase Agreement, the Lock-Up Agreements, the Certificate of Designations, the form of Registration Rights Agreement, the Nomis Bay Bridge Note, and the Funding Side Letter do not purport to be complete and are qualified in their entirety by reference to the Merger Agreement, the Securities Purchase Agreement, the forms of Lock-Up Agreements, the form of Certificate of Designations, the form of Registration Rights Agreement, the Nomis Bay Bridge Note, and the Funding Side Letter which are filed as Exhibits 2.1, 10.1, 10.2, 10.3, 10.4, 10.5, 3.1, 10.6, 10.7 and 10.8 respectively, to this Current Report on Form 8-K and which are incorporated herein by reference. The Merger Agreement, the Securities Purchase Agreement, the form of Lock-Up Agreements, the form of Certificate of Designations, and the form of Registration Rights Agreement have been attached as exhibits to this Current Report on Form 8-K to provide investors and securityholders with information regarding their respective terms. They are not intended to provide any other factual information about LNHC or Channel or to modify or supplement any factual disclosures about Channel in its public reports filed with the SEC. The Transaction Agreements include representations, warranties and covenants of Channel, LNHC and Merger Sub made solely for the purpose of the Transaction Agreements and solely for the benefit of the parties thereto in connection with the negotiated terms of the Transaction Agreements. Investors should not rely on the representations, warranties and covenants in the Transaction Agreements or any descriptions thereof as characterizations of the actual state of facts or conditions of Channel, LNHC or any of their respective affiliates. Moreover, certain of those representations and warranties may be subject to a contractual standard of materiality different from those generally applicable to SEC filings or may have been used for purposes of allocating risk among the parties to the Transaction Agreements, rather than establishing matters of fact.

Item 3.02. Unregistered Sales of Equity Securities.

The securities to be issued in the Merger and sold to the PIPE Investors will not be registered under the Securities Act, and will be issued and sold in reliance on the exemption from registration requirements thereof provided by Section 4(a)(2) of the Securities Act as a transaction by an issuer not involving a public offering. The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 4.01. Changes in Registrant's Certifying Accountant.

Based on information provided by Marcum LLP ("Marcum"), the independent registered public accounting firm of Channel, on November 1, 2024, CBIZ CPAs P.C. ("CBIZ") acquired the attest business of Marcum, and substantially all of the partners and staff that provided attestation services with Marcum joined CBIZ. On April 11, 2025, Channel was notified by Marcum that Marcum resigned as Channel's independent registered public accounting firm. On April 11, 2025, with the approval of Channel's Board of Directors, CBIZ was engaged as Channel's independent registered public accounting firm.

Marcum's report on Channel's consolidated financial statements for the fiscal years ended December 31, 2024 and 2023 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles.

During the fiscal years ended December 31, 2024 and 2023, and through April 11, 2025, the date of Marcum's resignation, there were (a) no disagreements (as defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) with Marcum on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to Marcum's satisfaction, would have caused Marcum to make reference to the subject matter of the disagreement in connection with its reports on Channel's consolidated financial statements for such periods and (b) no "reportable events" (as defined in Item 304(a)(1)(v) of Regulation S-K and the related instructions), except for the previously disclosed identification of material weaknesses in Channel's internal control over financial reporting, including: (i) Channel lacked the necessary corporate accounting resources to maintain adequate segregation of duties. Such a lack of segregation of duties is typical in a company with limited resources; (ii) Channel lacked the ability to provide multiple levels of review in connection with the financial reporting process, which means it cannot be ensured that Channel is meeting certain financial reporting and transaction processing controls standards and (iii) Channel lacked the necessary internal IT infrastructure to ensure proper IT general controls, additionally, Channel is reliant on third-party software for its financial systems and cannot ensure there are no vulnerabilities in these systems.

Prior to engaging CBIZ, Channel did not consult with CBIZ regarding the application of accounting principles to a specific completed or contemplated transaction or regarding the type of audit opinions that might be rendered by CBIZ on Channel's consolidated financial statements, and CBIZ did not provide any written or oral advice that was an important factor considered by Channel in reaching a decision as to any such accounting, auditing, or financial reporting issue.

Channel provided Marcum with a copy of this Current Report on Form 8-K prior to its filing with the SEC and requested that Marcum furnish Channel with a letter addressed to the SEC, pursuant to Item 304(a)(3) of Regulation S-K, stating whether it agrees with the above statements and, if it does not agree, the respects in which it does not agree. A copy of the letter, dated April 17, 2025, is filed as Exhibit 16.1 (which is incorporated by reference herein) to this Current Report on Form 8-K.

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

The disclosure set forth above in the paragraph titled, "*Stockholder Approval of Transaction*" in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.07. Channel intends to file with the SEC, and mail to its stockholders, an information statement on Schedule 14C describing the Merger Agreement and the transactions contemplated thereby.

Item 7.01. Regulation FD Disclosure

Attached hereto as Exhibit 99.1 and incorporated by reference into this Item 7.01 is an investor presentation used by Channel and LNHC in connection with the PIPE Financing.

The information disclosed under this Item 7.01, including Exhibit 99.1 hereto, is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be incorporated by reference into any registration statement or other document pursuant to the Securities Act, except as expressly set forth in such filing.

Item 8.01. Other Events.

On April 17, 2025, Channel and LNHC issued a joint press release announcing the execution of the Merger Agreement. The press release is filed as Exhibit 99.2 to this Current Report on Form 8-K and incorporated herein by reference, except that the information contained on the websites referenced in the press release is not incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits:

Exhibit No.	Description
<u>2.1</u>	<u>Agreement and Plan of Merger, dated as of April 16, 2025, by and among Channel Therapeutics Corporation, CHRO Merger Sub Inc., LNHC, Inc. and Ligand Pharmaceuticals Incorporated.</u>
<u>3.1</u>	<u>Form of Certificate of Designations of Rights and Preferences of the Series A Convertible Preferred Stock, to be filed with the Secretary of State of the State of Nevada.</u>
<u>10.1</u>	<u>Securities Purchase Agreement, dated as of April 16, 2025, by and among Channel Therapeutics Corporation, LNHC Inc., and each of the investors thereto.</u>
<u>10.2</u>	<u>Form of Lock-Up Agreement (Channel’s executive officers and directors)</u>
<u>10.3</u>	<u>Form of Lock-Up Agreement (certain investors who have entered the Securities Purchase Agreement)</u>
<u>10.4</u>	<u>Form of Lock-Up Agreement (certain investment company)</u>
<u>10.5</u>	<u>Form of Lock-Up Agreement (Nomis Bay, Ligand and other investors)</u>
<u>10.6</u>	<u>Form of Registration Rights Agreement.</u>
<u>16.1</u>	<u>Marcum Letter dated April 17, 2025.</u>
<u>99.1</u>	<u>PIPE Investor Presentation.</u>
<u>99.2</u>	<u>Press Release, dated April 17, 2025.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K and the exhibits attached hereto contain forward-looking statements (including within the meaning of Section 21E of the Exchange Act and Section 27A of the Securities Act) concerning Channel, LNHC, the combined company, the Transactions, and other matters. These statements may discuss goals, intentions, and expectations as to future plans, trends, events, results of operations or financial condition, or otherwise, based on current beliefs of the management of Channel and LNHC, as well as assumptions made by, and information currently available to, management of Channel and LNHC. Forward-looking statements generally include statements that are speculative in nature and depend upon or refer to future events or conditions, and include words such as “may,” “will,” “should,” “would,” “expect,” “anticipate,” “plan,” “likely,” “believe,” “estimate,” “project,” “intend,” and other similar expressions or the negative or plural of these words, or other similar expressions that are speculative or indicate future events or prospects, although not all forward-looking statements contain these words. Statements that are not historical facts are forward-looking statements. Forward-looking statements include, but are not limited to, expectations regarding the proposed Merger and PIPE Financing; the potential benefits and results of such transactions, including the sufficiency of the combined company’s capital resources; the combined company’s cash runway; the expected timing of the closing of the Transactions; statements regarding the potential of, and expectations regarding, LNHC’s and Channel’s programs, Channel’s belief that the transaction presents an extraordinary opportunity for current shareholders, Channel’s belief the transaction provides the potential for near-term or long-term revenue generation from Zelsuvmi or the expected timing of the commercial launch of Zelsuvmi, the future of its existing NaV1.7 programs and expanded capitalization from strong investors, Channel’s belief that the NaV1.7 inhibitor may offer a better option for post-surgical physical therapy as compared to bupivacaine, Channel’s belief that investors should feel encouraged that Channel has a strong development path towards successfully launching drugs with considerable market opportunities, possible acquisitions of complimentary FDA-approved products, and the listing of the combined company on the NYSE American, the anticipated benefits of the merger between Pelthos and Channel and the combined company’s opportunities, strategy and plans following the merger; and statements by Pelthos’ Chief Executive Officer. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties and are not guarantees of future performance. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation: the limited operating history of each company; the significant net losses incurred since inception; the ability or need to raise additional capital to finance operations; uncertainties related to commercialization or market acceptance of FDA-approved products; the ability to advance product candidates through preclinical and clinical development; the ability to obtain regulatory approval for, and ultimately commercialize, the combined company’s product candidates; the outcome of early clinical trials for product candidates, including the ability of those trials to satisfy relevant governmental or regulatory requirements; the fact that data and results from clinical studies may not necessarily be indicative of future results; limited experience in designing clinical trials and lack of experience in conducting clinical trials; the ability to identify and pivot to other programs, product candidates, or indications that may be more profitable or successful than current product candidates; the substantial competition the combined company may face in discovering, developing, or commercializing products; the negative impacts of the global events on operations, including ongoing and planned clinical trials and ongoing and planned preclinical studies; the ability to attract, hire, and retain skilled executive officers and employees; the ability of Channel, LNHC and the combined company to protect their respective intellectual property and proprietary technologies; reliance on third parties, contract manufacturers, and contract research organizations; the risk that the conditions to the closing of the Transactions are not satisfied; uncertainties as to the timing of the consummation of the Transactions and the ability of each of the parties to consummate the Transactions; risks related to Channel’s continued listing on The NYSE American LLC until closing of the Transactions; risks related to Channel’s and LNHC’s ability to correctly estimate their respective operating expenses and expenses associated with the proposed transaction, as well as uncertainties regarding the impact any delay in the closing would have on the anticipated cash resources of the combined company upon closing and other events and unanticipated spending and costs that could reduce the combined company’s cash resources; the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the Merger Agreement or the PIPE Financing; competitive responses to the Transactions; unexpected costs, charges or expenses resulting from the Transactions; the outcome of any legal proceedings that may be instituted against Channel, LNHC or any of their respective directors or officers related to the Merger Agreement, the PIPE Financing, or the proposed transactions contemplated thereby; the effect of the announcement or pendency of the Transactions on Channel’s and LNHC’s business relationships, operating results and business generally; and legislative, regulatory, political and economic developments and general market conditions. The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in Channel’s most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the SEC, as well as the Schedule 14C information statement to be filed with the SEC by Channel in connection with the Transaction. Channel and LNHC can give no assurance that the conditions to the Transactions will be satisfied. Except as required by applicable law, Channel and LNHC undertake no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

No Offer or Solicitation

This Current Report on Form 8-K is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of any vote in any jurisdiction pursuant to the Transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of the Securities Act. Subject to certain exceptions to be approved by the relevant regulators or certain facts to be ascertained, the public offer will not be made directly or indirectly, in or into any jurisdiction where to do so would constitute a violation of the laws of such jurisdiction, or by use of the mails or by any means or instrumentality (including without limitation, telephone and the internet) of interstate or foreign commerce, or any facility of a national securities exchange, of any such jurisdiction.

Important Additional Information About the Proposed Transactions Will be Filed with the SEC

In connection with the proposed transaction between Channel and LNHC, Channel intends to file relevant materials with the SEC, including an information statement of Channel. CHANNEL URGES INVESTORS AND STOCKHOLDERS TO READ THESE MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE MATERIALS, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT CHANNEL, LNHC, THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and stockholders will be able to obtain free copies of the information statement and other documents filed by Channel with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. In addition, investors and stockholders will be able to obtain free copies of the information statement and other documents filed by Channel with the SEC by contacting Channel at (877) 265-8266 or in writing at Channel Therapeutics Corporation, 4400 Route 9 South, Suite 1000, Freehold, NJ 07728. Investors and stockholders are urged to read the information statement and the other relevant materials when they become available before making any voting or investment decision with respect to the proposed transaction.

SIGNATURES

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

Date: April 17, 2025

Channel Therapeutics Corporation

By: /s/ Francis Knuettel II

Name: Francis Knuettel II

Title: Chief Executive Officer and Chief Financial Officer

AGREEMENT AND PLAN OF MERGER

by and among

CHANNEL THERAPEUTICS CORPORATION,

CHRO MERGER SUB INC.,

LNHC, INC.,

and solely for purposes of Article III,

LIGAND PHARMACEUTICALS INCORPORATED

Dated as of April 16, 2025

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “Agreement”), dated as of April 16, 2025, is entered into by and among Channel Therapeutics Corporation, a Nevada corporation (“Public Company”), CHRO Merger Sub Inc., a Delaware corporation and a wholly-owned subsidiary of Public Company (the “Merger Sub”), LNHC, Inc., a Delaware corporation (“Merger Partner”), and for purposes of Article III hereof, Ligand Pharmaceuticals Incorporated, a Delaware corporation (“Ligand”).

WHEREAS, the board of directors of Public Company (the “Public Company Board”) and the board of directors of Merger Partner (the “Merger Partner Board”) have each (i) determined that the Merger (as defined below) is fair to, and in the best interests of, their respective corporations and stockholders, (ii) approved and declared advisable this Agreement, the Merger and the actions contemplated by this Agreement, including the authorization of a class of Series A Convertible Preferred Stock, \$0.0001 par value per share, of Public Company, as contemplated by the Certificate of Designations (as defined below) (the “Public Company Series A Preferred Stock”), and (iii) determined to recommend that the stockholders of their respective corporations vote to approve such matters as are contemplated by this Agreement, including, in the case of Merger Partner, the adoption of this Agreement and, in the case of Public Company, (A) the approval of the issuance of shares of Public Company Series A Preferred Stock pursuant to this Agreement and the Concurrent Financing (as defined below), in each case pursuant to Sections 710-713 of the NYSE American LLC Company Guide (the “Share Issuances”), and (B) approval, to the extent required under applicable Nevada Revised Statutes (“NRS”) statutes, of the Public Company Charter Amendment (the “Charter Amendment Proposal”) and (C) the adoption of amendments to, or an amendment and restatement of, the Public Company Equity Incentive Plan (as defined below) (the “Equity Incentive Plan Amendment Proposal”);

WHEREAS, the combination of Public Company and Merger Partner shall be effected through a merger (the “Merger”) of Merger Sub with and into Merger Partner in accordance with the terms of this Agreement and the General Corporation Law of the State of Delaware (the “DGCL”), as a result of which Merger Partner will become a wholly-owned subsidiary of Public Company;

WHEREAS, concurrently with the execution and delivery of this Agreement and as a condition and inducement to Public Company’s and Merger Partner’s willingness to enter into this Agreement, each of (i) the officers and directors of the Public Company immediately prior to the Effective Time and listed on Schedule A of the Public Company Disclosure Schedule have entered into a lock-up agreement, substantially in the form attached hereto as Exhibit A-1, (ii) the officers and directors of Merger Partner immediately prior to the Effective Time and listed on Schedule A of the Merger Partner Disclosure Schedule have entered into a lock-up agreement, substantially in the form attached hereto as Exhibit A-2, (iii) certain investors who have entered into the Securities Purchase Agreements (as defined below) in connection with the Concurrent Financing (as defined below) have entered into a lock-up agreement, substantially in the form attached hereto as Exhibit A-3, and (iv) 3i, LP, a Delaware limited partnership (“3i”), has entered into a lock-up agreement, substantially in the form attached hereto as Exhibit A-4 (Exhibits A-1, A-2, A-3 and A-4, collectively, the “Lock-Up Agreements”);

WHEREAS, for United States federal income tax purposes, (i) it is intended that the Merger shall qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), or that the Merger and the Concurrent Financing shall be treated as an integrated transaction that qualifies as an exchange of shares of common stock, par value \$0.01 per share of Merger Partner (“Merger Partner Capital Stock”) and cash for shares of Public Company Series A Preferred Stock within the meaning of Section 351(a) of the Code (the “Intended Tax Treatment”) and (ii) this Agreement shall constitute a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a);

WHEREAS, concurrently with the execution and delivery of this Agreement, certain investors shall have entered into a securities purchase agreement, substantially in the form attached hereto as Exhibit C (the “Securities Purchase Agreement”), representing an aggregate commitment of not less than \$50,000,000, pursuant to which such investors have agreed to purchase the number of shares of Public Company Series A Preferred Stock set forth therein immediately prior to the Effective Time (the “Concurrent Financing”).

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, Public Company, Merger Sub and Merger Partner agree as follows:

ARTICLE I THE MERGER

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

1.2 Closing. Subject to the satisfaction or (to the extent permitted by Law) waiver of the conditions set forth in Article VII, the closing of the Merger (the “Closing”) will take place at 10:00 a.m., Eastern time (or at such other time as Public Company and Merger Partner mutually agree upon, orally or in writing), on a date to be specified by Public Company and Merger Partner (the “Closing Date”), which shall be no later than the second (2nd) Business Day after satisfaction or (to the extent permitted by Law) waiver of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or (to the extent permitted by Law) waiver of such conditions by remote exchange of electronic documents, unless another date or time is agreed to in writing by Public Company and Merger Partner). For the purposes of this Agreement, the term “Business Day” shall mean any day other than a Saturday, Sunday or other day on which commercial banking institutions in New York, New York are required or permitted by Law to be closed or other day on which the Delaware Secretary of State is closed.

1.3 Effects of the Merger. At the Effective Time, (i) Merger Sub shall be merged with and into Merger Partner (Merger Partner as the surviving corporation following the Merger is sometimes referred to herein as the “Surviving Corporation”) and the separate existence of Merger Sub shall cease and (ii) the certificate of incorporation of Merger Partner as in effect as of immediately prior to the Effective Time shall be amended and restated in its entirety to read as set forth on Exhibit B-1, and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein and in accordance with the applicable provisions of the DGCL. In addition, the bylaws of Merger Partner, as in effect immediately prior to the Effective Time, shall be amended and restated to read as set forth on Exhibit B-2, and, as so amended, shall be the bylaws of the Surviving Corporation until thereafter amended as provided therein and in accordance with the applicable provisions of the DGCL. The Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL.

1.4 Directors and Officers of the Surviving Corporation.

(a) The individuals named on Section 1.4(a) of the Merger Partner Disclosure Schedule shall be and constitute all of the directors of the Surviving Corporation as of the Effective Time, each to hold office until his or her respective successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

(b) The individuals named on Section 1.4(b) of the Merger Partner Disclosure Schedule (or such other executive officers of Merger Partner designated by Merger Partner prior to the Effective Time) shall be and constitute all of the officers of the Surviving Corporation as of the Effective Time, each to hold office until his or her respective successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

1.5 Public Company Matters.

(a) Board of Directors. Public Company shall take such actions as may be reasonably necessary (including, to the extent necessary, procuring the resignation or removal of any directors on the Public Company Board) so that, immediately after the Effective Time, the number of directors that comprise the full Public Company Board shall be seven (7) and shall consist of (i) four (4) directors selected by Merger Partner that are listed on Section 1.5(a) of the Merger Partner Disclosure Schedule (the “Merger Partner Designees”), (ii) the intended Chief Executive Officer of Public Company following the Closing that is listed on Section 1.5(a) of the Merger Partner Disclosure Schedule, (iii) one (1) director selected by the Public Company Board listed on Section 1.5(a) of the Public Company Disclosure Schedule (the “Public Company Designee”), and (iv) one (1) director selected by Nomis Bay listed on Annex B (the “Nomis Bay Designee”). If any Merger Partner Designee, Public Company Designee or Nomis Bay Designee is unable or unwilling to serve as director of Public Company, the party appointing such Person shall designate a successor.

(b) Officers. Public Company shall take such actions as may be reasonably necessary (including, to the extent necessary, procuring the resignation (to the extent limited to positions held by such officers and not employment) or removal of any officer of Public Company) so that the officers of Merger Partner immediately prior to the Effective Time shall constitute all of the officers of Public Company immediately after the Effective Time (or if such individual is unable or unwilling to serve as an officer of the Public Company Board immediately following the Effective Time, then another individual that is designated by Merger Partner prior to the Effective Time), each having the same title as he or she had as an officer of Merger Partner immediately prior to the Effective Time.

(c) Charter Amendments. Public Company shall, immediately prior to the Concurrent Investment, file the Public Company Charter Amendment and the Certificate of Designations with the Nevada Secretary of State.

**ARTICLE II
CONVERSION OF SECURITIES**

2 . 1 Conversion of Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of Merger Partner Capital Stock or any shares of capital stock of Merger Sub:

(a) Capital Stock of Merger Sub. Each share of the common stock, \$0.001 par value per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) fully paid and nonassessable share of common stock, \$0.01 par value per share, of the Surviving Corporation.

(b) Cancellation of Treasury Stock. All shares of Merger Partner Capital Stock that are held in treasury immediately prior to the Effective Time shall be cancelled and shall cease to exist and no stock of Public Company or other consideration shall be delivered in exchange therefor.

(c) Conversion of Merger Partner Capital Stock. Subject to Section 2.2, each share of Merger Partner Capital Stock, other than shares to be cancelled in accordance with Section 2.1(b), issued and outstanding immediately prior to the Effective Time shall be automatically converted into the right to receive a number of shares of Public Company Series A Preferred Stock equal to the Exchange Ratio. As of the Effective Time, all such shares of Merger Partner Capital Stock shall cease to be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate or non-certificated book entry representing any such shares of Merger Partner Capital Stock shall cease to have any rights with respect thereto, except the right to receive the shares of Public Company Series A Preferred Stock pursuant to this Section 2.1(c) and any cash in lieu of fractional shares of Public Company Series A Preferred Stock to be issued or paid in consideration therefor and any amounts payable upon the surrender of such certificate in accordance with Section 2.2, without interest. For purposes of this Agreement, "Exchange Ratio" means the quotient obtained by dividing (x) the number of Merger Partner Merger Shares by (y) the number of Merger Partner Outstanding Shares, in which:

(i) "Aggregate Valuation" means the sum of (a) the Merger Partner Valuation, plus (b) the Public Company Valuation.

(i i) "Merger Partner Allocation Percentage" the quotient determined by dividing (i) the Merger Partner Valuation by (ii) the Aggregate Valuation.

(i i i) "Merger Partner Merger Shares" means the product determined by multiplying (i) the Post-Closing Public Company Shares by (ii) the Merger Partner Allocation Percentage.

(iv) "Merger Partner Outstanding Shares" means the total number of shares of Merger Partner Capital Stock outstanding immediately prior to the Effective Time, expressed on a fully-diluted and as-converted to Merger Partner Capital Stock basis calculated using the Treasury Stock Method.

(v) "Merger Partner Valuation" means \$67,000,000.

(vi) "Post-Closing Public Company Shares" means the quotient determined by dividing (i) the Public Company Outstanding Shares by (ii) the Public Company Allocation Percentage.

(vii) "Public Company Allocation Percentage" means the quotient determined by dividing (i) the Public Company Valuation by (ii) the Aggregate Valuation.

(viii) "Public Company Closing Price" means the volume weighted average closing trading price of a share of Public Company Common Stock on the NYSE American for the five (5) consecutive trading days ending five (5) trading days immediately prior to the date upon which the Draft Exchange Ratio Schedule is delivered pursuant to Section 6.16(a).

(ix) "Public Company Outstanding Shares" means the total number of shares of Public Company Common Stock that are issued and outstanding immediately prior to the Effective Time, expressed on a fully-diluted and as-converted to Public Company Common Stock basis, calculated using the Treasury Stock Method and assuming, without duplication, the conversion of all Public Company Preferred Stock outstanding as of immediately prior to the Effective Time (on an as-converted to Public Company Common Stock basis). For the avoidance of doubt, (1) no Public Company Stock Options that are (x) unvested and outstanding as of immediately prior to the Effective Time or (y) vested and outstanding as of immediately prior to the Effective Time with an exercise price equal to or greater than the Public Company Closing Price shall be included in the total number of shares of Public Company Common Stock outstanding for purposes of determining the Public Company Outstanding Shares, and (2) other than with respect to Public Company Common Stock underlying vested outstanding Public Company Stock Options and Public Company Warrants with an exercise price less than the Public Company Closing shares of Public Company Common Stock reserved for issuance under the Public Company Stock Plans as of immediately prior to the Effective Time shall not be included in the total number of shares of Public Company Common Stock outstanding for purposes of determining the Public Company Outstanding Shares.

(x) “Public Company Valuation” means \$15,000,000.

(x i) “Treasury Stock Method” means, with respect to Public Company, a calculation that assumes on a pro forma basis that all outstanding, vested and unexercised Public Company Stock Options (as defined below) with an exercise price less than the Public Company Closing Price, are exercised on a cashless basis (i.e., that the proceeds from such exercises are used to repurchase shares of Public Company Common Stock at the Public Company Closing Price, thereby reducing the number of shares outstanding, with the net effect representing the potential dilution from the vesting and exercise of all such Public Company Stock Options). For the avoidance of doubt, the Treasury Stock Method shall exclude entirely any Public Company Stock Options with a per-share exercise price greater than the Public Company Closing Price.

For the avoidance of doubt, neither the proceeds from the Concurrent Financing nor the shares of Public Company Series A Preferred Stock to be issued in connection therewith shall be included in the calculation or determination of the Exchange Ratio or any component thereof. For illustrative purposes only, a sample Exchange Ratio calculation is attached hereto as Annex A.

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

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

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

(a) Exchange Agent. At the Effective Time, Public Company shall deposit with Nevada Agency and Transfer Company or another bank or trust company designated by Public Company and reasonably acceptable to Merger Partner (the “Exchange Agent”), for the benefit of the holders of shares of Merger Partner Capital Stock, for exchange in accordance with this Section 2.2, through the Exchange Agent, (i) certificates or non-certificated book entries representing the shares of Public Company Series A Preferred (such shares of Public Company Series A Preferred Stock, together with any dividends or distributions with respect thereto with a record date after the Effective Time, being hereinafter referred to as the “Exchange Fund”) issuable pursuant to Section 2.1 in exchange for outstanding shares of Merger Partner Capital Stock, (ii) cash in an amount sufficient to make payments for fractional shares required pursuant to Section 2.2(b), and (iii) any dividends or distributions to which holders of non-certificated book entries that, as of immediately prior to the Effective Time, represented outstanding shares of Merger Partner Capital Stock, whose shares were converted pursuant to Section 2.1 into the right to receive shares of Public Company Series A Preferred Stock, may be entitled.

(b) No Fractional Shares. No certificate or scrip representing fractional shares of Public Company Series A Preferred Stock shall be issued, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of Public Company. Notwithstanding any other provision of this Agreement, each holder of shares of Merger Partner Capital Stock converted pursuant to the Merger who would otherwise have been entitled to receive a fraction of a share of Public Company Series A Preferred Stock shall receive, in lieu thereof, cash (without interest and subject to applicable Tax withholding) in an amount equal to such fractional part of a share of Public Company Series A Preferred Stock multiplied by the last reported sale price of Public Company Series A Preferred Stock at the 4:00 p.m., Eastern time, end of regular trading hours on The NYSE American LLC (the “NYSE American”) on the last trading day prior to the Effective Time.

(c) No Further Ownership Rights in Merger Partner Capital Stock. All shares of Public Company Series A Preferred Stock issued in accordance with the terms hereof (including any cash, pursuant to Section 2.2(b), or dividends or other distributions paid) shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to such shares of Merger Partner Capital Stock, and from and after the Effective Time there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Merger Partner Capital Stock that were outstanding immediately prior to the Effective Time.

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

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

(f) Withholding Rights. Each of the Exchange Agent, Public Company and the Surviving Corporation shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to, or contemplated by, this Agreement to any holder of shares of Merger Partner Capital Stock and any other recipient of payments hereunder such amounts as it reasonably determines that it is required to deduct and withhold with respect to the making of such payment under the Code, or any other applicable provision of Law; provided, however, that so long as an Internal Revenue Service (“IRS”) Form W-9 is provided by Ligand, no withholding shall apply on payments to Ligand absent a change in Tax Law after the date hereof requiring otherwise. The applicable withholding agent shall use commercially reasonable efforts to provide prior notice to any holder of shares of Merger Partner Capital Stock of its intent to deduct or withhold Taxes on payments for Merger Partner Capital Stock and shall reasonably cooperate with such holder in obtaining any available exemption or reduction of such withholding. Any amounts so deducted or withheld shall be timely paid over to the appropriate Governmental Entity. To the extent that amounts are so deducted or withheld and paid over to the appropriate Governmental Entity by the Surviving Corporation or Public Company, as the case may be, such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Merger Partner Capital Stock or other recipient of payments hereunder in respect of which such deduction and withholding was made by the Surviving Corporation or Public Company, as the case may be.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF MERGER PARTNER

Except as set forth herein or in the disclosure schedule delivered or made available by Merger Partner to Public Company and Merger Sub on the date of this Agreement (the “Merger Partner Disclosure Schedule”), Ligand and Merger Partner represent and warrant to Public Company and Merger Sub as follows:

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

3.2 Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of Merger Partner consists of 100 shares of Merger Partner Capital Stock. The rights and privileges of each class of Merger Partner’s capital stock are as set forth in Merger Partner’s certificate of incorporation. As of the date of this Agreement, (i) 100 shares of Merger Partner Capital Stock are issued and outstanding, and (ii) 0 shares of Merger Partner Capital Stock are held in the treasury of Merger Partner.

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

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

3.3 Subsidiaries.

(a) A list of all Merger Partner Subsidiaries is set forth on Section 3.3(a) of the Merger Partner Disclosure Schedule. Each Merger Partner Subsidiary is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted, and is duly qualified to do business and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so qualified or in good standing, individually or in the aggregate, that have not had, and are not reasonably likely to have, a Merger Partner Material Adverse Effect on such Merger Partner Subsidiary.

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

3.4 Authority; No Conflict; Required Filings and Consents.

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

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

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

(d) The affirmative vote in favor of the Merger Partner Stockholder Proposal by the sole holder of the vote represented by the outstanding shares of Merger Partner Capital Stock (the “Merger Partner Written Consent”), is the only vote of the holders of any class or series of Merger Partner’s capital stock or other securities necessary for the adoption of this Agreement by Merger Partner and for the consummation by Merger Partner of the other transactions contemplated by this Agreement. There are no bonds, debentures, notes or other indebtedness of Merger Partner having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Merger Partner may vote.

3.5 Financial Statements; Information Provided.

(a) Merger Partner has made available to Public Company correct and complete copies of the Financial Statements. The Financial Statements (i) were prepared in accordance with United States generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods covered thereby (except (x) that the unaudited Financial Statements do not contain footnotes and (y) as may be indicated in the notes to such Financial Statements) and (ii) fairly present in all material respects the financial position of Merger Partner as of the dates thereof, except that the unaudited interim Financial Statements are subject to normal year-end adjustments, that are not expected to be material in amount. For purposes of this Agreement, “Financial Statements” means (A) the unaudited balance sheet as of December 31, 2024 (the “Most Recent Balance Sheet” and such date, the “Most Recent Balance Sheet Date”), and the related unaudited statements of income, changes in stockholders’ equity and cash flows of Merger Partner as for the period then ended, and (B) the audited balance sheet as of December 31, 2023, and the related audited statements of income, changes in stockholders’ equity and cash flows of Merger Partner as for the period then ended. The books of account and other financial records of Merger Partner and each Merger Partner Subsidiary are true and complete in all material respects.

(b) The information to be supplied by or on behalf of Merger Partner for inclusion or incorporation by reference in the Information Statement to be filed by Public Company with respect to the approval of (i) the Share Issuances under the NYSE American rules or applicable NRS provisions, (ii) the Charter Amendment Proposal (clauses (i) and (ii) collectively, the “Required Public Company Stockholder Proposals”) and (iii) the Equity Incentive Plan Amendment Proposal (the “Other Public Company Stockholder Proposal”) and, collectively with any other approvals, the “Required Public Company Stockholder Approvals”), which information shall be deemed to include all material information about or relating to Merger Partner and/or the Merger Partner Stockholder Proposal, shall not, on the date the Information Statement and any amendments or supplements thereto is first filed with the SEC and at the time it is first mailed to stockholders of Public Company, or at any time thereafter up to and including the Effective Time, contain any untrue statement that, at such time and in light of the circumstances under which it shall be made, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made in the Information Statement not false or misleading; or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the Required Public Company Stockholder Approvals that has become false or misleading.

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

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

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

3.8 Taxes.

(a) Each of Merger Partner and each Merger Partner Subsidiary has properly filed all material Tax Returns that it was required to file, and all such Tax Returns are true, correct and complete in all material respects. Each of Merger Partner and each Merger Partner Subsidiary has paid all material Taxes, whether or not shown on any Tax Return, that were due and payable.

(b) Neither Merger Partner nor any Merger Partner Subsidiary is, nor has it ever been, a member of an affiliated group with which it has filed (or been required to file) consolidated, combined, unitary or similar U.S. federal Tax Returns, other than a group of which the common parent is Merger Partner or Ligand. With the exception of customary commercial leases or contracts that are not primarily related to Taxes entered into in the Ordinary Course of Business, Merger Partner and each Merger Partner Subsidiary (i) does not have any material liability under Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of state, local or non-U.S. Law), or as a transferee or successor for any Taxes of any Person other than Merger Partner or Ligand, and (ii) is not a party to or bound by any Tax indemnity, Tax sharing, Tax allocation or similar agreement.

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

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

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

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

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

(h) There are no Liens with respect to Taxes upon any of the assets or properties of Merger Partner or any Merger Partner Subsidiary, other than with respect to Taxes not yet due and payable or being contested in good faith.

(i) Merger Partner will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) adjustments under Section 481 of the Code (or any similar adjustments under any provision of corresponding non-U.S., state or local Tax Laws) for a taxable period (or portion thereof) ending on or prior to the Closing Date, (ii) installment sale or other open transaction disposition made prior to the Closing Date outside the Ordinary Course of Business, or (iii) prepaid amount or deferred revenue received prior to the Closing Date outside the Ordinary Course of Business.

(j) Merger Partner has not participated in any “listed transaction” as defined in Treasury Regulations Section 1.6011-4(b)(2).

(k) Merger Partner (i) is not a party to any joint venture, partnership, or other arrangement that is treated as a partnership for U.S. federal income Tax purposes and (ii) since Merger Partner Incorporation has always been classified as an association taxable as a C corporation for U.S. federal income tax purposes.

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

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

(n) To the knowledge of Merger Partner, neither Merger Partner nor any Merger Partner Subsidiary or any of its Affiliates has taken or agreed to take any action, or has any knowledge of any fact or circumstance, the taking or existence of which, as the case may be, would reasonably be expected to prevent the Merger and the Concurrent Financing from qualifying for the Intended Tax Treatment.

3.9 Owned and Leased Real Properties.

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

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

3.10 Intellectual Property.

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

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

(c) Merger Partner or Merger Partner Subsidiary, as applicable, is the sole and exclusive owner of all Merger Partner Owned Intellectual Property, free and clear of any Liens, other than any joint owners of the Merger Partner Owned Intellectual Property that are listed in Section 3.10(c) of the Merger Partner Disclosure Schedule. None of the Merger Partner Intellectual Property is subject to any orders, decrees or injunctions.

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

(e) To the knowledge of Merger Partner, the operations of Merger Partner and each Merger Partner Subsidiary as currently conducted do not infringe, misappropriate or otherwise violate and have not since Merger Partner Incorporation infringed, misappropriated or otherwise violated the valid and enforceable Intellectual Property rights of any individual or entity in any material respect. To Merger Partner's knowledge, no individual or entity has infringed, misappropriated or otherwise violated the Merger Partner Owned Intellectual Property or any rights under the Merger Partner Intellectual Property that are exclusively licensed to Merger Partner or a Merger Partner Subsidiary in any material respect, and neither Merger Partner nor any Merger Partner Subsidiary has filed or threatened in writing any claims alleging that a third party or Worker has infringed, misappropriated or otherwise violated any Merger Partner Intellectual Property. No individual or entity has filed and served upon Merger Partner or a Merger Partner Subsidiary or, to Merger Partner's knowledge, threatened or otherwise filed any action or proceeding alleging that Merger Partner or any Merger Partner Subsidiary has infringed, misappropriated or otherwise violated any individual's or entity's Intellectual Property rights nor has Merger Partner or any Merger Partner Subsidiary received any written notification that a license under any other individual's or entity's Intellectual Property is or may be required.

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

(g) Section 3.10(g) of the Merger Partner Disclosure Schedule identifies (i) each license or agreement pursuant to which Merger Partner or a Merger Partner Subsidiary has granted rights to any Merger Partner Licensed Intellectual Property in any material respect, and (ii) each agreement, contract, assignment or other instrument pursuant to which Merger Partner or a Merger Partner Subsidiary has granted any joint ownership interest in or to each item of Merger Partner Owned Intellectual Property, in each case (i) and (ii) other than Excluded Contracts.

(h) Section 3.10(h) of the Merger Partner Disclosure Schedule identifies (i) each license or agreement pursuant to which Merger Partner or a Merger Partner Subsidiary has obtained rights to any Merger Partner Licensed Intellectual Property (excluding generally available, off the shelf software programs that are licensed by Merger Partner or a Merger Partner Subsidiary pursuant to "shrink wrap" licenses, the total fees associated with which are less than \$50,000) and (ii) each agreement, contract, assignment or other instrument pursuant to which Merger Partner or a Merger Partner Subsidiary has obtained any joint or sole ownership interest in or to each item of Merger Partner Owned Intellectual Property, in each case (i) and (ii) excluded for Excluded Contracts.

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

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

3.11 Contracts.

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

(i) any Contract (or group of related Contracts) for the purchase or sale of products or for the furnishing or receipt of services (A) which expressly requires future payments by or to Merger Partner of more than \$200,000 annually, or (B) in which Merger Partner has granted manufacturing rights, “most favored nation” pricing provisions or marketing or distribution rights relating to any products or territory, or has agreed to purchase goods or services exclusively from a particular party or to a right of first offer, right of first refusal, right of first negotiation in favor of any third party;

(ii) any Contract under which Merger Partner has granted to a third party a license under, or option or covenant not to sue with respect to, any Merger Partner Intellectual Property;

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

(i v) any (A) employment Contract (excluding offer letters for at-will employment that do not provide for severance or for advance notice of termination or for any change of control, transaction, retention or other special remuneration) that provides for base salary and target bonus, when taken together, of at least \$200,000 annually and (B) individual independent contractor or consulting Contract that involves or could involve payments in excess of \$100,000 within any twelve (12) month period;

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

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

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

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

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

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

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

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

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

(b) Merger Partner has made available to Public Company a complete and accurate copy of each Contract listed in Sections 3.10(a), 3.10(g), 3.10(h), and 3.11(a) of the Merger Partner Disclosure Schedule. With respect to each Contract so listed or that should be listed: (i) the Contract is legal, valid, binding and enforceable and in full force and effect against Merger Partner, as applicable, and, to the knowledge of Merger Partner, against each other party thereto, as applicable, subject to the Bankruptcy and Equity Exception; and (ii) none of Merger Partner, nor, to the knowledge of Merger Partner, any other party, is in material breach or violation of, or default under, any such Contract, and no event has occurred, is pending or, to the knowledge of Merger Partner, is threatened, which, with or without notice or lapse of time, or both, would constitute a material breach or default by Merger Partner or, to the knowledge of Merger Partner, any other party under such Contract, except for such breaches, violations or defaults that, individually or in the aggregate, have not had, and are not reasonably likely to have, a Merger Partner Material Adverse Effect.

3.12 Litigation. Except as otherwise set forth on Section 3.12 of the Merger Partner Disclosure Schedule, as of the date of this Agreement, there is no action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity or before any arbitrator that is pending or has been threatened in writing against Merger Partner or any Merger Partner Subsidiary that (i) seeks either damages in excess of \$250,000 or equitable relief or (ii) in any manner challenges or seeks to prevent, enjoin, alter or delay the transactions contemplated by this Agreement. There are no material judgments, orders or decrees outstanding against Merger Partner or any Merger Partner Subsidiary.

3.13 Environmental Matters.

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

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

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

3.14 Employee Benefit Plans. As of the date of this Agreement, Merger Partner does not sponsor, maintain or contribute to, and has never sponsored, maintained or, contributed to (nor been required to contribute to) any Employee Benefit Plan. Except as would not reasonably be expected to result in Liability to Merger Partner (including as an ERISA Affiliate) following the Closing, none of the ERISA Affiliates of Merger Partner has (i) ever maintained, contributed to, or had any Liability with respect to an Employee Benefit Plan that is or was a defined benefit pension plan as defined in Section 3(2) and 3(35) of ERISA or was ever subject to Section 412 or 430 of the Code or Title IV of ERISA or (ii) ever been obligated to contribute to a “multiemployer plan” (as defined in Section 3(37) or 4001(a)(3) of ERISA). Except as would not reasonably be expected to result in Liability to Merger Partner (including as an ERISA Affiliate) following the Closing, no Employee Benefit Plan sponsored by an ERISA Affiliate of Merger Partner (i) that is intended to be qualified under Section 401(a) of the Code is funded by, associated with or related to a “voluntary employees’ beneficiary association” within the meaning of Section 501(c)(9) of the Code, (ii) is funded with or otherwise holds securities issued by Merger Partner, Public Company or any of their respective ERISA Affiliates, (iii) is a “multiple employer plan” within the meaning of Section 413(c) of the Code or (iv) is a “multiple employer welfare arrangement” as defined in Section 3(40) of ERISA.

3.15 Compliance With Laws. Except as would not reasonably be expected to result in a Merger Partner Material Adverse Effect, Merger Partner and each Merger Partner Subsidiary has since Merger Partner Incorporation complied with, is not in violation of, and, as of the date of this Agreement, has not received any written notice from any Governmental Entity alleging any violation with respect to, any applicable provisions of any Law related to the conduct of its business or the ownership or operation of its properties or assets.

3.16 Permits and Regulatory Matters.

Except as would not reasonably be expected to result in a Merger Partner Material Adverse Effect:

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

(b) All Permits that are necessary for the conduct of the business of Merger Partner and each Merger Partner Subsidiary as currently conducted (“Merger Partner Authorizations”) are in full force and effect. No Merger Partner Authorization shall cease to be effective as a result of the consummation of the transactions contemplated by this Agreement. Merger Partner and each Merger Partner Subsidiary is in compliance with the terms of each such Merger Partner Authorization. All material applications, reports, notices and other documents required to be filed by Merger Partner and each Merger Partner Subsidiary with any Governmental Entity have been timely filed and are complete and correct as of the date filed or as amended prior to the date of this Agreement. Neither Merger Partner nor any Merger Partner Subsidiary, and to Merger Partner’s knowledge, nor any officer, employee or agent of Merger Partner or any Merger Partner Subsidiary has been convicted of any crime or engaged in any conduct that has previously caused or would reasonably be expected to result in (i) disqualification or debarment by the FDA under 21 U.S.C. Sections 335(a) or (b), or any similar Law of any other Governmental Entity, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar Law of any Governmental Entity.

(c) Merger Partner and each Merger Partner Subsidiary: (i) is and since Merger Partner Incorporation has been in compliance, to the extent applicable, with all Laws applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any pharmaceutical or biological product tested, developed, promoted, marketed, manufactured or distributed by Merger Partner or such Merger Partner Subsidiary; (ii) has not since Merger Partner Incorporation received or been subject to any unresolved FDA Form 483s, FDA Notices of Adverse Findings or warning letters, or any written notice or correspondence from any Governmental Entity alleging or asserting any material noncompliance with any Merger Partner Authorizations; and (iii) has not since Merger Partner Incorporation received written notice that any Governmental Entity has taken or is intending to take action to limit, suspend, modify or revoke any Merger Partner Authorizations and, to the knowledge of Merger Partner, there is no action or proceeding pending or threatened against Merger Partner or any Merger Partner Subsidiary by any Governmental Entity (including any prosecution, injunction, seizure, civil fine, suspension or recall), in each case alleging that Merger Partner or a Merger Partner Subsidiary is in material noncompliance with applicable Laws, regulations or orders implemented by the FDA or any other Governmental Entity exercising comparable authority. Neither Merger Partner nor any Merger Partner Subsidiary nor, to Merger Partner’s knowledge, any of their respective officers, employees or agents has made an untrue statement of a material fact or fraudulent statement to any Governmental Entity relating to the Merger Partner Authorizations or failed to disclose a material fact required to be disclosed to any Governmental Entity relating to the Merger Partner Authorizations.

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

3.17 Employees.

(a) All current and past key employees of Merger Partner and each Continuing Employee have entered into confidentiality and assignment of inventions agreements with Merger Partner or one of its Affiliates, a copy or form of which has previously been made available to Public Company. To the knowledge of Merger Partner, as of the date of this Agreement, no employee of Merger Partner or Continuing Employee is in material violation of any term of any patent disclosure agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Merger Partner because of the nature of the business currently conducted by Merger Partner or to the use of Intellectual Property of others. To the knowledge of Merger Partner, as of the date of this Agreement, no key employee or group of key employees of Merger Partner or Continuing Employee has any plans to terminate employment with Merger Partner or following the Closing with Public Company and its Subsidiaries.

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

(c) Except as would not reasonably be expected to result in a Merger Partner Material Adverse Effect, Merger Partner is and has been in compliance in all material respects with all applicable Laws related to employment (including verification of employment eligibility), employment practices (including without limitation Laws related to discrimination, harassment, and retaliation), terms and conditions of employment and wages and hours (including, without limitation, classification of employees) with respect to any employee (as defined by, or determined in accordance with, applicable Laws). To the knowledge of Merger Partner, all Workers of Merger Partner and all Continuing Employees are lawfully authorized to work in the United States.

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

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

3.18 Insurance. Ligand maintains insurance policies (the “Ligand Insurance Policies”), including insurance covering directors and officers for securities Law and other customary liabilities, with reputable insurance carriers against all risks of a character and in such amounts as are usually insured against by similarly situated companies in the same or similar businesses as Merger Partner. Each Ligand Insurance Policy is in full force and effect. Merger Partner has complied in all material respects with the provisions of each Ligand Insurance Policy under which it is the insured party. No insurer under any Ligand Insurance Policy has cancelled or generally disclaimed liability under any such policy or indicated any intent to do so or not to renew any such policy. From and after the Effective Time, Merger Partner and any Merger Partner Subsidiary shall cease to be insured by the Ligand Insurance Policies, and Merger Partner will not be eligible to seek, through any means, to benefit from the Ligand Insurance Policies.

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

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

3.21 Controls and Procedures, Certifications and Other Matters.

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

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

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

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

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

3.24 Privacy and Data Protection.

(a) Merger Partner and each Merger Partner Subsidiary has complied at all times, and currently complies, in each case, in all material respects, with any applicable data protection and privacy Law with respect to their businesses, including, as applicable, with respect to (i) requirements relating to notification and/or registration of processing of personal data with any applicable national data protection regulator, (ii) requests from data subjects under data protection and privacy Laws, (iii) where necessary, the obtaining of consent to the processing of personal data and/or direct marketing activity, and (iv) where necessary, the obtaining of any approval, consultation and/or agreement of any applicable works councils or such similar worker representation bodies. Merger Partner and each Merger Partner Subsidiary have all material rights necessary to process all personal data used in the business of the Merger Partner or Merger Partner Subsidiary, as applicable. Neither Merger Partner nor any Merger Partner Subsidiary has received any written notice or complaint from any individual, third party and/or Governmental Entity, or to the knowledge of Merger Partner, has not been threatened with any written notice or complaint from any individual, third party and/or Governmental Entity (x) alleging non-compliance by Merger Partner or any Merger Partner Subsidiary with any applicable data protection and privacy Law (including any prohibition or restriction on the transfer of data to any jurisdiction) or (y) claiming compensation for or an injunction for non-compliance with any applicable data protection and privacy Law.

(b) Merger Partner and each Merger Partner Subsidiary has established and maintains commercially reasonable technical, physical and organizational controls, policies, procedures, safeguards, measures and security systems, plans and technologies in material compliance with requirements under applicable privacy and data protection Laws. Since Merger Partner Incorporation, no material breach or material security incident in relation to Merger Partner's or any Merger Partner Subsidiary personal data and/or proprietary data has occurred or, to Merger Partner's knowledge, is threatened, and there has been no actual or, to Merger Partner's knowledge, threatened unauthorized or illegal processing of, or accidental or unlawful destruction, loss or alteration of, any of Merger Partner's or any Merger Partner Subsidiary's personal data and/or proprietary data.

3.25 No Other Representations or Warranties. Merger Partner hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement, none of Public Company, Merger Sub nor any other Person on behalf of Public Company or Merger Sub makes any express or implied representation or warranty with respect to Public Company or Merger Sub or their respective financial condition, business, results of operations, properties, assets, liabilities, or prospects or otherwise or with respect to any other statements made or information provided to Merger Partner or any of its Affiliates in connection with the transactions contemplated hereby, and (subject to the express representations and warranties of Public Company and Merger Sub set forth in Article IV (in each case as qualified and limited by the Public Company Disclosure Schedule) or any representations and warranties of a signatory to any Lock-Up Agreements) none of Merger Partner or any of its Affiliates, stockholders, directors, officers, employees, agents, representatives or advisors, or any other Person, has relied on any representations, warranties, statements or information (including the accuracy or completeness thereof).

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PUBLIC COMPANY AND THE MERGER SUB

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

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

4.2 Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of Public Company consists of 200,000,000 shares of Public Company Common Stock and 20,000,000 shares of preferred stock, \$0.0001 par value per share (“Public Company Preferred Stock”). The rights and privileges of each class of Public Company’s capital stock are as set forth in Public Company’s articles of incorporation, as amended (as defined in NRS 78.010(1)(b)). As of the close of business on the Business Day immediately prior to the date of this Agreement, (i) 6,028,011 shares of Public Company Common Stock were issued or outstanding, (ii) no shares of Public Company Common Stock were held in the treasury of Public Company or by Subsidiaries of Public Company, and (iii) 2,600 shares of Public Company Preferred Stock were issued or outstanding.

(b) As of the date of this Agreement, there are outstanding options to purchase 925,449 shares of Public Company Common Stock (each, a “Public Company Stock Option” and collectively, the “Public Company Stock Options”) and 356,554 shares of Public Company Common Stock issuable pursuant to awards of restricted stock units relating to Public Company Stock (“Public Company RSU Awards” and together with Public Company Stock Options, “Public Company Equity Awards”). Public Company has made available to Merger Partner complete and accurate copies of all stock or equity related plans, agreements, or arrangements of Public Company (collectively, the “Public Company Stock Plans”), the standard forms of all award agreements evidencing the Public Company Equity Awards and a copy of each agreement evidencing a Public Company Equity Award that does not conform in all material respects to a standard form agreement. As of the date of this Agreement, Public Company has reserved 1,944,444 shares of Public Company Common Stock for issuance to employees pursuant to Public Company’s 2023 Equity Incentive Plan, as amended (the “Public Company EIP”), of which 1,018,995 shares remain available for issuance thereunder as of the date hereof. Public Company has not granted, issued or authorized the grant or issuance of any Public Company Equity Awards on the Business Day prior to the date of this Agreement or on the date of this Agreement. With respect to each Public Company Equity Award (whether outstanding or previously exercised or settled) (i) each grant of a Public Company Equity Award was duly authorized no later than the date on which the grant of such Public Company Equity Award was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the Public Company Board (or a duly constituted and authorized committee thereof), or a duly authorized delegate thereof, and any required stockholder approval by the necessary number of votes or written consents, (ii) each such grant was made in accordance with the terms of the applicable Public Company Stock Plan, the Securities Act, the Exchange Act, to the extent applicable, and all other applicable Laws and are not and have not been the subject of any internal investigation, review or inquiry. Each Public Company Stock Option has an exercise price that is no less than the fair market value of the underlying shares on the date of grant, as determined in accordance with Section 409A of the Code. Section 4.2(b) of the Public Company Disclosure Schedule sets forth a true and complete list of each Public Company Equity Award outstanding as of the date of this Agreement, including: (A) the name of the holder, (B) the number of shares of Public Company Common Stock subject thereto, (C) the date of grant thereof, (D) the exercise price thereof, if applicable, (E) the expiration date thereof, if applicable, (F) the applicable vesting schedule, including any acceleration provisions, and the number of vested and unvested shares subject thereto, and (G) in the case of a Public Company Stock Option, whether the Public Company Stock Option is intended to be an “incentive stock option” (as defined in the Code) or a non-qualified stock option.

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

(d) Except (i) as set forth in this Section 4.2 or in Article II, (ii) as reserved for future grants under Public Company Stock Plans, outstanding as of the close of business on the Business Day prior to the date of this Agreement, (iii) as reserved for issuance and issuable upon conversion of outstanding shares of Public Company Preferred Stock, (iv) for the rights to acquire shares pursuant to the Public Company EIP, (v) commitments to issue shares of Public Company Common Stock pursuant to the Securities Purchase Agreement in the Concurrent Financing, as of the date of this Agreement, and (vi) as reserved for issuance and issuable upon conversion of the outstanding promissory note with 3i, LP and upon exercise of the A.G.P. warrant, (A) there are no equity securities of any class of Public Company, or any security exchangeable into or exercisable for such equity securities, issued, reserved for issuance or outstanding and (B) there are no options, warrants, equity securities, stock appreciation, phantom stock, profit participation, calls, rights, commitments or agreements of any character to which Public Company or any of its Subsidiaries is a party or by which Public Company or any of its Subsidiaries is bound obligating Public Company or any of its Subsidiaries to issue, exchange, transfer, deliver or sell, or cause to be issued, exchanged, transferred, delivered or sold, additional shares of capital stock or other equity interests of Public Company or any security or rights convertible into or exchangeable or exercisable for any such shares or other equity interests, or obligating Public Company or any of its Subsidiaries to grant, extend, accelerate the vesting of, otherwise modify or amend or enter into any such option, warrant, equity security, call, right, commitment or agreement. As of the date of this Agreement, other than pursuant to any Public Company Stock Plan, Public Company is not a party to or is bound by any, and to the knowledge of Public Company, there are no, agreements or understandings with respect to the voting (including voting trusts and proxies) or sale or transfer (including agreements imposing transfer restrictions) of any shares of capital stock or other equity interests of Public Company. Except as otherwise set forth on Section 4.2(d) of the Public Company Disclosure Schedule, as contemplated by this Agreement, the Securities Purchase Agreement or described in this Section 4.2(d), there are no registration rights to which Public Company or any of its Subsidiaries is a party or by which it or they are bound with respect to any equity security of any class of Public Company. Stockholders of Public Company are not entitled to dissenters' or appraisal rights under applicable state Law in connection with the Merger, and the Public Company Board has not adopted or approved any resolution pursuant to the NRS or otherwise granting dissenter's, appraisal or similar rights to any holder of shares of Public Company Common Stock or any other equity interests of or in Public Company, or to any other Person.

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

4.3 Subsidiaries.

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

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

(c) Public Company has made available to Merger Partner complete and accurate copies of the articles of incorporation, bylaws, or other organizational documents of each Subsidiary of Public Company.

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

4.4 Authority; No Conflict; Required Filings and Consents.

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

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

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

(d) The affirmative vote in favor of the Charter Amendment Proposal (as it relates to the Public Company Charter Amendment to change the name of Public Company to "Pelthos Therapeutics Inc."), the Share Issuance, and the Other Public Company Stockholder Proposal by the holders of a majority of the outstanding Public Company Common Stock is the only vote of the holders of any class or series of Public Company's capital stock or other securities of Public Company necessary to approve the Charter Amendment Proposal, the Share Issuance, and the Other Public Company Stockholder Proposal (collectively, the "Public Company Written Consent"). There are no bonds, debentures, notes or other indebtedness of Public Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Public Company may vote.

4.5 SEC Filings; Financial Statements; Information Provided.

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

(b) Each of the financial statements (including, in each case, any related notes and schedules) contained or to be contained in the Public Company SEC Reports at the time filed (or if amended prior to the date hereof, when so amended) (i) complied or will comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, (ii) were or will be prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and at the dates involved (except as may be indicated in the notes to such financial statements or, in the case of unaudited interim financial statements, as permitted by the SEC) and (iii) fairly presented or will fairly present in all material respects the financial position of Public Company and its Subsidiaries as of the dates indicated and the results of its operations and cash flows for the periods indicated, except that the unaudited interim financial statements were or are subject to normal and recurring year-end adjustments that are not expected to be material in amount. The balance sheet of Public Company as of September 30, 2024 is referred to herein as the “Public Company Balance Sheet.”

(c) Since January 1, 2025 and prior to the date of this Agreement, Public Company has not received any correspondence from the NYSE American or the staff thereof relating to the delisting or maintenance of listing of the Public Company Common Stock on the NYSE American. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to any Public Company SEC Reports.

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

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

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

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

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

4.8 Taxes.

(a) Each of Public Company and its Subsidiaries has properly filed all material Tax Returns that it was required to file, and all such Tax Returns are true, correct and complete in all material respects. Each of Public Company and its Subsidiaries has paid all material Taxes, whether or not shown on any Tax Return, that were due and payable.

(b) Neither Public Company nor any of its Subsidiaries is, nor has it ever been, a member of an affiliated group with which it has filed (or been required to file) consolidated, combined, unitary or similar U.S. federal Tax Returns, other than a group of which the common parent is Public Company. With the exception of customary commercial leases or contracts that are not primarily related to Taxes entered into in the Ordinary Course of Business, neither Public Company nor any of its Subsidiaries (i) has any material liability under Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of state, local or non-U.S. Law), or as a transferee or successor for any Taxes of any Person other than Public Company or any of its Subsidiaries, or (ii) is a party to or bound by any Tax indemnity, Tax sharing, Tax allocation or similar agreement.

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

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

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

(f) Neither Public Company nor any of its Subsidiaries (i) is a party to any joint venture, partnership, or other arrangement that is treated as a partnership for U.S. federal income Tax purposes or (ii) since the date of its formation or the formation of any predecessor thereof, has always been, for all U.S. federal income tax purposes, classified as an association taxable as a C corporation.

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

(h) Neither Public Company nor any of its Subsidiaries has distributed to its stockholders or security holders stock or securities of a controlled corporation, nor has stock or securities of Public Company or any of its Subsidiaries been distributed, in a transaction to which Section 355 of the Code applies in the two (2) years prior to the date of this Agreement.

(i) There are no Liens with respect to Taxes upon any of the assets or properties of Public Company or any of its Subsidiaries, other than with respect to Taxes not yet due and payable or being contested in good faith.

(j) Neither Public Company nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) adjustments under Section 481 of the Code (or any similar adjustments under any provision of corresponding non-U.S., state or local Tax Laws) for a taxable period (or portion thereof) ending on or prior to the Closing Date, (ii) installment sale or other open transaction disposition made prior to the Closing Date outside the Ordinary Course of Business, or (iii) prepaid amount or deferred revenue received prior to the Closing Date outside the Ordinary Course of Business.

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

(2).

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

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

(n) Neither Public Company nor any of its Affiliates has taken or agreed to take any action, or has any knowledge of any fact or circumstance, the taking or existence of which, as the case may be, would reasonably be expected to prevent the Merger and the Concurrent Financing from qualifying for the Intended Tax Treatment.

4.9 Owned and Leased Real Properties.

(a) Neither Public Company nor any of its Subsidiaries owns or has ever owned any real property, nor is either party to any agreement to purchase or sell any real property.

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

4.10 Intellectual Property.

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

(b) There are no inventorship challenges, *inter partes* proceedings, opposition or nullity proceedings or interferences declared, commenced or provoked, or, to the knowledge of Public Company, threatened, with respect to any Patent Rights included in the Public Company Registrations. Except as set forth on Section 4.10(b) of the Public Company Disclosure Schedule, none of the Patent Rights included in the Public Company Registrations have been abandoned. Public Company and each of its Subsidiaries have complied with its duty of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent office with respect to all patent and trademark applications filed by or on behalf of Public Company and has made no material misrepresentation in such applications. Public Company has no knowledge of any information that would preclude Public Company or any of its Subsidiaries from having clear title to the Public Company Registrations.

(c) Public Company is the sole and exclusive owner of all Public Company Owned Intellectual Property, free and clear of any Liens, other than any joint owners of the Public Company Owned Intellectual Property listed in Section 4.10(c) of the Public Company Disclosure Schedule. None of the Public Company Intellectual Property is subject to any orders, decrees or injunctions.

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

(e) To the knowledge of Public Company, the operations of Public Company and its Subsidiaries as currently conducted do not infringe, misappropriate or otherwise violate and have not in the past five (5) years infringed, misappropriated or otherwise violated any valid and enforceable Intellectual Property rights of any individual or entity. To Public Company's knowledge, no individual or entity has infringed, misappropriated or otherwise violated the Public Company Owned Intellectual Property or any rights under the Public Company Licensed Intellectual Property that are exclusively licensed to Public Company or any of its Subsidiaries, and neither Public Company nor any of its Subsidiaries has filed or threatened in writing any claims alleging that a third party or Worker has infringed, misappropriated or otherwise violated any Public Company Intellectual Property. No individual or entity has filed and served upon Public Company or any of its Subsidiaries or, to Public Company's knowledge, threatened or otherwise filed any action or proceeding alleging that Public Company or any of its Subsidiaries has infringed, misappropriated or otherwise violated any individual's or entity's Intellectual Property rights nor has Public Company or any of its Subsidiaries received any written notification that a license under any other individual's or entity's Intellectual Property is or may be required.

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

(g) Section 4.10(g) of the Public Company Disclosure Schedule identifies each (i) license or other agreement pursuant to which Public Company or any of its Subsidiaries has granted rights to any Public Company Licensed Intellectual Property, and (ii) each agreement, contract, assignment or other instrument pursuant to which Public Company or any of its Subsidiaries has granted any joint ownership interest in or to each item of Public Company Owned Intellectual Property, in each case (i) and (ii) other than Excluded Contracts.

(h) Section 4.10(h) of the Public Company Disclosure Schedule identifies (i) each license or agreement pursuant to which Public Company or any of its Subsidiaries has obtained rights to any Public Company Licensed Intellectual Property (excluding generally available, off the shelf software programs that are licensed by Public Company or any of its Subsidiaries pursuant to “shrink wrap” licenses, the total fees associated with which are less than \$50,000) and (ii) each agreement, contract, assignment or other instrument pursuant to which Public Company or any of its Subsidiaries has obtained any joint or sole ownership interest in or to each item of Public Company Owned Intellectual Property, in each case (i) and (ii) other than Excluded Contracts.

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

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

4.11 Contracts.

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

(i) any Contract (or group of related Contracts) for the purchase or sale of products or for the furnishing or receipt of services (A) which expressly requires future payments by or to Public Company or any of its Subsidiaries in excess of \$200,000 annually, or (B) in which Public Company or any of its Subsidiaries has granted manufacturing rights, “most favored nation” pricing provisions or marketing or distribution rights relating to any products or territory, or has agreed to purchase goods or services exclusively from a particular party or to a right of first offer, right of first refusal, right of first negotiation in favor of any third party;

- (ii) any Contract under which Public Company or any of its Subsidiaries has granted to a third party a license under, or option or covenant not to sue with respect to, any Public Company Intellectual Property;
- (iii) any Contract under which Public Company or any of its Subsidiaries is prohibited from selling, licensing or otherwise distributing any of its technology or products, or providing services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or any segment of the market or line of business;
- (iv) any (A) employment Contract (excluding offer letters for at-will employment that do not provide for severance or for advance notice of termination or for any change of control, transaction, retention or other special remuneration) and (B) individual independent contractor or consulting Contract that involves or could involve payments in excess of \$50,000 within any twelve (12) month period;
- (v) any Contract, plan, policy or program providing for retention or stay pay, change in control payments or transaction-based bonuses;
- (vi) any Contract relating to any agreement of indemnification or guaranty not entered into in the Ordinary Course of Business;
- (vii) any Contract relating to the disposition or acquisition of material assets or any ownership interest in Public Company or any of its Subsidiaries, in each case, involving payments in excess of \$100,000 in the aggregate;
- (viii) any settlement Contract or settlement-related Contract (including any Contract in connection with which any employment-related claim is settled) under which either side has remaining financial obligations;
- (ix) any dealer, distribution, joint marketing, joint venture, joint development, partnership, strategic alliance, collaboration, development agreement or outsourcing arrangement;
- (x) any Contract for the conduct of research studies, pre-clinical or clinical studies, manufacturing, distribution, supply, marketing or co-promotion of any products in development by or which has been or which is being marketed, distributed, supported, sold or licensed out, in each case by or on behalf of Public Company or any of its Subsidiaries;
- (xi) except with respect to Indebtedness between or among Public Company and its Subsidiaries, any Contract relating to (A) Indebtedness or (B) any financial guaranty;
- (xii) any Contract or commitment with any Person, including any financial advisor, broker, finder, investment banker, attorneys or other Person, providing advisory services or other services for Public Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement; and

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

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

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

4.13 Environmental Matters.

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

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

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

4.14 Employee Benefit Plans.

(a) Section 4.14(a) of the Public Company Disclosure Schedule contains a true and complete list of all material Public Company Employee Plans. As applicable with respect to each material Public Company Employee Plan, Public Company has made available to Merger Partner true and complete copies of (i) the plan document, including all amendments thereto, and in the case of an unwritten Employee Benefit Plan, a written description of all material terms thereof, (ii) all related trust instruments or other funding-related documents and insurance contracts, (iii) the summary plan description and each summary of material modifications thereto, (iv) the financial statements for the three (3) most recent years for which such financial statements are available (in audited form, if available or required by ERISA) and, where applicable, annual reports with any Governmental Entity (e.g., Form 5500 and all schedules thereto), (v) the most recent IRS determination or opinion letter, (vi) written results of any required compliance testing for the three (3) most recent plan years and (vii) all material, non-routine notices, filings or correspondence during the past three (3) years with any Governmental Entity.

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

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

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

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

(f) No Public Company Employee Plan provides, and neither Public Company nor any of its ERISA Affiliates has any obligation to provide, any post-termination health, disability or life insurance benefits to any individual, except as required by (i) COBRA or similar state Law or (ii) contractually required subsidies for COBRA coverage during a severance period under an agreement listed on Section 4.14(a) of the Public Company Disclosure Schedule.

(g) Each Public Company Employee Plan that is a group health plan under Section 733(a)(1) of ERISA has satisfied all obligations under COBRA and each applicable state Law relating to continuation of health coverage for participants and beneficiaries with respect to any qualifying event that has occurred on or before the Closing Date. Neither Public Company nor any of the Public Company Employee Plans has incurred (whether or not assessed), and are not reasonably expected to incur or to be subject to, any Tax, penalty, assessment, or other Liability that may be imposed under the ACA or Sections 4980B, 4980D, 4980H, 6721 or 6722 of the Code or with respect to any requirement to timely file ACA information returns with the IRS or provide statements to participants under Section 6056 or 6055 of the Code or state requirements as applicable, or pursuant to Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any of the Public Company Employee Plans. No IRS Letter 226J, 5699, 5698, or IRS Notice 972CG has been issued to or with respect to Public Company or any Public Company Employee Plan. No Public Company Employee Plan is “self-insured medical reimbursement plan” as defined in Section 105(h) of the Code.

(h) Except as contemplated by this Agreement or set forth in Section 4.14(h) of the Public Company Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with additional or subsequent events, including any termination of employment or service), will (i) result in any payment (including any severance or bonus payment) becoming due to any current or former employee or other individual service provider of Public Company or any of its Subsidiaries, (ii) result in any forgiveness of indebtedness to any current or former employee or other individual service provider of Public Company or any of its Subsidiaries, (iii) increase, or result in an acceleration of the time of payment or vesting of, the compensation or benefits otherwise due to any current or former employee or other individual service provider of Public Company or any of its Subsidiaries, (iv) trigger any payment or funding of any compensation or benefits under any Public Company Employee Plan, or (v) result in any restriction on the right of Merger Partner, Public Company or any of their respective Subsidiaries to merge, amend, terminate or transfer any Public Company Employee Plan. No Public Company Employee Plan provides, and neither Public Company nor any of its ERISA Affiliates has any obligation to provide, any gross-up, indemnification or reimbursement of any Taxes, including, without limitation, Taxes incurred under Section 4999 or 409A of the Code.

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

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

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

4.16 Permits and Regulatory Matters.

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

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

(b) All Permits that are necessary for the conduct of the business of Public Company as currently conducted are in full force and effect. No Public Company Authorization shall cease to be effective as a result of the consummation of the transactions contemplated by this Agreement. Public Company and its Subsidiaries are in compliance in all material respects with the terms of each such Public Company Authorization. All material applications, reports, notices and other documents required to be filed by Public Company and its Subsidiaries with all Governmental Entities have been timely filed and are complete and correct in all material respects as of the date filed or as amended prior to the date of this Agreement. None of Public Company and its Subsidiaries, and to Public Company’s knowledge, any officer, employee or agent of Public Company or any of its Subsidiaries has been convicted of any crime or engaged in any conduct that has previously caused or would reasonably be expected to result in (i) disqualification or debarment by the FDA under 21 U.S.C. Sections 335(a) or (b), or any similar Law of any other Governmental Entity, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar Law of any Governmental Entity.

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

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

4.17 Employees.

(a) Public Company has made available to Merger Partner a complete and accurate list of all employees of Public Company and its Subsidiaries as of the date of this Agreement, setting forth for each employee: job title; classification as exempt or non-exempt for wage and hour purposes; annual base salary, hourly rate or other rates of compensation; bonus potential; full-time or part-time status; date of hire; business location; status (i.e., active or inactive and if inactive, the type of leave and estimated duration); and any visa or work permit status and the date of expiration, if applicable.

(b) Public Company has made available to Merger Partner a complete and accurate list as of the date hereof of all of the independent contractors, consultants, temporary employees, leased employees or other agents engaged by Public Company or any of its Subsidiaries and classified by Public Company or any of its Subsidiaries as other than employees ("Public Company Contingent Workers"), setting forth such individual's engagement date, role in the business, work location, and fee or other compensation arrangements.

(c) Except as set forth on Section 4.17(a) of the Public Company Disclosure Schedule, all current employees and past key employees of Public Company and its Subsidiaries have entered into confidentiality and assignment of inventions agreements with Public Company or one of its Subsidiaries, a copy or form of which has previously been made available to Merger Partner. To the knowledge of Public Company, as of the date of this Agreement, no employee of Public Company or any Subsidiary of Public Company is in violation of any term of any patent disclosure agreement, non-competition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Public Company or any of its Subsidiaries because of the nature of the business currently conducted by Public Company or any of its Subsidiaries or to the use of Intellectual Property of others. To the knowledge of Public Company, as of the date of this Agreement, no key employee or group of key employees has any plans to terminate employment with Public Company or its Subsidiaries.

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

(e) Public Company and its Subsidiaries are and have been in compliance in all material respects with all applicable Laws related to employment (including verification of employment eligibility), employment practices (including Laws related to discrimination, harassment, and retaliation), worker classification (including employee-independent contractor classification and the proper classification of employees as exempt employees and non-exempt employees), terms and conditions of employment and wages and hours (including, without limitation, classification of employees) with respect to any employee (as defined by, or determined in accordance with, applicable Laws). To the knowledge of Public Company, all Workers of Public Company and its Subsidiaries are lawfully authorized to work in the United States.

(f) Neither Public Company nor any of its Subsidiaries has received written notice of any charge or complaint pending before the Equal Employment Opportunity Commission or other Governmental Entity alleging unlawful discrimination, harassment, retaliation or any other violation of or non-compliance with applicable Law relating to the employment, treatment, or termination of any employees of Public Company or any of its Subsidiaries, nor, to the knowledge of Public Company, has any such charge been threatened within the preceding three (3) years. No current or former employee of Public Company or any of its Subsidiaries has, pursuant to internal complaint procedures, made a written complaint of discrimination, retaliation or harassment, nor to Public Company's knowledge, has an oral complaint of any of the foregoing been made within the preceding three (3) years. Public Company and its Subsidiaries have reasonably investigated all discrimination and sexual harassment allegations of which Public Company and its Subsidiaries are aware. With respect to each such allegation (except those that Public Company and its Subsidiaries reasonably deemed to not have merit) Public Company and its Subsidiaries have taken prompt corrective action reasonably calculated to prevent further improper action and Public Company and its Subsidiaries do not reasonably expect any material Liabilities with respect to any such allegations. Neither Public Company nor any of its Subsidiaries has entered into any settlement agreements related to allegations of sexual harassment or misconduct by a director, officer, employee, independent contractor or other individual service provider of the Public Company or any of its Subsidiaries.

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

4.18 Insurance. Public Company and its Subsidiaries maintain insurance policies (the "Public Company Insurance Policies"), including insurance covering directors and officers for securities Law and other customary liabilities, with reputable insurance carriers against all risks of a character and in such amounts as are usually insured against by similarly situated companies in the same or similar businesses. Each Public Company Insurance Policy is in full force and effect. Except as set forth on Section 4.18 of the Public Company Disclosure Schedule, none of the Public Company Insurance Policies shall terminate or lapse (or be affected in any other adverse manner) by reason of any of the transactions contemplated by this Agreement. Public Company and each of its Subsidiaries have complied in all material respects with the provisions of each Public Company Insurance Policy under which it is the insured party. No insurer under any Public Company Insurance Policy has cancelled or generally disclaimed liability under any such policy or indicated any intent to do so or not to renew any such policy. Public Company has delivered to Merger Partner accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets, liabilities and operations of Public Company and its Subsidiaries.

4.19 Opinion of Financial Advisor. Prior to the execution and delivery of this Agreement, the financial advisor of Public Company, M&N Sarchet, Inc. (the “Public Company Financial Advisor”), has delivered to the Public Company Board an opinion to the effect that, as of the date of such opinion and subject to the assumptions, qualifications and limitations set forth therein, the aggregate consideration (i.e., the Merger Partner Merger Shares) to be paid by Public Company in the Merger pursuant to this Agreement is fair, from a financial point of view, to Public Company, a signed copy of which opinion will be provided by Public Company to Merger Partner within one (1) Business Day following the date of this Agreement solely for informational purposes to confirm delivery of such opinion to the Public Company Board (the “Opinion of Financial Advisor”).

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

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

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

4.23 Operations of Merger Sub. Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement. Merger Sub has no assets or liabilities other than those incident to its formation, the execution of this Agreement and the completion of the transactions hereunder.

4.24 Certain Business Relationships with Affiliates. Except as otherwise set forth on Section 4.24 of the Public Company Disclosure Schedule, neither any Affiliate of Public Company (other than a wholly owned subsidiary of Public Company) nor any of its or their current equityholders, directors, officers, or employees (a) owns any material property or right, tangible or intangible, which is used in the business of Public Company or any of its Subsidiaries, (b) has any material claim or cause of action against Public Company or any of its Subsidiaries, (c) owes any material money to, or is owed any material money by, Public Company or any of its Subsidiaries or (d) has or has had any direct or indirect interest of any kind in, or controls or has controlled, or is an officer, manager, director, equityholder, member or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, as applicable, (i) any Person that is a client, customer, supplier, vendor, distributor, lessor, lessee, debtor, creditor or competitor of Public Company or any of its Subsidiaries or (ii) any property, asset or right that is owned, held or used by Public Company or any of its Subsidiaries. Section 4.24(e) of the Public Company Disclosure Schedule describes any material Contracts between Public Company or any of its Subsidiaries, on the one hand, and any Affiliate thereof (other than a wholly owned subsidiary of Public Company) or any officer, manager, director, equityholder or employee of such Affiliate, on the other hand, which were entered into or have been in effect at any time since January 1, 2023, other than any employment or service Contracts, invention assignment agreements and other Contracts relating to or entered into in connection with any employment or service, including any Contracts relating to stock purchases and awards, stock options and other equity or equity-based incentive arrangements, in each case relating to compensation and entered into in the Ordinary Course of Business.

4.25 Controls and Procedures, Certifications and Other Matters.

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

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

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

4.26 Books and Records. The minute books and other similar records of Public Company contain accurate summaries, in all material respects, of all actions taken at any meetings of Public Company's stockholders, the Public Company Board or any committee thereof and of all written consents executed in lieu of the holding of any such meeting since January 1, 2021.

4.27 Privacy and Data Protection.

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

(b) Public Company and each of its Subsidiaries have established and maintain commercially reasonable technical, physical and organizational controls, policies, procedures, safeguards, measures and security systems, plans and technologies in material compliance with requirements under applicable privacy and data protection Laws. Since January 1, 2021, no material breach or material security incident in relation to Public Company's or any of its Subsidiaries' personal data and/or proprietary data has occurred or, to the Public Company's knowledge, is threatened, and there has been no actual or, to the Public Company's knowledge, threatened unauthorized or illegal processing of, or accidental or unlawful destruction, loss or alteration of, any of Public Company's or its Subsidiaries' personal data and/or proprietary data.

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

4.29 No Other Representations or Warranties. Each of Public Company and Merger Sub hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement, none of Ligand, Merger Partner nor any other Person on behalf of Ligand or Merger Partner makes any express or implied representation or warranty with respect to Merger Partner or its financial condition, business, results of operations, properties, assets, liabilities, or prospects or otherwise or with respect to any other statements made or information provided to Public Company, Merger Sub or any of their Affiliates in connection with the transactions contemplated hereby, and (subject to the express representations and warranties of Ligand and Merger Partner set forth in Article III (in each case as qualified and limited by the Merger Partner Disclosure Schedule) or any representations and warranties of a signatory to the Lock-Up Agreement of Merger Partner) none of Public Company, Merger Sub or any of their respective Affiliates, stockholders, directors, officers, employees, agents, representatives or advisors, or any other Person, has relied on any representations, warranties, statements, or information (including the accuracy or completeness thereof).

ARTICLE V CONDUCT OF BUSINESS

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

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

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

(c) except as required to give effect to anything in contemplation of the Closing, amend its certificate of incorporation, bylaws or other comparable charter or organizational documents or effect or be a party to any merger, consolidation, share exchange, business combination, liquidation, dissolution, reorganization, statutory conversion, recapitalization, reclassification of shares, stock split or reverse stock split or form any new subsidiary or acquire any equity interest or other interest in any other Person;

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

(e) except in the Ordinary Course of Business, sell, lease, license, pledge, or otherwise dispose of or encumber any properties or assets material to Merger Partner;

(f) enter into any material transaction other than in the Ordinary Course of Business;

(g) license any material Intellectual Property to or from any third party;

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

(i) (i) incur or suffer to exist any Indebtedness or guarantee any such Indebtedness of another Person in excess of \$100,000 in the aggregate, (ii) issue, sell, or amend any debt securities or warrants or other rights to acquire any debt securities of Merger Partner, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person, or enter into any arrangement having the economic effect of any of the foregoing, or (iii) make any loans, advances (other than routine advances to employees of Merger Partner in the Ordinary Course of Business) or capital contributions to, or investment in, any other Person;

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

Schedule;

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

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

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

(n) except in the Ordinary Course of Business, make (i) any capital expenditures or other expenditures with respect to property, plant or equipment or (ii) other material expenditures in excess of \$1,000,000 in the aggregate;

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

(p) except (A) in the Ordinary Course of Business or (B) in connection with any transaction otherwise specifically permitted by this Section 5.1(p), (i) modify or amend in any material respect, or terminate, any material contract or agreement to which Merger Partner or Merger Partner Subsidiary is party, or (ii) knowingly waive, release or assign any material rights or claims (including any write-off or other compromise of any accounts receivable of Merger Partner Subsidiary);

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

(r) except (A) in the Ordinary Course of Business or (B) in connection with any transaction otherwise specifically permitted by this Section 5.1(r), (i) enter into any contract or agreement, including those relating to the rendering of services or the distribution, sale or marketing by third parties of the products or products licensed by Merger Partner or Merger Partner Subsidiary or (ii) license any Intellectual Property rights to or from any third party;

(s) open or close any facility or office;

(t) make, change or revoke any material Tax election (other than elections made in the Ordinary Course of Business), change an annual accounting period in respect of material Taxes, enter into any closing agreement in respect of material Taxes, waive or extend any statute of limitations with respect to material Taxes (other than any automatic extension granted in the Ordinary Course of Business and consistent with past custom and practice of Merger Partner), settle or compromise any material Tax liability, claim or assessment, knowingly surrender any right to claim a refund of material Taxes, or amend any material Tax Return; or

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

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

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

(b) issue, deliver, sell, grant, pledge or otherwise dispose of or encumber any shares of its capital stock, any other voting securities or any securities convertible into or exchangeable for, or any rights, warrants or options to acquire, any such shares, voting securities or convertible or exchangeable securities, in each case other than the issuance of shares of Public Company Series A Preferred Stock pursuant to the Concurrent Financing, upon the exercise of Public Company Stock Options or Public Company Warrants or conversion of Public Company Preferred Stock, in each case, outstanding on the date of this Agreement in accordance with their present terms (including cashless exercises), or other than a Permitted Issuance;

(c) except as required to give effect to anything in contemplation of the Closing, amend its certificate of incorporation, bylaws or other comparable charter or organizational documents or effect or be a party to any merger, consolidation, share exchange, business combination, liquidation, dissolution, reorganization, statutory conversion, recapitalization, reclassification of shares, stock split or reverse stock split or form any new subsidiary or acquire any equity interest or other interest in any other Person;

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

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

(f) except as set forth on Section 5.2(f) of the Public Company Disclosure Schedule, enter into any material transaction other than in the Ordinary Course of Business;

(g) license any material Intellectual Property rights to or from any third party;

(h) (i) incur or suffer to exist any Indebtedness or guarantee any such Indebtedness of another Person in excess of \$100,000 in the aggregate, (ii) issue, sell or amend any debt securities or warrants or other rights to acquire any debt securities of Public Company or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any “keep well” or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing, (iii) make any loans, advances (other than routine advances to employees of Public Company in the Ordinary Course of Business) or capital contributions to, or investment in, any other Person, other than Public Company or any of its direct or indirect wholly owned subsidiaries or (iv) enter into any hedging agreement or other financial agreement or arrangement designed to protect Public Company or its Subsidiaries against fluctuations in commodities prices or exchange rates;

(i) create or otherwise incur any encumbrance on any material asset of Public Company or any of its Subsidiaries, other than Permitted Liens;

(j) incur, pay or otherwise agree to bear any Transaction Expenses in excess of the threshold set forth in Section 5.2 of the Public Company Disclosure Schedule;

(k) forgive any loans to any Person, including its employees, officers, directors or Affiliate;

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

(m) make (i) any capital expenditures or other expenditures with respect to property, plant or equipment or (ii) other material expenditures in excess of \$100,000 in the aggregate (other than any expenditures in the Ordinary Course of Business);

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

(o) except (A) in the Ordinary Course of Business or (B) in connection with any transaction otherwise specifically permitted by this Section 5.2(o), (i) modify or amend in any material respect, or terminate, any material contract or agreement to which Public Company or any of its Subsidiaries is party, or (ii) knowingly waive, release or assign any material rights or claims (including any write-off or other compromise of any accounts receivable of Public Company or any of its Subsidiaries);

(p) except (A) in the Ordinary Course of Business or (B) in connection with any transaction otherwise specifically permitted by this Section 5.2(p), (i) enter into any contract or agreement, including those relating to the rendering of services or the distribution, sale or marketing by third parties of the products or products licensed by Public Company or any of its Subsidiaries or (ii) license any Intellectual Property rights to or from any third party;

(q) except as required to comply with the terms of a Public Company Employee Plan as in effect on the date of this Agreement, (i) take any action with respect to, adopt, enter into, terminate or amend any Public Company Employee Plan (or any other employee benefit or compensation plan, program, policy, agreement or arrangement that would have constituted a Public Company Employee Plan had it been in effect on the date of this Agreement) or any collective bargaining agreement, (ii) increase or alter the compensation (including any compensation opportunities) or benefits of, or pay or grant any bonus or bonus opportunity or severance, change in control, retention, transaction or other similar compensation or benefits, to, any director, officer, employee or consultant, (iii) amend or accelerate the payment, right to payment or vesting of any compensation or benefits, including any outstanding equity or equity-based incentive awards, (iv) pay any benefit not provided for as of the date of this Agreement under any Public Company Employee Plan, (v) grant any awards under any Public Company Employee Plan (or under any other employee benefit or compensation plan, program, policy, agreement or arrangement that would have constituted a Public Company Employee Plan had it been in effect on the date of this Agreement), (vi) take any action other than in the Ordinary Course of Business to fund or in any other way secure the payment of compensation or benefits under any Public Company Employee Plan (or under any other employee benefit or compensation plan, program, policy, agreement or arrangement that would have constituted a Public Company Employee Plan had it been in effect on the date of this Agreement); (vii) hire, promote or engage, or terminate (other than for cause), any employee or other individual service provider; or (viii) waive or release any noncompetition, nonsolicitation, confidentiality, assignment of Intellectual Property or other restrictive covenant obligation of any current or former employee or other individual service provider of Public Company or any of its Subsidiaries;

(r) make, change or revoke any material Tax election (other than elections made in the Ordinary Course of Business), change an annual accounting period in respect of material Taxes, enter into any closing agreement in respect of material Taxes, waive or extend any statute of limitations with respect to material Taxes (other than any automatic extension granted in the Ordinary Course of Business and consistent with past custom and practice of Public Company), settle or compromise any material Tax liability, claim or assessment, knowingly surrender any right to claim a refund of material Taxes, or amend any material Tax Return;

(s) commence any offering of shares of Public Company Common Stock or Public Company Preferred Stock, including pursuant to any employee stock purchase plan;

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

(u) fail to use commercially reasonable efforts to maintain insurance levels substantially comparable to levels existing as of the date of this Agreement;

(v) open or close any facility or office;

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

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

5.3 Confidentiality. The parties acknowledge that Public Company and Merger Partner have previously executed a letter agreement, dated as of November 14, 2024 (the "Confidentiality Agreement"), which Confidentiality Agreement shall continue in full force and effect in accordance with its terms, except as expressly modified by this Agreement.

ARTICLE VI ADDITIONAL AGREEMENTS

6.1 No Solicitation.

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

- (i) solicit, seek, encourage, induce or initiate or knowingly take any action to facilitate or encourage any offers, inquiries or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, any Acquisition Proposal or Acquisition Inquiry;
- (ii) enter into, continue or otherwise participate or engage in any discussions or negotiations regarding any Acquisition Proposal or Acquisition Inquiry, or furnish to any Person any non-public information or afford any Person other than Public Company or Merger Partner, as applicable, access to such party's property, books or records (except pursuant to a request by a Governmental Entity) in connection with any offers, inquiries or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, any Acquisition Proposal;
- (iii) take any action to make the provisions of any "fair price", "business combination" or "control share acquisition" statute or other similar statute or regulation inapplicable to any transactions contemplated by an Acquisition Proposal; or
- (iv) publicly propose to do any of the foregoing described in clauses (i) through (iii).

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

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

(i) (A) Merger Partner Board (and any committee thereof) shall not, except as set forth in this Section 6.1, (1) withhold, withdraw or modify, or publicly propose to withhold, withdraw or modify, the approval or recommendation by the Merger Partner Board with respect to the Merger, (2) fail to recommend against acceptance of a tender offer within ten (10) Business Days after commencement, or (3) propose publicly to approve, endorse, adopt or recommend, or has approved, endorsed, adopted, or recommended any Acquisition Proposal (each, a “Merger Partner Board Recommendation Change”) and (B) the Public Company Board (and any committee thereof) shall not, except as set forth in this Section 6.1, (1) fail to include its recommendation of the approval of the Required Public Company Stockholder Proposals or shall have withdrawn or modified in a manner adverse to Merger Partner its recommendation of the Required Public Company Stockholder Proposals, (2) withhold, withdraw or modify, or publicly propose to withhold, withdraw or modify, the approval or recommendation by the Public Company Board with respect to the Share Issuances or the Public Company Charter Amendment, (3) after the receipt by Public Company of an Acquisition Proposal and Merger Partner requests in writing that Public Company Board reconfirm its recommendation of the Required Public Company Stockholder Proposals, fail to do so within ten (10) Business Days after its receipt of Merger Partner’s request, (4) fail to recommend against acceptance of a tender offer within ten (10) Business Days after commencement or (5) propose publicly to approve, endorse, adopt or recommend, or has approved, endorsed, adopted, or recommended any Acquisition Proposal (each a “Public Company Board Recommendation Change”);

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

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

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

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

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

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

6 . 2 NYSE American Listing. Public Company shall use its commercially reasonable efforts, and shall take all reasonably necessary actions, to continue the listing of Public Company Common Stock issuable upon conversion of the Public Company Series A Preferred Stock on the NYSE American during the term of this Agreement (through and until the Effective Time) and to cause the shares of Public Company Common Stock issuable upon conversion of the Public Company Series A Preferred Stock being issued in connection with the Merger to be approved for listing (subject to notice of issuance) on the NYSE American at or prior to the Effective Time, including by filing the NYSE American Listing Application. Merger Partner will cooperate with Public Company to cause the NYSE American Listing Application to be conditionally approved prior to the Effective Time and shall promptly furnish to Public Company all information concerning Merger Partner and its officers, directors, and equityholders and such other matters, in each case, that may be required or reasonably requested in connection with any action contemplated by this Section 6.2.

6 . 3 Access to Information. Each of Public Company and Merger Partner shall (and Public Company shall cause its Subsidiaries to) afford to the other party's officers, employees, accountants, counsel and other representatives, reasonable access, during normal business hours during the period prior to the Effective Time, to all its properties, books, contracts, commitments, personnel and records and, during such period, each of Public Company and Merger Partner shall (and Public Company shall cause its Subsidiaries to) furnish promptly to the other party all information concerning its business, properties, assets and personnel as the other party may reasonably request in furtherance of the consummation of the Merger, the Concurrent Financing, or the other transactions contemplated by this Agreement; provided, however, that a party may restrict the foregoing access to the extent that (a) any applicable Law requires such restriction, (b) such access would give rise to a risk of waiving any attorney-client privilege, work product doctrine or other applicable privilege, or (c) such access would be in breach of any confidentiality obligation or similar obligation. Each of Public Company and Merger Partner will (and Public Company will cause its Subsidiaries to) hold any such information which is nonpublic in confidence in accordance with the Confidentiality Agreement. No information or knowledge obtained in any investigation pursuant to this Section 6.3 or otherwise shall affect or be deemed to modify any representation or warranty contained in this Agreement or the conditions to the obligations of the parties to consummate the Merger. Any information obtained pursuant to the access contemplated by this Section 6.3 shall be subject to the Confidentiality Agreement. Any access to any facilities of Merger Partner, Public Company, or any of their Subsidiaries, shall be subject to the reasonable security measures and insurance requirements of Merger Partner, Public Company, or any of their Subsidiaries, as applicable, and shall not include the right to perform any "invasive" testing or soil, air or groundwater sampling, including, without limitation, any Phase I or Phase II environmental assessments. Without limiting the generality of the foregoing, from the date of this Agreement until the Effective Time, each of Public Company and Merger Partner shall promptly provide the other party with copies of any material notice, report or other document received from any Governmental Entity in connection with the Merger or any of the transactions contemplated by this Agreement.

6.4 Stockholder Approval.

(a) Promptly after the execution of this Agreement, and in any event no later than one (1) Business Day thereafter, Merger Partner shall solicit and obtain the Merger Partner Stockholder Approval by the Merger Partner Written Consent for the purposes of (i) evidencing the adoption of this Agreement and the approval of the Merger and the other transactions contemplated hereby and (ii) acknowledging that the approval given thereby is irrevocable and that such stockholder is aware of its rights to demand appraisal for its shares pursuant to Section 262 of the DGCL, a copy of which was attached to the Merger Partner Written Consent, and that such stockholder has received and read a copy of Section 262 of the DGCL and (iii) acknowledging that by its approval of the Merger it is not entitled to appraisal rights with respect to its shares in connection with the Merger and thereby waives any rights to receive payment in cash of the fair value of its Merger Partner Capital Stock under Section 262 of the DGCL. In connection with the Merger Partner Stockholder Approval, Merger Partner shall comply with all disclosure and other obligations to its stockholders under the DGCL and any other applicable Laws. Merger Partner shall take all action that is both reasonable and lawful to obtain the Merger Partner Stockholder Approval. Without limiting the generality of the foregoing, Merger Partner agrees that its obligations under this Section 6.4(a) shall not be affected by the commencement, public proposal, public disclosure or communication to Merger Partner of any Acquisition Proposal or a Merger Partner Board Recommendation Change. Any solicitation or similar disclosure circulated to Merger Partner's stockholder in connection with this Agreement and the Merger shall be in form and substance reasonably satisfactory to Public Company and, except in the case of a Merger Partner Board Recommendation Change, any solicitation or similar disclosure, if the Merger Partner Stockholder Approval has not already been obtained, shall include the recommendation of Merger Partner Board that Merger Partner's stockholder consent to the adoption of this Agreement and approval of the Merger.

(b) Subject to Section 6.1(b), promptly after the execution of this Agreement, and in any event no later than one (1) Business Day thereafter, in lieu of calling a meeting of the stockholders of Public Company, Public Company shall solicit and obtain the Required Public Company Stockholder Approvals by the Public Company Written Consent. As soon as reasonably practicable after the Public Company Written Consent has been duly executed, Public Company shall deliver to Merger Partner a copy of the Public Company Written Consent.

(c) In the event that the Required Public Company Stockholder Approvals are obtained in accordance with Section 6.4(b), Public Company shall, as promptly as practical thereafter, and in any event within twenty (20) Business Days of the date of this Agreement, file with the SEC the Information Statement prepared by the Public Company in consultation with Merger Partner and its counsel as provided below and describing this Agreement and the Merger and the other transactions related thereto. Public Company shall include in the Information Statement the Opinion of Financial Advisor, in its entirety, together with a summary thereof (which summary shall comply with the provision of Item 1015(b) of Regulation M-A promulgated by the SEC). As promptly as reasonably practicable after the Information Statement has been cleared by the SEC (including receipt of confirmation from the SEC that the Information Statement will not be reviewed) or promptly after ten (10) calendar days have passed since the date of filing of the preliminary Information Statement with the SEC without notice from the SEC of its intent to review the Information Statement, Public Company shall file with the SEC the Information Statement in definitive form as contemplated by Rule 14c-2 promulgated under the Exchange Act substantially in the form previously cleared or filed with the SEC, as the case may be, and mail a copy of the Information Statement to Public Company's stockholders of record in accordance with applicable Law. In connection with the Public Company Written Consent and the Information Statement, Public Company shall take all actions necessary to comply, and shall comply in all material respects, with applicable Law, the bylaws and the Exchange Act, including Regulation 14C and Schedule 14C promulgated thereunder, as applicable. Public Company shall cause the definitive Information Statement (or any amendment or supplement thereto) that is filed with the SEC and at the time the definitive Information Statement is mailed to the stockholders of the Public Company, to not (i) contain any untrue statement of a material fact or (ii) omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Public Company and Merger Partner shall cooperate with one another (i) in connection with the preparation of the Information Statement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith or with the Information Statement. Merger Partner and its counsel shall be given a reasonable opportunity to review and comment on the Information Statement each time before it is filed with the SEC, and Public Company shall give reasonable and good faith consideration to any comments made by Merger Partner and its counsel. No amendment or supplement to the Information Statement shall be made by Public Company without the prior written consent of Merger Partner (such consent not to be unreasonably withheld, conditioned or delayed). Public Company shall provide Merger Partner and its counsel with (i) any comments or other communications, whether written or oral, that Public Company or its counsel may receive from time to time from the SEC or its staff with respect to the Information Statement promptly after receipt of those comments or other communications and (ii) a reasonable opportunity to participate in Public Company's response to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given by Public Company), including by participating with Public Company or its counsel in any discussions or meetings with the SEC. Public Company shall use its reasonable best efforts to promptly provide responses to the SEC with respect to any and all comments received on the Information Statement from the SEC, including by taking the actions set forth in Section 6.4(b) of the Public Company Disclosure Schedule. If any information relating to Merger Partner or Public Company, or any of their respective Affiliates or its or their respective Representatives, should be discovered by a party hereto, which information should be set forth in an amendment or supplement to the Information Statement so that the Information Statement would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, the party that discovers such information shall as promptly as practicable following such discovery notify the other party or parties (as the case may be) and after such notification, as and to the extent required by applicable Law, (i) Public Company shall promptly prepare (with the assistance of Merger Partner as provided for in this Section 6.4(b)) an amendment or supplement to the Information Statement and (ii) Public Company shall cause the Information Statement as so amended or supplemented to be filed with the SEC and to be disseminated to its stockholders.

(d) Unless the Public Company Board has effected a Public Company Board Recommendation Change in accordance with Section 6.1 and terminated this Agreement to enter into a definitive agreement with respect to a Superior Proposal pursuant to Section 8.1, Public Company's obligation to obtain the Required Public Company Stockholder Approvals by the Public Company Written Consent in accordance with Section 6.4(b) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Acquisition Proposal.

(e) Except in the case of a Public Company Board Recommendation Change made in compliance with Section 6.1, (i) Public Company shall use its reasonable best efforts to solicit from the stockholders of Public Company consent in favor of the Required Public Company Stockholder Approvals, (ii) Public Company shall ensure that the Public Company Written Consent solicited in connection with the Required Public Company Stockholder Approvals is in material compliance with all applicable Laws and (iii) Public Company, in its capacity as the sole stockholder of Merger Sub, shall approve the Merger.

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

6.5 Legal Conditions to Merger.

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

(b) Each of Merger Partner and Public Company shall use reasonable best efforts to give (or shall cause their respective Subsidiaries to give) any notices to third parties, and use, and cause their respective Subsidiaries to use, their reasonable best efforts to obtain any third party consents related to or required in connection with the Merger that are (i) necessary to consummate the transactions contemplated hereby, (ii) disclosed or required to be disclosed in the Merger Partner Disclosure Schedule or the Public Company Disclosure Schedule, as the case may be, or (iii) required to prevent the occurrence of an event that may have a Merger Partner Material Adverse Effect or a Public Company Material Adverse Effect, as the case may be, from occurring prior to or after the Effective Time. Notwithstanding the foregoing, upon request of Merger Partner, Public Company will provide a guaranty of any Merger Partner Leases requested by a lessor thereunder to the extent such guaranty is conditioned on the occurrence of the Closing and effective at or after the Effective Time.

(c) Subject to the terms hereof, Public Company and Merger Partner agree, and shall cause each of their respective Subsidiaries, to (i) cooperate and to use their respective commercially reasonable efforts to obtain any required government clearances or approvals under any other federal, state or foreign Law or, regulation or decree designed to prohibit, restrict or regulate actions for the purpose or effect of monopolization or restraint of trade ("Antitrust Laws"), and (ii) respond to any government requests for information under any Antitrust Law. The parties hereto will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to any Antitrust Law.

(d) Subject to the terms hereof, Public Company and Merger Partner shall, and shall cause their respective Subsidiaries to negotiate in good faith and agree on (i) the final form of Zelsuvmi Royalty Agreement between Merger Partner and Nomis Bay, (ii) the final form of CHRO Ligand Legacy Product Royalty Agreement between Public Company and Ligand, (iii) the final form of CHRO Nomis Bay Legacy Product Royalty Agreement between Public Company and Ligand, and (iv) the final form of CHRO Management Legacy Product Royalty Agreement between Public Company and those other Persons signatory thereto, in each case in substantially the form attached to the Securities Purchase Agreement with such modifications as Public Company, Merger Partner and the other parties thereto may mutually agree, in order to satisfy the conditions to consummation of the Concurrent Financing as set forth in the Securities Purchase Agreement.

6.6 Public Disclosure. The initial press release announcing the execution of this Agreement shall be issued only (i) in such form as shall be mutually agreed upon by Public Company and Merger Partner and (ii) following receipt of the Merger Partner Written Consent and Public Company Written Consent. No party shall, and no party shall permit any of its Subsidiaries or any of its Representatives to, issue any other press release or otherwise make any public statement with respect to the Merger or this Agreement unless required by applicable Law or stock exchange rule, in which case the party required to make such disclosure shall use commercially reasonable efforts to consult with the other party before making any such press release or public statement; provided that Public Company and Ligand (with respect to Merger Partner) may comply with SEC requirements under the Securities Act or the Exchange Act that require any disclosure, without the consent of other parties hereto. Without limiting the foregoing, Public Company shall, by 9:00 a.m. Eastern Time, on the first (1st) Business Day immediately following the date of exchange by the parties of the executed copies of the Merger Partner Written Consent and Public Company Written Consent, file with the SEC a Current Report on Form 8-K in form and substance as reasonably approved by Merger Partner (which approval shall not be unreasonably withheld, conditioned or delayed).

6.7 Intended Tax Treatment. The parties intend that the Merger and the Concurrent Financing qualify for the Intended Tax Treatment. Each of the parties shall use reasonable best efforts to cause the Merger and the Concurrent Financing to so qualify, and agree not to, and not to permit or cause any of their Affiliates to, take any action or cause any action to be taken which would reasonably be expected to prevent or impede the Merger the Concurrent Financing from so qualifying. The Merger and the Concurrent Financing shall be reported by the parties for all Tax purposes in accordance with the foregoing, unless otherwise required pursuant to a “determination” within the meaning of Section 1313(a) of the Code.

6.8 Affiliate Legends. Section 6.8 of the Merger Partner Disclosure Schedule sets forth a list of those Persons who are, in Merger Partner’s reasonable judgment, “affiliates” of Merger Partner within the meaning of Rule 145 promulgated under the Securities Act (“Rule 145 Affiliates”). Merger Partner shall notify Public Company in writing regarding any change in the identity of its Rule 145 Affiliates prior to the Closing Date. Public Company shall be entitled to place appropriate legends on the certificates evidencing any shares of Public Company Series A Preferred Stock or Public Company Common Stock to be received by Rule 145 Affiliates of Merger Partner in the Merger reflecting the restrictions set forth in Rule 145 promulgated under the Securities Act and to issue appropriate stop transfer instructions to the transfer agent for Public Company Series A Preferred Stock or Public Company Common Stock.

6.9 D&O Indemnification.

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

(b) Prior to the Effective Time, Public Company shall determine in good faith to either (i) continue to maintain in effect for six (6) years after the Effective Time, the Public Company's directors' and officers' insurance policies and fiduciary liability insurance policies in place as of the date hereof or (ii) purchase a six (6)-year prepaid "D&O tail policy" for the non-cancellable extension of the directors' and officers' liability coverage of Public Company's existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six (6) years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under Public Company's existing policies as of the date of this Agreement with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of Public Company by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the Merger).

(c) Prior to the Effective Time, Merger Partner shall determine in good faith to either (i) continue to maintain in effect for six (6) years after the Effective Time, the Merger Partner's or its Affiliates' directors' and officers' insurance policies and fiduciary liability insurance policies in place as of the date hereof or (ii) purchase a six (6)-year prepaid "D&O tail policy" for the non-cancellable extension of the directors' and officers' liability coverage of Merger Partner's existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six (6) years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under Merger Partner's existing policies as of the date of this Agreement with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of Merger Partner by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the Merger).

(d) Public Company shall pay all expenses, including reasonable and documented attorneys' fees, that may be incurred by a Person in successfully enforcing such Person's rights provided in this Section 6.9.

(e) Public Company and Merger Partner agree that all rights to exculpation, indemnification and advancement of expenses for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, now existing in favor of the current or former directors, officers or employees, as the case may be, of Public Company, Merger Partner or any of their respective Subsidiaries as provided in their respective certificates of incorporation or bylaws or other organization documents or in any agreement in existence immediately prior to the Effective Time shall survive the Merger and shall continue in full force and effect. The provisions of this Section 6.9 are intended to be in addition to the rights otherwise available to the current officers and directors of Public Company, Merger Partner or any of their respective Subsidiaries by Law, charter, statute, bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the Indemnified Persons, their heirs and their representatives. The obligations set forth in this Section 6.9 shall not be terminated, amended or otherwise modified in any manner that adversely affects any Indemnified Person, or any Person who is a beneficiary under the policies referred to in this Section 6.9 and their heirs and representatives, without the prior written consent of such affected Indemnified Person or other Person.

(f) If the Surviving Corporation or Public Company or any of their respective successors or assigns shall (i) consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such Person shall assume all of the obligations of such Person set forth in this Section 6.9.

(g) Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to Merger Partner, Public Company or any of their respective Subsidiaries for any of their respective directors, officers or other employees, it being understood and agreed that the indemnification provided for in this Section 6.9 is not prior to or in substitution for any such claims under such policies.

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

6.11 Employee Communications. Public Company and Merger Partner will use reasonable best efforts to consult with each other, and will consider in good faith each other's advice and comments, prior to providing any notices or other written or broad-based communications to their respective employees or other individual service providers regarding this Agreement or the Merger and the effects thereof on the employment or service, compensation or benefits of their respective employees or other individual service providers; provided, that the foregoing shall not apply to any later communication of information that is the same as, or is substantially similar to, information with respect to which Merger Partner has previously provided its consent.

6.12 IRS Form W-9. On or prior to the Closing Date, Ligand shall deliver to Public Company a completed and executed IRS Form W-9 of Ligand.

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

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

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

6.16 Calculation of Exchange Ratio.

(a) Not less than ten (10) Business Days prior to the anticipated date for Closing (the "Anticipated Closing Date"), Public Company shall deliver to Merger Partner a draft schedule (the "Draft Exchange Ratio Schedule") setting forth, in reasonable detail, Public Company's good faith, estimated calculation of the Exchange Ratio as of the Anticipated Closing Date; provided, that Merger Partner shall make available to Public Company the Merger Partner capitalization information required to calculate the Exchange Ratio, or any such additional information of Merger Partner as Public Company may reasonably request. Public Company shall make available to Merger Partner the work papers and back-up materials used in or reasonably relevant to preparing the Draft Exchange Ratio Schedule and, if reasonably requested by Merger Partner, Public Company's transfer agent, accountants and counsel at reasonable times and upon reasonable advance notice. Public Company shall consider in good faith and incorporate any comments provided by Merger Partner within four (4) Business Days of delivery of the Draft Exchange Ratio Schedule.

(b) Not less than four (4) (but no more than six (6)) Business Days prior to the Anticipated Closing Date, Public Company will deliver to Merger Partner a proposed final schedule (the "Final Exchange Ratio Schedule") setting forth, in reasonable detail, Public Company's good faith, estimated calculation of the Exchange Ratio, prepared and certified by Public Company's Chief Financial Officer (or if there is no Chief Financial Officer, the Chief Executive Officer of Public Company), which shall, absent fraud or manifest error, be conclusive and binding on the parties hereto.

6.17 Continuing Employee Offers. Within ten (10) days following the date hereof, Merger Partner shall provide to Public Company a true and complete list of all Continuing Employees. Public Company shall, no later than five (5) days prior to the Anticipated Closing Date, make offers of employment to each Continuing Employee on terms and conditions determined by Merger Partner and communicated to Public Company. Each such employment offer shall be effective as of and contingent upon the occurrence of the Closing.

6.18 Merger Partner Financials. As promptly as reasonably practicable following the date hereof, Merger Partner shall deliver to Public Company any audited or unaudited consolidated balance sheets and the related audited or unaudited consolidated statements of operations and comprehensive loss, and stockholders' deficit and cash flows of Merger Partner as of and for a year-to-date period ended as of the end of any other different fiscal quarter (and as of and for the same period from the previous fiscal year) or fiscal year (and as of and for the prior fiscal quarter), as applicable that is required to be included in the Information Statement or any other filing required by applicable Law. All such financial statements, together with any audited or unaudited consolidated balance sheet and the related audited or unaudited consolidated statements of operations and comprehensive loss, and stockholders' deficit and cash flows of Merger Partner as of and for a year-to-date period ended as of the end of a different fiscal quarter (and as of and for the same period from the previous fiscal year) or fiscal year (and as of and for the prior fiscal quarter) that is required to be included in the Information Statement or any other filing required by applicable Law (A) will fairly present in all material respects the financial position of Merger Partner as of the date thereof, and the results of its operations, stockholders' equity and cash flows for the respective periods then ended (subject, in the case of any unaudited interim financial statements, to normal year-end audit adjustments, none of which is expected to be material), (B) will be prepared in conformity with GAAP applied on a consistent basis during the periods involved (except, in the case of any audited financial statements, as may be indicated in the notes thereto and subject, in the case of any unaudited financial statements, to normal year-end audit adjustments, none of which is expected to be material), (C) in the case of any audited financial statements, will be audited in accordance with the standards of the PCAOB and contain an unqualified report of Merger Partner's auditor and (D) will comply in all respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act in effect as of the respective dates thereof (including Regulation S-X or Regulation S-K, as applicable).

6.19 Amendment to Public Company Equity Plan. Prior to the Effective Time, the Public Company Board will amend, or amend and restate, the existing Public Company Equity Plan in form and substance as agreed to by Public Company and Merger Partner (such agreement not to be unreasonably withheld, conditioned or delayed by either party), subject to the Closing and the approval of the stockholders of the Public Company and effective as of the Effective Time, and will include provisions in the Public Company Written Consent for the stockholders of Public Company to approve the Equity Incentive Plan Amendment Proposal.

6.20 Obligations of Merger Sub. Public Company will take all action necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement.

ARTICLE VII CONDITIONS TO MERGER

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

(a) Stockholder Approvals. The Merger Partner Stockholder Proposal shall have been approved by means of the Merger Partner Written Consent by the requisite vote of the stockholders of Merger Partner under applicable Law and Merger Partner's certificate of incorporation. The Required Public Company Stockholder Proposals shall have been approved by means of the Public Company Written Consent by the requisite vote of the stockholders of Public Company under applicable Law.

(b) Compliance with Rule 14c-2 and SEC Rules. 20 calendar days shall have elapsed following the commencement of mailing of the Information Statement to Public Company's shareholders; provided, that, to the extent any rules and regulations of the SEC applicable to the Information Statement require a longer period than such 20 calendar days, then this condition shall only be satisfied upon the expiration of such longer period.

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

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

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

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

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

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

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

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

(e) Third Party Consents. Merger Partner shall have obtained (i) all consents and approvals of third parties listed in Section 7.2(e) of the Merger Partner Disclosure Schedule and (ii) any other consent or approval of any third party (other than a Governmental Entity) the failure of which to obtain, individually or in the aggregate, is reasonably likely to have a Merger Partner Material Adverse Effect.

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

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

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

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

(d) Resignations. Merger Partner shall have received copies of the resignations, effective as of the Effective Time, of each director and officer (for such officers, limited to the offices held by such officers and not to such officer's employment) of Public Company and its Subsidiaries, other than a resignation from the individual designated a director to Public Company Board by the Public Company in compliance with Section 1.5(a).

(e) Third Party Consents. Public Company shall have obtained (i) all consents and approvals of third parties listed in Section 7.3(e) of the Public Company Disclosure Schedule and (ii) any other consent or approval of any third party (other than a Governmental Entity) the failure of which to obtain, individually or in the aggregate, is reasonably likely to have a Public Company Material Adverse Effect.

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

ARTICLE VIII TERMINATION AND AMENDMENT

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

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

(b) by either Public Company or Merger Partner if the Merger shall not have been consummated by October 31, 2025 (the "Outside Date") (provided that the right to terminate this Agreement under this Section 8.1(b) shall not be available to Public Company or Merger Partner if such party's (or in the case of Public Company, Merger Sub's) failure to fulfill any obligation under this Agreement has been a principal cause of the failure of the Merger to occur on or before the Outside Date);

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

(d) by Merger Partner if the Required Public Company Stockholder Approvals are not obtained by delivery of the Public Company Written Consent on or prior to 5:00 p.m., New York City time, on the date that is two (2) Business Days after the execution of this Agreement;

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

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

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

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

(i) by Public Company, if the Merger Partner Stockholder Approval is not obtained by delivery of the Merger Partner Written Consent on or prior to 5:00 p.m., New York City time, on the date that is two (2) Business Days after the execution of this Agreement.

8 . 2 Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1, this Agreement shall immediately become void and there shall be no liability or obligation on the part of Public Company, Merger Partner, Merger Sub or their respective officers, directors, stockholders or Affiliates; provided, that (a) any such termination shall not relieve any party from liability for any material and willful breach of this Agreement or Fraud and (b) the provisions of Section 5.3 (Confidentiality), this Section 8.2 (Effect of Termination), Section 8.3 (Fees and Expenses) and Article IX (Miscellaneous) (other than Section 9.14) and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement. A “material and willful breach” by a party of a provision of this Agreement means a material breach that is the consequence of a party knowingly undertaking an action, or failing to undertake an action, with the understanding that the action, or failure to act, was or would reasonably be expected to be a breach by such party of the applicable provisions of this Agreement. For purposes of this Agreement, the failure to consummate the Closing pursuant to, and when required by, the terms of this Agreement shall constitute a material and willful breach hereunder.

8 . 3 Fees and Expenses. Except as set forth in this Section 8.3 or expressly set forth in this Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Merger is consummated. Notwithstanding the foregoing:

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

(b) If the Merger is consummated, Public Company shall pay all amounts due to outside legal counsel of each of Public Company, Merger Partner and Ligand that are reasonably incurred in such outside legal counsel’s capacity as such in connection with the Merger, the Concurrent Financing and the other transactions contemplated hereby, or as previously incurred in such outside legal counsel’s capacity as such in the ordinary course of business with the Public Company.

(c) Public Company shall pay all reasonable attorneys' fees and other costs (including expert witness fees) incurred by Ligand, Merger Partner and/or Nomis Bay in connection with such Person's defense against any action, suit, proceeding, claim, arbitration or investigation before any Governmental Entity or before any arbitrator arising or relating to this Agreement or the Concurrent Financing.

ARTICLE IX MISCELLANEOUS

9.1 Non-survival of Representations, Warranties and Agreements. Subject to the limitations set forth in this Section 9.1, the Surviving Representations shall survive the Effective Time until the date that is twelve (12) months from the Effective Time (the "Survival Period"), provided, however, that no party will be liable or otherwise required to pay (except in the case of Fraud) in respect of the Surviving Representations for claims in excess of \$10,000,000 in the aggregate with respect to all claims. It is the express intent of the parties that if Survival Period is shorter or longer than the statute of limitations that would otherwise have been applicable to such claim, then, by contract, the applicable statute of limitations with respect to such claim shall be reduced to the shortened or increased to the extended Survival Period contemplated hereby. Other than the Surviving Representations, none of the representations, warranties, covenants or agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time, other than those covenants or agreements of the parties which by their terms apply, or are to be performed in whole or in part, after the Effective Time.

9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (i) three (3) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, or (ii) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable overnight courier service, in each case to the intended recipient as set forth below:

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

Channel Therapeutics Corporation
4400 Route 9 South, Suite 1000
Freehold, NJ 07728
Attention: Chief Executive Officer
with a copy (which shall not constitute notice) to:

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

- (b) if to Merger Partner, to:

LNHC, Inc.
555 Heritage Drive, Suite 200
Jupiter, FL 33458
Attention: Chief Executive Officer

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

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Peter Handrinos; Leah Sauter
Email: peter.handrinos@lw.com; leah.sauter@lw.com

Any party to this Agreement may give any notice or other communication hereunder using any other means (including personal delivery, messenger service, ordinary mail or electronic mail), but no such notice or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Any party to this Agreement may change the address to which notices and other communications hereunder are to be delivered by giving the other parties to this Agreement notice in the manner set forth in this Section 9.2.

9.3 Entire Agreement. This Agreement (including the Schedules, Annexes and Exhibits hereto and the documents and instruments referred to herein that are to be delivered at the Closing) constitutes the entire agreement among the parties to this Agreement and supersedes any prior understandings, agreements or representations by or among the parties hereto, or any of them, written or oral, with respect to the subject matter hereof and the parties hereto expressly disclaim reliance on any such prior understandings, agreements or representations to the extent not embodied in this Agreement. Notwithstanding the foregoing, the Confidentiality Agreement shall remain in effect in accordance with its terms.

9.4 Amendment. Subject to applicable Law, and Section 6.9(e) (D&O Indemnification), this Agreement may be amended with the approval of the Public Company Board and the Merger Partner Board, at any time prior to the Effective Time (whether before or after obtaining the Public Company Written Consent or the Merger Partner Written Consent); provided, however, that after the Public Company Written Consent or the Merger Partner Written Consent have been obtained, no amendment to this Agreement may be made without the further approval of the stockholders of Public Company or Merger Partner, as applicable, if such further approval is required by Law. This Agreement may not be amended except by an instrument in writing signed on behalf of each of Public Company and Merger Partner.

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

9.6 Procedure for Termination, Amendment, Extension or Waiver. A termination of this Agreement pursuant to Section 8.1, an amendment, modification or supplement of this Agreement pursuant to Section 9.4 or an extension or waiver of this Agreement pursuant to Section 9.5 shall, in order to be effective, require action by the respective boards of directors of the applicable parties.

9.7 No Third Party Beneficiaries. This Agreement is not intended to, and shall not, confer upon any other Person any rights or remedies hereunder, except as set forth in or contemplated by the terms and provisions of Section 6.9.

9.8 Assignment. No party may assign any of its rights or delegate any of its performance obligations under this Agreement, in whole or in part, by operation of Law or otherwise without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment of rights or delegation of performance obligations in violation of this Section 9.8 is void.

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

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

9.11 Interpretation. When reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or Section of this Agreement, unless otherwise indicated. The table of contents, table of defined terms and headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” Where this Agreement refers to information that was “made available”, that means that such information was either (i) provided directly to the Public Company or Merger Partner, as applicable, by the other party, with confirmation of receipt, (ii) included in the virtual data rooms established by Public Company and Merger Partner created for the purposes of providing information to the other party in connection with this Agreement at least one (1) Business Day prior to the execution and delivery of this Agreement or (iii) solely with respect to information made available by Public Company, filed with and publicly available on the SEC’s EDGAR prior to the date of this Agreement. When used in the Agreement, “Person” shall mean any natural person, corporation, exempted company, limited liability company, partnership, exempted limited partnership, association, joint venture, trust, or other entity or business association.

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

9.13 Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at Law or in equity.

9.14 Submission to Jurisdiction. Each of the parties to this Agreement (i) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, a state or federal court sitting in Wilmington, Delaware in any action or proceeding arising out of or relating any Relevant Matter, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined in any such court, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iv) agrees not to bring any action or proceeding arising out of or relating to any Relevant Matter in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 9.2. Nothing in this Section 9.14, however, shall affect the right of any party to serve legal process in any other manner permitted by Law.

9.15 WAIVER OF JURY TRIAL. EACH OF PUBLIC COMPANY, THE MERGER SUB AND MERGER PARTNER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY RELEVANT MATTER.

9.16 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than Merger Partner, Public Company, Merger Sub and the Indemnified Persons to the extent of their respective rights pursuant to Section 6.9) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.17 Disclosure Schedule. Each of the Merger Partner Disclosure Schedule and the Public Company Disclosure Schedule shall be arranged in sections corresponding to the numbered sections contained in this Agreement, and the disclosure in any section shall qualify only (i) the corresponding section of this Agreement and (ii) the other sections of this Agreement, to the extent that it is reasonably apparent from a reading of such disclosure that it also qualifies or applies to such other sections. The inclusion of any information in the Merger Partner Disclosure Schedule or the Public Company Disclosure Schedule, as applicable, shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in a Merger Partner Material Adverse Effect or a Public Company Material Adverse Effect, as applicable, or is outside the Ordinary Course of Business.

9.18 Certain Defined Terms. For purposes of this Agreement:

(a) “A.G.P. Warrants” means the warrants to purchase up to 55,000 shares of Public Company Common Stock, issued by Public Company to A.G.P./Alliance Global Partners pursuant to that certain underwriting agreement, dated February 15, 2024, as amended by that certain Letter Agreement, dated February 16, 2024.

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

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

(d) “Certificate of Designations” means the Certificate of Designations of Series A Convertible Preferred Stock of Public Company in the form attached hereto as Exhibit D.

(e) “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(f) “Continuing Employee” means an employee or contractor of Merger Partner or one of its Affiliates who is expected to perform services for Public Company and its Subsidiaries effective upon Closing.

(g) “Contract” means, with respect to any Person, any written, oral or other agreement, contract, subcontract, lease (whether for real or personal property), mortgage, understanding, arrangement, instrument, note, option, warranty, license, sublicense, insurance policy, benefit plan or commitment or undertaking of any nature to which such Person is a party or by which such Person or any of its assets are bound under applicable Law.

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

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

(j) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

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

(l) “Excluded Contracts” means (i) Contracts solely concerning non-exclusive rights granted to Merger Partner or Public Company (as applicable) that are not material to the business of such Person, including any Contract solely for the license of “off-the-shelf” software that is available on standard commercial terms, (ii) Contracts the terms of which are solely focused on obligations relating to non-disclosure or confidentiality or assignments of Intellectual Property (to the extent in customary form and copies of which forms have been made available to Public Company or Merger Partner, as applicable), in each case entered into in the Ordinary Course of Business, (iii) statements of work, works orders, project annexes, purchase orders and associated terms and conditions to the extent the Contract accompanying such statements of work, works orders, project annexes, purchase orders, and associated terms and conditions has been made available to Public Company or Merger Partner, as applicable, (iv) agreements with clinical trial sites, and (v) solely with respect to Public Company, Contracts related to Intellectual Property that has been abandoned as of the date hereof, including those identified on Section 9.18(k) of the of the Public Company Disclosure Schedule.

(m) “Fraud” means an actual (and not constructive, promissory, imputed, reckless or negligent) common law fraud under the laws of the State of Delaware by a party hereto in the making of the representations and warranties by such party as set forth in Article III or Article IV, as applicable, and not with respect to any other matters.

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

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

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

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

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

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

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

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

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

(w) “Merger Partner Incorporation” means the date of incorporation of Merger Partner, which is September 8, 2023.

(x) “Merger Partner Intellectual Property” means the Merger Partner Owned Intellectual Property and the Merger Partner Licensed Intellectual Property.

(y) “Merger Partner Licensed Intellectual Property” means all Intellectual Property that is licensed to Merger Partner or a Merger Partner Subsidiary by any individual or entity, excluding any Intellectual Property that is licensed to Merger Partner or a Merger Partner Subsidiary under Excluded Contracts.

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

(a a) “Merger Partner Owned Intellectual Property” means all Intellectual Property owned or purported to be owned by Merger Partner or a Merger Partner Subsidiary, in whole or in part.

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

(cc) “Merger Partner Subsidiary” means the entities set forth on Section 3.3(a) of the Merger Partner Disclosure Schedule.

(dd) “Nomis Bay” means Nomis Bay Ltd., a Bermuda exempted company.

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

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

(g g) “Permitted Issuance” means (i) any issuance made pursuant the committed equity financing facility pursuant to that certain Common Stock Purchase Agreement, dated as of July 26, 2024, by and between the Company and Tikkun Capital LLC (as amended, restated, supplemented or otherwise modified from time to time), and any transactions contemplated thereby, including the issuance and sale of shares thereunder, up to a maximum of \$1,000,000 in total proceeds from such issuances in the aggregate, and (ii) any issuance made in connection with a the conversion of that certain Convertible Note dated July 24, 2024 held by 3i, in the principal amount of \$750,000 (the “3i Convertible Note”) into Public Company Common Stock in accordance with its terms.

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

(i i) “Permitted Settlement” means, with respect to any Person, a settlement by such Person of any pending legal proceeding that: (i) provides for the payment by such Person of money damages not to exceed \$100,000 in the aggregate and no other relief of any nature; and (ii) includes an unconditional release and wavier of future claims by all plaintiffs in favor of such Person.

(j j) “Public Company Charter Amendment” means the amendment to change the name of Public Company to “Pelthos Therapeutics Inc.”

(k k) “Public Company Common Stock” means the shares of common stock, \$0.0001 par value per share, of Public Company.

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

(m m) “Public Company Intellectual Property” means the Public Company Owned Intellectual Property and the Public Company Licensed Intellectual Property.

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

(oo) “Public Company Material Adverse Effect” means any Effect that, individually or in the aggregate with all other Effects that have occurred through the date of determination of the occurrence of a Public Company Material Adverse Effect, has had, or is reasonably likely to have, a material adverse effect on the business, assets and liabilities, financial condition or results of operations of Public Company and its Subsidiaries, taken as a whole; provided, however, that no Effect, to the extent resulting from or arising out of any of the following, alone or in combination, shall be deemed to be a Public Company Material Adverse Effect or be taken into account for purposes of determining whether a Public Company Material Adverse Effect has occurred or is reasonably likely to occur: (i) changes after the date of this Agreement in prevailing economic or market conditions in the United States or any other jurisdiction (except to the extent those changes have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (ii) changes or events after the date of this Agreement affecting the industry or industries in which Public Company and its Subsidiaries operate generally (except to the extent those changes or events have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (iii) changes after the date of this Agreement in generally accepted accounting principles or requirements or the interpretation thereof (except to the extent those changes have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (iv) changes after the date of this Agreement in Laws, rules or regulations of general applicability or interpretations thereof by any Governmental Entity (except to the extent those changes have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (v) any natural disaster, epidemic, pandemic or other disease outbreak or any outbreak of major hostilities or any act of terrorism (except to the extent those changes or events have a disproportionate effect on Public Company and its Subsidiaries relative to the other participants in the industry or industries in which Public Company and its Subsidiaries operate), (vi) a change in the public trading price of Public Company Common Stock or the implications hereof (it being understood that any Effect causing or giving rise to any such change shall be taken into account for purposes of determining whether a Public Company Material Adverse Effect has occurred or is reasonably likely to occur), (vii) the execution, delivery, announcement or performance of the obligations under this Agreement or the announcement, pendency or anticipated consummation of the transactions contemplated by this Agreement, (viii) any failure by Public Company or any of its Subsidiaries to meet any public estimates or expectations of such Person’s revenue, earnings or other financial performance or results of operations for any period, (ix) any failure by Public Company or any of its Subsidiaries to meet any internal guidance, budgets, plans or forecasts of such Person’s revenues, earnings or other financial performance or results of operations, (x) the taking of any action, or the failure to take any action, by Merger Partner that is expressly required under the terms of this Agreement, (xi) any changes in or affecting research and development, preclinical studies, clinical trials or other drug development activities (including the failure to obtain positive results from clinical trials, the occurrence of adverse events or serious adverse events in any clinical trial, development activities or favorable responses from any applicable Governmental Entity) conducted by or on behalf of Public Company or any of its Subsidiaries or licensees in respect of such Person’s products or product candidates, (xii) regulatory approval of, or regulatory action or announcement with respect to, any product, or product candidates, of a third party that are similar to, or expected to compete against, any of Public Company’s or any of its Subsidiaries’ product candidates, including product candidates licensed out to the third parties, (xiii) any stockholder or derivative litigation arising from or relating to this Agreement or the transactions contemplated by the Agreement, or (xiv) any of the matters set forth on Section 9.18(oo) of the Public Company Disclosure Schedule (but in the case of clauses (vi), (vii), (viii), or (ix), the underlying cause of such changes or failures shall be taken into account for purposes of determining whether a Public Company Material Adverse Effect has occurred or is reasonably likely to occur, unless such changes or failures would otherwise be excepted from this definition).

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

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

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

(ss) “Specified Time” means the earliest to occur of (i) the Effective Time, (ii) in the case of Public Company, the date on which the stockholders of Public Company shall have approved the Required Public Company Stockholder Proposals, (iii) in the case of Merger Partner, the date on which the stockholders of Merger Partner shall have approved the Merger Partner Stockholder Proposal, and (iv) the time at which this Agreement is terminated in accordance with the terms hereof.

(tt) “Superior Proposal” means, with respect to Public Company or Merger Partner, any bona fide, unsolicited written Acquisition Proposal (for purpose of this definition, replacing all references in such definition to 15% with 50%), (i) on terms which the board of directors of such party determines in its good faith judgment to be more favorable to the holders of such party’s capital stock from a financial point of view than the transactions contemplated by this Agreement (after consultation with its financial and outside legal advisors), taking into account all the terms and conditions of such proposal and this Agreement (including any termination or break-up fees and conditions to consummation, as well as any written, binding offer by the other party hereto to amend the terms of this Agreement for at least four (4) Business Days) that the board of directors of such party determines to be relevant, and (ii) which board of directors of such party has determined to be reasonably capable of being completed on the terms proposed, taking into account all financial, regulatory, legal and other aspects of such proposal that board of directors of such party determines to be relevant (including the likelihood and timing of consummation as compared to the transactions contemplated hereby).

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

(vv) “Surviving Representations” means, (i) with respect to Merger Partner, all of the representations and warranties set forth in Article III, other than Section 3.5(b), Section 3.7(ii), Section 3.11(a) and the first sentence of Section 3.11(b), and (ii) with respect to Public Company, all of the representations and warranties set forth in Article IV, other than Section 4.5(e), Section 4.7(ii), Section 4.11(a) and the first sentence of Section 4.11(b).

(ww) “Taxes” means any taxes, charges, fees, duties, contributions, levies or other similar assessments or liabilities in the nature of a tax, including, without limitation, income, gross receipts, corporation, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, national insurance, business license, business organization, environmental, workers compensation, payroll, profits, severance, stamp, occupation, windfall profits, customs duties, franchise and other taxes of any kind imposed by the United States of America or any state, local or non-U.S. government, or any agency or political subdivision thereof, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items.

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

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

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

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

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

3i Convertible Note	Section 9.18(gg)
401(k) Plan	<u>Section 6.17</u>
ACA	<u>Section 4.14(b)</u>
Affiliate	<u>Section 3.2(b)</u>
Aggregate Valuation	<u>Section 2.1(c)(i)</u>
Agreement	<u>Preamble</u>
Alternative Acquisition Agreement	<u>Section 6.1(b)(ii)</u>
Anticipated Closing Date	<u>Section 6.16(a)</u>
Antitrust Laws	<u>Section 6.5(c)</u>
Bankruptcy and Equity Exception	<u>Section 3.4(a)</u>
Business Day	<u>Section 1.2</u>
Certificate of Merger	<u>Section 1.1</u>
Certificates	<u>Section 2.2(a)</u>
Charter Amendment Proposal	<u>Recitals</u>
Closing	<u>Section 1.2</u>
Closing Date	<u>Section 1.2</u>
Code	<u>Recitals</u>
Concurrent Financing	<u>Recitals</u>
Confidentiality Agreement	<u>Section 5.3</u>
DGCL	<u>Recitals</u>
Draft Exchange Ratio Schedule	<u>Section 6.16(a)</u>
Effective Time	<u>Section 1.1</u>
Equity Incentive Plan Amendment Proposal	<u>Recitals</u>
Exchange Act	<u>Section 3.4(c)</u>
Exchange Agent	<u>Section 2.2(a)</u>
Exchange Fund	<u>Section 2.2(a)</u>
Exchange Ratio	<u>Section 2.2(b)</u>
FDA	<u>Section 3.16(a)</u>
Final Exchange Ratio Schedule	<u>Section 6.16(b)</u>
Financial Statements	<u>Section 3.5(a)</u>
GAAP	<u>Section 3.5(a)</u>
Governmental Entity	<u>Section 3.4(c)</u>
IND	<u>Section 3.16(a)</u>
Indemnified Persons	<u>Section 6.9(a)</u>

Intended Tax Treatment	<u>Recitals</u>
IRS	<u>Section 2.2(f)</u>
Liens	<u>Section 3.4(b)</u>
Ligand	<u>Preamble</u>
Ligand Insurance Policies	<u>Section 3.18</u>
Lock-Up Agreements	<u>Recitals</u>
Merger	<u>Recitals</u>
Merger Partner	<u>Preamble</u>
Merger Partner Allocation Percentage	<u>Section 2.1(c)(ii)</u>
Merger Partner Authorizations	<u>Section 3.16(b)</u>
Merger Partner Board	<u>Recitals</u>
Merger Partner Board Recommendation Change	<u>Section 6.1(b)(i)</u>
Merger Partner Capital Stock	<u>Recitals</u>
Merger Partner Disclosure Schedule	<u>Article III</u>
Merger Partner Leases	<u>Section 3.9(b)</u>
Merger Partner Merger Shares	<u>Section 2.1(c)(iii)</u>
Merger Partner Outstanding Shares	<u>Section 2.1(c)(iv)</u>
Merger Partner Stockholder Approval	<u>Section 3.4(a)</u>
Merger Partner Stockholder Proposal	<u>Section 3.4(a)</u>
Merger Partner Valuation	<u>Section 2.1(c)(v)</u>
Merger Partner Written Consent	<u>Section 3.4(d)</u>
Merger Sub	<u>Preamble</u>
Most Recent Balance Sheet	<u>Section 3.5(a)</u>
Most Recent Balance Sheet Date	<u>Section 3.5(a)</u>
NRS	<u>Recitals</u>
NYSE American	<u>Section 2.2(b)</u>
NYSE American Listing Application	<u>Section 4.4(c)</u>
Opinion of Financial Advisor	<u>Section 4.19</u>
Other Public Company Stockholder Proposal	<u>Section 3.5(b)</u>
Outside Date	<u>Section 8.1(b)</u>
Permits	<u>Section 3.16(a)</u>
Post-Closing Public Company Shares	<u>Section 2.1(c)(vi)</u>
Public Company	<u>Preamble</u>
Public Company Allocation Percentage	<u>Section 2.1(c)(vii)</u>
Public Company Authorizations	<u>Section 4.16(a)</u>
Public Company Balance Sheet	<u>Section 4.5(b)</u>
Public Company Board	<u>Recitals</u>
Public Company Board Recommendation Change	<u>Section 6.1(b)(i)</u>
Public Company Closing Price	<u>Section 2.1(c)(viii)</u>
Public Company Contingent Workers	<u>Section 4.17(b)</u>
Public Company Disclosure Schedule	<u>Article IV</u>
Public Company EIP	<u>Section 4.2(b)</u>
Public Company Equity Awards	<u>Section 4.2(b)</u>
Public Company Financial Advisor	<u>Section 4.19</u>
Public Company Insurance Policies	<u>Section 4.18</u>
Public Company Leases	<u>Section 4.9(b)</u>
Public Company Outstanding Shares	<u>Section 2.1(c)(ix)</u>
Public Company Preferred Stock	<u>Section 4.2(a)</u>
Public Company RSU Award	<u>Section 4.2(b)</u>
Public Company SEC Reports	<u>Section 4.5(a)</u>
Public Company Series A Preferred Stock	<u>Recitals</u>

Public Company Stock Option	<u>Section 4.2(b)</u>
Public Company Stock Plans	<u>Section 4.2(b)</u>
Public Company Valuation	<u>Section 2.1(c)(x)</u>
Public Company Warrants	<u>Section 4.2(c)</u>
Public Company Written Consent	<u>Section 4.4(d)</u>
Recommendation Change Notice	<u>Section 6.1(b)</u>
Regulating Authorities	<u>Section 3.16(a)</u>
Representatives	<u>Section 6.1(a)</u>
Required Public Company Stockholder Approvals	<u>Section 3.5(b)</u>
Required Public Company Stockholder Proposals	<u>Section 3.5(b)</u>
Rule 145 Affiliates	<u>Section 6.8</u>
SEC	<u>Section 3.4(c)</u>
Securities Act	<u>Section 3.2(b)</u>
Security Holder Litigation	<u>Section 6.14</u>
Share Issuances	<u>Recitals</u>
Securities Purchase Agreement	<u>Recitals</u>
Surviving Corporation	<u>Section 1.3</u>
Treasury Stock Method	<u>Section 2.1(c)(xi)</u>
WARN Act	<u>Section 3.17(e)</u>

[Remainder of Page Intentionally Left Blank]

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

CHANNEL THERAPEUTICS CORPORATION

By: /s/ Francis Knuettel II
Name: Francis Knuettel II
Title: Chief Executive Officer and Chief Financial Officer

CHRO MERGER SUB INC.

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

LNHC, INC.

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

For purposes of Article III:

LIGAND PHARMACEUTICALS INCORPORATED

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

[Signature Page to Agreement and Plan of Merger]

**FORM OF CERTIFICATE OF DESIGNATIONS OF RIGHTS AND PREFERENCES OF
SERIES A CONVERTIBLE PREFERRED STOCK OF
CHANNEL THERAPEUTICS CORPORATION**

Under Section 78.1955 of the Nevada Revised Statutes

I, Francis Knuettel II, hereby certify that I am the Chief Executive Officer and President, Chief Financial Officer, Treasurer and Secretary of Channel Therapeutics Corporation (the “**Company**”), a corporation organized and existing under the Nevada Revised Statutes (the “**NRS**”), and further do hereby certify:

That pursuant to the authority expressly conferred upon the Board of Directors of the Company (the “**Board**”) by the Company’s Articles of Incorporation, as amended (the “**Articles of Incorporation**”), and Section 78.1955 of the NRS, the Board on April [], 2025 adopted the following resolution determining it desirable and in the best interests of the Company and its shareholders for the Company to create a series of 150,000 shares of preferred stock designated as “**Series A Convertible Preferred Stock**”, none of which shares have been issued, to be issued pursuant to the Securities Purchase Agreement (as defined below), in accordance with the terms of the Securities Purchase Agreement:

RESOLVED, that pursuant to the authority vested in the Board, in accordance with the provisions of the Articles of Incorporation, a series of preferred stock, par value \$0.0001 per share, of the Company be and hereby is created pursuant to this certificate of designations (this “**Certificate of Designations**”), and that the designation and number of shares established pursuant hereto and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

TERMS OF SERIES A CONVERTIBLE PREFERRED STOCK

1. Designation and Number of Shares. There shall hereby be created and established out of the authorized and unissued shares of the preferred stock of the Company a series of preferred stock of the Company designated as “Series A Convertible Preferred Stock” (the “**Series A Convertible Preferred Stock**”). The authorized number of shares of Series A Convertible Preferred Stock (the “**Preferred Shares**”) shall be one hundred and fifty thousand (150,000) shares; *provided, however* that, by resolution of the Board, the number of authorized shares of Series A Convertible Preferred Stock may hereafter be reduced to a number that is not less than the number of shares of Series A Convertible Preferred Stock then outstanding or issuable pursuant to the Securities Purchase Agreement. Each Preferred Share shall have a par value of \$0.0001 per share. Capitalized terms not defined herein shall have the meaning as set forth in Section 28 below.

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

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

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

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

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

(ii) “**Conversion Price**” means, with respect to each Preferred Share, as of any Conversion Date or other date of determination, \$1.00, subject to adjustment as provided herein.

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

(i) Optional Conversion. To convert a Preferred Share into Conversion Shares on any date (a “**Conversion Date**”), a Holder shall deliver (whether via electronic mail or otherwise) to the Company, for receipt on or prior to 5:00 p.m., New York City time, on such date, a copy of an executed notice of conversion of the share(s) of Preferred Shares subject to such conversion in the form attached hereto as Exhibit I (the “**Conversion Notice**”) to the Company. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of any such Preferred Shares as aforesaid, such Holder shall surrender to a nationally recognized overnight delivery service for delivery to the Company the original certificates, if any, representing the Preferred Shares (the “**Preferred Share Certificates**”) if so converted as aforesaid (or an indemnification undertaking with respect to the Preferred Shares in the case of its loss, theft or destruction as contemplated by Section 15(a)). On the date of receipt of a Conversion Notice, the Company shall transmit by electronic mail an acknowledgment of confirmation and representation as to whether such shares of Common Stock may then be resold pursuant to Rule 144 (as defined in the Securities Purchase Agreement) or an effective and available registration statement, in the form attached hereto as Exhibit II, of receipt of such Conversion Notice to such Holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms set forth herein. On or before the first (1st) Trading Day following each Trading Day on which the Company has received a Conversion Notice (the “**Share Delivery Deadline**”), the Company shall (1) provided that the Transfer Agent is participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program (“**FAST**”) and such shares of Common Stock (i) (A) may then be sold by the applicable Holder pursuant to an available and effective registration statement and (B) such Holder provides such documentation or other information evidencing the sale of the shares of Common Stock as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request or (ii) are eligible to be resold by the Holder without further condition (including current public information requirements) pursuant Rule 144 (the “**Resale Eligibility Conditions**”), instruct the Transfer Agent to credit such aggregate number of Conversion Shares to which such Holder shall be entitled pursuant to such conversion to such Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian (“**DWAC**”) system upon receipt of such Buyer’s broker’s request through DTC’s DRS/DWAC system, or (2) if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, upon the request of such Holder, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such Holder or its designee, for the number of Conversion Shares to which such Holder shall be entitled. If the number of Preferred Shares represented by the Preferred Share Certificate(s) submitted for conversion pursuant to Section 3(c)(iii) is greater than the number of Preferred Shares being converted, then the Company or the Transfer Agent shall, as soon as practicable and in no event later than two (2) Trading Days after receipt of the Preferred Share Certificate(s) and at the Company’s expense, issue and deliver to such Holder (or its designee) by overnight courier service a new Preferred Share Certificate or a new Book-Entry (in either case, in accordance with Section 15(c)) representing the number of Preferred Shares not converted. The Person or Persons entitled to receive the Conversion Shares issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such Conversion Shares on the Conversion Date; provided, that such Person shall be deemed to have waived any voting rights of any such Conversion Shares that may arise with respect to any record date during the period commencing on such Conversion Date, through, and including, such applicable Share Delivery Deadline (each, an “**Conversion Period**”), as necessary, such that the aggregate voting rights of any Common Stock (including such Conversion Shares) beneficially owned by such Person and/or any of its Attribution Parties, collectively, on any such record date shall not exceed the Maximum Percentage (as defined below) as a result of any such conversion of such applicable Preferred Shares with respect thereto. Notwithstanding anything to the contrary contained in this Certificate of Designations or the Registration Rights Agreement, after the effective date of a Registration Statement (as defined in the Registration Rights Agreement) and prior to a Holder’s receipt of the notice of a Suspension Period (as defined in the Registration Rights Agreement), the Company shall use reasonable best efforts to cause the Transfer Agent to deliver unlegended Conversion Shares to such Holder (or its designee) in connection with any sale of Registrable Securities (as defined in the Registration Rights Agreement) with respect to which such Holder has entered into a contract for sale, and delivered a copy of the prospectus included as part of the particular Registration Statement to the extent applicable, prior to the Holder’s receipt of such notice and for which such Holder has not yet settled, subject to receipt by the Company of customary representations and other documentation reasonably acceptable to the Company in connection therewith.

(ii) **Company's Failure to Timely Convert.** If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, to issue and deliver to such Holder (or its designee) a certificate for the number of Conversion Shares to which such Holder is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, to credit such Holder's or its designee's balance account with DTC upon receipt of such Buyer's broker request through DTC's DRS/DWAC system for such number of Conversion Shares to which such Holder is entitled upon such Holder's conversion of any Conversion Amount (as the case may be) (a "**Conversion Failure**") and, after the occurrence of at least three (3) Conversion Failures then, in addition to all other remedies available to such Holder, the Company shall pay in cash to such Holder on each day after the Share Delivery Deadline that the issuance of such Conversion Shares is not timely effected an amount equal to 0.5% of the product of (A) the sum of the number of Conversion Shares not issued to such Holder on or prior to the Share Delivery Deadline and to which such Holder is entitled, multiplied by (B) the average VWAP of the Common Stock during the period beginning on the applicable Conversion Date and ending on the applicable Share Delivery Deadline, and such Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Preferred Shares that has not been converted pursuant to such Conversion Notice; provided that the voiding of an Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline either (A) the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, the Company shall fail to issue and deliver to such Holder (or its designee) a certificate and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee, as applicable, with DTC upon receipt of such Buyer's broker request through DTC's DRS/DWAC system, for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (i) above, and if on or after such Share Delivery Deadline such Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of Conversion Shares issuable upon such conversion that such Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure (a "**Buy-In**"), then, in addition to all other remedies available to such Holder, the Company shall, in such Holder's discretion as set forth in a written request to the Company (which may be an e-mail), either: (I) within two (2) Business Days after receipt of such Holder's request pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such Conversion Shares) or credit to the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such Conversion Shares) shall terminate and such shares shall be cancelled, provided that until December 31, 2026, in lieu of paying the Buy-In Price in cash, the Company will increase the Stated Value of the Preferred Shares held by such Buyer, pro rata per share, by the amount of the Buy-In Price, or (II) within two (2) Business Days after receipt of such Holder's request, promptly honor its obligation to so issue such Conversion Shares on the Company's share register or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC upon receipt of such Buyer's broker request through DTC's DRS/DWAC system for the number of Conversion Shares to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the average VWAP of the Common Stock during the period commencing on the date of the applicable Conversion Notice and ending on the applicable Share Delivery Deadline (each, a "**Buy-In Payment Amount**"). Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Conversion Shares (or to electronically deliver such Conversion Shares) upon the conversion of the Preferred Shares as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Conversion Failure, as applicable, this Section 3(c)(ii) shall not apply to a Holder to the extent the Company has already paid such amounts in full to such Holder with respect to such Delivery Failure, as applicable, pursuant to the analogous sections of the Securities Purchase Agreement.

(iii) Registration: Book-Entry. At the time of issuance of any Preferred Shares hereunder, the applicable Holder may, by written request (including by electronic-mail) to the Company, elect to receive such Preferred Shares in the form of one or more Preferred Share Certificates or in Book-Entry form. The Company (or the Transfer Agent, as custodian for the Preferred Shares) shall maintain a register (the “**Register**”) for the recordation of the names and addresses of the Holders of each Preferred Share and the Stated Value of the Preferred Shares and whether the Preferred Shares are held by such Holder in Preferred Share Certificates or in Book-Entry form (the “**Registered Preferred Shares**”). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and each Holder of the Preferred Shares shall treat each Person whose name is recorded in the Register as the owner of a Preferred Share for all purposes (including, without limitation, the right to receive payments and Dividends hereunder) notwithstanding notice to the contrary. A Registered Preferred Share may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Preferred Shares by such Holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Preferred Shares in the same aggregate Stated Value as the Stated Value of the surrendered Registered Preferred Shares to the designated assignee or transferee pursuant to Section 15, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of such Registered Preferred Shares within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any Preferred Shares in accordance with the terms hereof, the applicable Holder shall not be required to physically surrender such Preferred Shares held in the form of a Preferred Share Certificate to the Company unless (A) the full or remaining number of Preferred Shares represented by the applicable Preferred Share Certificate are being converted (in which event such certificate(s) shall be delivered to the Company as contemplated by this Section 3(c)(iii)) or (B) such Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Preferred Shares upon physical surrender of the applicable Preferred Share Certificate. Each Holder and the Company shall maintain records showing the Stated Value and Dividends converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to such Holder and the Company, so as not to require physical surrender of a Preferred Share Certificate upon conversion. If the Company does not update the Register to record such Stated Value and Dividends converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within one (1) Business Day of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, such records of such Holder establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each Preferred Share Certificate shall bear the following legend:

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

(i v) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Preferred Shares submitted for conversion, the Company shall convert from each Holder electing to have Preferred Shares converted on such date a pro rata amount of such Holder's Preferred Shares submitted for conversion on such date based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the aggregate number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of Conversion Shares issuable to a Holder in connection with a conversion of Preferred Shares, the Company shall issue to such Holder the number of Conversion Shares not in dispute and resolve such dispute in accordance with Section 20.

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

4. Rights Upon Fundamental Transactions.¹

(a) Assumption. Upon the occurrence of any Fundamental Transaction, other than a Fundamental Transaction consummated solely in cash, the Successor Entity shall succeed to, and (if the successor entity is not the Company) be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. In addition to the foregoing, upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to each Holder confirmation that there shall be issued upon conversion of the Preferred Shares at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Preferred Shares prior to such Fundamental Transaction, such securities, cash, assets or other property which each Holder would have been entitled to receive upon the happening of such Fundamental Transaction had all the Preferred Shares held by each Holder been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designations), as adjusted in accordance with the provisions of this Certificate of Designations. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion or redemption of the Preferred Shares.

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

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

¹ See 5(b) below for provisions related to Alternate Consideration.

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

6. Rights Upon Issuance of Other Securities.

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

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

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

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

8. Authorized Shares.

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

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

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

(a) For so long as any Preferred Shares remain issued and outstanding, and subject to the Maximum Percentage limitation defined above, the holders of each Preferred Share shall have the right to vote in an amount equal to the voting power of such aggregate number of shares of Common Stock then issuable upon conversion of such Preferred Share, such that each Preferred Share shall be entitled to vote, with the aggregate voting power of a Holder's Preferred Shares limited by the Maximum Percentage.

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

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

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

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

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

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

15. Reissuance of Preferred Share Certificates and Book Entries

(a) Transfer If any Preferred Shares are to be transferred, the applicable Holder shall surrender the applicable Preferred Share Certificate to the Company (or, if the Preferred Shares are held in Book-Entry form, a written instruction letter to the Company), whereupon the Company will forthwith issue and deliver upon the order of such Holder a new Preferred Share Certificate (in accordance with Section 15(c)) (or evidence of the transfer of such Book-Entry), registered as such Holder may request, representing the outstanding number of Preferred Shares being transferred by such Holder and, if less than the entire outstanding number of Preferred Shares is being transferred, a new Preferred Share Certificate (in accordance with Section 15(c)) to such Holder representing the outstanding number of Preferred Shares not being transferred (or evidence of such remaining Preferred Shares in a Book-Entry for such Holder). Such Holder and any assignee, by acceptance of the Preferred Share Certificate or evidence of Book-Entry issuance, as applicable, acknowledge and agree that, by reason of the provisions of Section 3(c)(i) following conversion or redemption of any of the Preferred Shares, the outstanding number of Preferred Shares represented by the Preferred Shares may be less than the number of Preferred Shares stated on the face of the Preferred Shares.

(b) Lost, Stolen or Mutilated Preferred Share Certificate. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of a Preferred Share Certificate (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the applicable Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of such Preferred Share Certificate, the Company shall execute and deliver to such Holder a new Preferred Share Certificate (in accordance with Section 15(c)) representing the applicable outstanding number of Preferred Shares.

(c) Preferred Share Certificate and Book-Entries Exchangeable for Different Denominations and Forms Each Preferred Share Certificate is exchangeable, upon the surrender hereof by the applicable Holder at the principal office of the Company, for a new Preferred Share Certificate or Preferred Share Certificate(s) or new Book-Entry (in accordance with Section 15(c)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Preferred Share Certificate, and each such new Preferred Share Certificate and/or new Book-Entry, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Preferred Share Certificate as is designated in writing by such Holder at the time of such surrender. Each Book-Entry may be exchanged into one or more new Preferred Share Certificates or split by the applicable Holder by delivery of a written notice to the Company into two or more new Book-Entries (in accordance with Section 15(c)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Book-Entry, and each such new Book-Entry and/or new Preferred Share Certificate, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Book-Entry as is designated in writing by such Holder at the time of such surrender.

(d) Issuance of New Preferred Share Certificate or Book-Entry. Whenever the Company is required to issue a new Preferred Share Certificate or a new Book-Entry pursuant to the terms of this Certificate of Designations, such new Preferred Share Certificate or new Book-Entry (i) shall represent, as indicated on the face of such Preferred Share Certificate or in such Book-Entry, as applicable, the number of Preferred Shares remaining outstanding (or in the case of a new Preferred Share Certificate or new Book-Entry being issued pursuant to Section 15 or Section 15(b), the number of Preferred Shares designated by such Holder) which, when added to the number of Preferred Shares represented by the other new Preferred Share Certificates or other new Book-Entry, as applicable, issued in connection with such issuance, does not exceed the number of Preferred Shares remaining outstanding under the original Preferred Share Certificate or original Book-Entry, as applicable, immediately prior to such issuance of new Preferred Share Certificate or new Book-Entry, as applicable, and (ii) shall have an issuance date, as indicated on the face of such new Preferred Share Certificate or in such new Book-Entry, as applicable, which is the same as the issuance date of the original Preferred Share Certificate or in such original Book-Entry, as applicable.

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

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

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

19. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all Holders and shall not be construed against any Person as the drafter hereof. Notwithstanding the foregoing, nothing contained in this Section 19 shall permit any waiver of any provision of Section 3(d).

20. Dispute Resolution.

(a) Submission to Dispute Resolution.

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

(ii) Such Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 20 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such investment bank (the **“Dispute Submission Deadline”**) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the **Required Dispute Documentation**) (it being understood and agreed that if either such Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such investment bank, neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

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

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 20 constitutes an agreement to arbitrate between the Company and each Holder (and constitutes an arbitration agreement) under Chapter 38 of the Nevada Revised Statutes, as amended (or such applicable successor rule or regulation of Nevada) (ii) the terms of this Certificate of Designations and each other applicable Transaction Document shall serve as the basis for the selected investment bank’s resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Certificate of Designations and any other applicable Transaction Documents, (iii) the applicable Holder (and only such Holder with respect to disputes solely relating to such Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 20 to any state or federal court sitting in Carson City, Nevada, in lieu of utilizing the procedures set forth in this Section 20 and (iv) nothing in this Section 20 shall limit such Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 20).

21. Notices; Currency; Payments.

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

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

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

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

23. Governing Law. This Certificate of Designations shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of Nevada, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Nevada or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Nevada. Except as otherwise required by Section 20 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Carson City, Nevada, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 20 above. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS CERTIFICATE OF DESIGNATIONS OR ANY TRANSACTION CONTEMPLATED HEREBY.**

24. Judgment Currency.

(a) If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 24 referred to as the “**Judgment Currency**”) an amount due in U.S. dollars under this Certificate of Designations, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

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

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 24(a)(i) being hereinafter referred to as the “**Judgment Conversion Date**”).

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 24(a)(i) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

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

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

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

27. Shareholder Matters: Amendment.

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

(b) Amendment. Except for Section 3(c)(iv) and this Section 27(b), which may not be amended, modified or waived hereunder, this Certificate of Designations or any provision hereof may be amended, modified or waived by obtaining the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the NRS, of the Required Holders, voting separate as a single class, and with such other shareholder approval, if any, as may then be required pursuant to the NRS and the Articles of Incorporation.

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

(a) “**1933 Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

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

(c) “**Additional Amount**” means, as of the applicable date of determination, with respect to each Preferred Share, all declared and unpaid Dividends on such Preferred Share.

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

(e) “**Attribution Parties**” means, with respect to any Holder, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Initial Issuance Date, directly or indirectly managed or advised by such Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company’s Common Stock would or could be aggregated with such Holder’s and its Attribution Parties for purposes of Section 13(d) of the 1934 Act, including shares held by any “group” of which the Holder is a member. For clarity, the purpose of the foregoing is to subject collectively such Holder and its Attribution Parties to the Maximum Percentage.

(f) **“Bloomberg”** means Bloomberg, L.P.

(g) **“Book-Entry”** means each entry on the Register evidencing one or more Preferred Shares held by a Holder in lieu of a Preferred Share Certificate issuable hereunder.

(h) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any Governmental Authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(i) [Intentionally Omitted]

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

(k) **“Code”** means the Internal Revenue Code of 1986, as amended.

(l) **“Common Stock”** means (i) the Company’s shares of common stock, \$0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(m) **“Convertible Securities”** means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

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

(a) **“Fundamental Transaction”** means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire in any transaction or series of related transactions, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Certificate of Designations calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

- (o) **“GAAP”** means United States generally accepted accounting principles, consistently applied.
- (p) **“Group”** means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.
- (q) **“Governmental Authority”** means any federal, foreign, state, county, municipal, provincial, or local governmental authority, court, judicial body, arbitration tribunal, government or self-regulatory organization, commission, tribunal or organization, or any regulatory, administrative, or other agency, or any political or other subdivision, department, commission, board, bureau, branch, division, ministry, or instrumentality of any of the foregoing.
- (r) **“Liquidation Event”** means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries, taken as a whole.
- (s) **“Options”** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.
- (t) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.
- (u) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.
- (v) **“Principal Market”** means the NYSE American.
- (w) **“Registration Rights Agreement”** means that certain registration rights agreement, dated as of the Closing Date, by and among the Company and the initial holders of the Preferred Shares relating to, among other things, the registration of the resale of the Common Stock issuable upon conversion of the Preferred Shares or otherwise pursuant to the terms of this Certificate of Designations as may be amended from time to time.

- (x) **“Required Holders”** means Required Holders as defined in the Securities Purchase Agreement.
- (y) **“SEC”** means the United States Securities and Exchange Commission or the successor thereto.
- (z) **“Securities Purchase Agreement”** means that certain securities purchase agreement by and among the Company and the initial holders of Preferred Shares, dated as of the Subscription Date, as may be amended from time to time in accordance with the terms thereof.
- (aa) **“Stated Value”** shall mean \$1,000 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Initial Issuance Date with respect to the Preferred Shares.
- (bb) **“Subscription Date”** means _____, 20__.
- (cc) **“Subject Entity”** means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.
- (dd) **“Subsidiaries”** shall have the meaning as set forth in the Securities Purchase Agreement
- (ee) **“Successor Entity”** means the Person (or, if so elected by the Required Holders, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.
- (ff) **“Trading Day”** means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the applicable Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.
- (gg) **“Transaction Documents”** means the Securities Purchase Agreement, the Registration Rights Agreement, this Certificate of Designations and each of the other agreements and instruments entered into or delivered by the Company or any of the Holders in connection with the transactions contemplated by the Securities Purchase Agreement, all as may be amended from time to time in accordance with the terms thereof.

(hh) “**VWAP**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its “VAP” function (set to 09:30 start time and 16:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Required Holders. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 20. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period..

29. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designations, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from such Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from such Holder), such Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 29 shall limit any obligations of the Company, or any rights of any Holder, under Section 4(i) of the Securities Purchase Agreement.

30. Absence of Trading and Disclosure Restrictions. The Company acknowledges and agrees that no Holder is a fiduciary or agent of the Company and that each Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of such Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that each Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designations of Series A Convertible Preferred Stock of Channel Therapeutics Corporation to be signed by its _____ on this ____ day of _____, 20__.

CHANNEL THERAPEUTICS CORPORATION.

By: _____
Name:
Title:

**CHANNEL THERAPEUTICS CORPORATION
CONVERSION NOTICE**

Reference is made to the Certificate of Designations of the Articles of Incorporation of Channel Therapeutics Corporation, a Nevada corporation (the “**Company**”) establishing the terms, preferences and rights of the Series A Convertible Preferred Stock, \$0.0001 par value (the “**Preferred Shares**”) of the Company (the “**Certificate of Designations**”). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of Preferred Shares indicated below into shares of common stock, \$0.0001 par value per share (the “**Common Stock**”), of the Company, as of the date specified below.

Date of Conversion: _____

Aggregate number of Preferred Shares to be converted: _____

Aggregate Stated Value of such Preferred Shares to be converted: _____

Aggregate accrued and unpaid Dividends with respect to such Preferred Shares to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Preferred Shares submitting this Conversion Notice that after giving effect to the conversion provided for in this Conversion Notice, such Holder (together with its affiliates and Attribution Parties) will not have beneficial ownership (together with the beneficial ownership of such Person’s affiliates and Attribution Parties) of a number of shares of Common Stock which exceeds the Maximum Percentage (as defined in the Certificate of Designations) of the total outstanding shares of Common Stock of the Company as determined pursuant to the provisions of Section 4(d) of the Certificate of Designations.

Please issue the Common Stock into which the applicable Preferred Shares are being converted to Holder, or for its benefit, as follows:

☐ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

☐ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____, _____

Name of Registered Holder

By: _____

Name:

Title:

Tax ID: _____

E-mail Address:

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock [are][are not] eligible to be resold by the applicable Holder either (i) pursuant to Rule 144 (subject to such Holder's [and such Holder's executing broker's, if applicable,] execution and delivery to the Company of a customary 144 representation letter[s]) or (ii) an effective and available registration statement and (c) hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__ from the Company and acknowledged and agreed to by _____.

CHANNEL THERAPEUTICS CORPORATION

By: _____

Name: _____

Title: _____

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the “**Agreement**”), dated as of April 16, 2025, is by and among Channel Therapeutics Corporation, a Nevada corporation with offices located at 4400 Route 9 South, Suite 1000, Freehold, NJ 07728 (the “**Company**”), LNHG, Inc. a Delaware corporation, with offices located at 4020 Stirrup Creek Drive Suite 110, Durham, NC 27703 (the “**Target**”), and together with the Company, the “**BC Parties**”), and each of the investors listed on the Schedule of Buyers attached hereto (individually, a “**Buyer**” and collectively, the “**Buyers**”).

RECITALS

A. Prior to the date hereof the Company has obtained bridge notes, in an aggregate amount not to exceed \$24,000,000 (the “**Bridge Notes**”), from certain of the Buyers (the “**Bridge Buyers**”), which shall become due and payable at the time of Closing (as defined below).

B. Concurrently with the execution of this Agreement, the Company entered into that certain Agreement and Plan of Merger (the “**Merger Agreement**”), with the Target, and CHRO Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of the Company (“**Merger Sub**”), pursuant to which, among other things, the Merger Sub shall merge with and into the Target and, at the closing thereof (the “**Closing**”, and such date, the “**Closing Date**”), the Target, as the surviving entity, shall be a wholly-owned subsidiary of the Company (the “**Merger**”).

C. The Company, the Target and each Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “**1933 Act**”), and Rule 506(b) of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) under the 1933 Act.

D. The Company has authorized (i) a new series of convertible preferred stock of the Company designated as Series A Convertible Preferred Stock, par value \$0.0001 per share, the terms of which are set forth in the certificate of designations of preferences and rights for such series of preferred stock (the “**Certificate of Designations**”) in the form attached hereto as Exhibit A (together with any convertible preferred shares issued in replacement thereof in accordance with the terms thereof, the “**Series A Preferred Stock**”), which Series A Preferred Stock shall be convertible into shares of Common Stock (such shares of Common Stock issuable pursuant to the terms of the Certificate of Designations, including, without limitation, upon conversion or otherwise, collectively, the “**Conversion Shares**”), in accordance with the terms of the Certificate of Designations.

E. Each Buyer, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, the aggregate number of shares of Series A Preferred Stock (the “**Preferred Shares**”) set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers.

F. On the date hereof, (i) Ligand Pharmaceuticals Incorporated (“**Ligand**”) shall have delivered to the Company a lock-up agreement in the form of Exhibit B-1 attached hereto (the “**Ligand Lock-Up Agreement**”), duly executed and delivered by Ligand and the Company, (ii) Nomis Bay Ltd (“**Nomis Bay**”) shall have delivered to the Company a lock-up agreement in the form of Exhibit B-2 attached hereto (the “**Nomis Bay Lock-Up Agreement**”), (iii) BPY Limited (“**BPY**”) shall have delivered to the Company a lock-up agreement in the form of Exhibit B-2 attached hereto (the “**BPY Lock-Up Agreement**”), (iv) Boothbay Absolute Return Strategies, LP (“**Boothbay**”) shall have delivered to the Company a lock-up agreement in the form of Exhibit B-2 attached hereto (the “**Boothbay Lock-Up Agreement**”) and together with the Ligand Lock-Up Agreement, the Nomis Bay Lock-Up Agreement, and the BPY Lock-Up Agreement, each a “**Lead Investor Lock-Up Agreement**”; and (v) a certain institutional investor shall have delivered to the Company a lock-up agreement in the form of Exhibit B-3 attached hereto (the “**II Lock-Up Agreement**”), in each case, duly executed and delivered by the parties thereto.

G. On the date hereof, the Company shall have delivered to such Buyer, and each such Buyer shall have delivered to the Company, lock-up agreements, in the form of **Exhibit C** attached hereto (each, an **“Other Financing Participant Lock-Up Agreement”**), duly executed and delivered by such Persons listed on Schedule G attached hereto (the **“Lock-Up Parties”**), pursuant to which the Lock-Up Parties, severally, shall have agreed not to directly, or indirectly, sell any securities of the Company except in compliance therewith.

H. On the date hereof, the executive officers and directors of the Company immediately prior to the Effective Time (as defined in the Merger Agreement) listed on Schedule H attached hereto shall have duly executed and delivered to the Company, lock-up agreements, in the form of **Exhibit D** attached hereto (each, a **“Company DO Lock-Up Agreement”**), and together with the Lead Investor Lock-Up Agreements, the II Lock-Up Agreement and the Other Financing Participant Lock-Up Agreements, the **“Lock-Up Agreements”**).

I. On the Closing Date, the parties hereto shall execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit E** (the **“Registration Rights Agreement”**), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement), under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

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

AGREEMENT

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

1. PURCHASE AND SALE OF PREFERRED SHARES.

(a) **Purchase of Preferred Shares.** Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Closing Date (as defined below), the aggregate number of Preferred Shares as is set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers.

(b) **Closing.** The closing (the **“Closing”**) of the purchase of the Preferred Shares by the Buyers shall take place remotely via exchange of executed documents and funds immediately prior to the Effective Time (as defined in the Merger Agreement) on the date on which the closing of the Merger occurs (the **“Closing Date”**). As used herein **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(c) Purchase Price. The aggregate purchase price for the Preferred Shares to be purchased by each Buyer (the "**Purchase Price**") shall be the amount set forth opposite such Buyer's name in column (4) on the Schedule of Buyers (less, with respect to any Bridge Buyer, any amounts then due and payable with respect to any Bridge Notes).

(d) Form of Payment. On or before the Closing Date, (i) each Buyer shall pay its respective Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(f) and, with respect to any Bridge Buyer, any amounts then due and payable with respect to any Bridge Notes) to the Company for the Preferred Shares to be issued and sold to such Buyer at the Closing, by wire transfer of immediately available funds in accordance with the Flow of Funds Letter (as defined below) and (ii) the Company shall deliver to each Buyer an electronic copy of the aggregate number of Preferred Shares as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers, duly executed on behalf of the Company and registered in the name of such Buyer or its designee. If a Buyer has delivered the Purchase Price by wire transfer pursuant to clause (i) of this Section 1(d) prior to the Closing Date, and the Closing does not occur for any reason on or prior to the fifth (5th) Business Day following the expected Closing Date, the Company shall promptly (but not later than one (1) Business Day thereafter) return the Subscription Amount to such Buyers by wire transfer of United States dollars in immediately available funds to the account specified by such Buyer, and Preferred Shares shall be deemed cancelled; provided that, unless this Agreement has been terminated pursuant to Section 8, such return of funds shall not terminate this Agreement or relieve the Buyers of their respective obligations to purchase the Preferred Shares at the Closing

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

Each Buyer, severally and not jointly, represents and warrants to the Company with respect to only itself that, as of the date hereof and as of the Closing Date:

(a) Organization; Authority. Such Buyer is an entity duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization with all requisite power and authority, and has taken all requisite corporate or other action, to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. Such Buyer (i) is acquiring its Preferred Shares, and (ii) upon conversion of its Preferred Shares will acquire the Conversion Shares issuable upon conversion thereof, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, such Buyer does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the 1933 Act. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof.

(c) Accredited Investor Status. Such Buyer is, and will be on each date on which it converts any Preferred Shares, (a) either an “accredited investor” as that term is defined in Rule 501(a) of Regulation D or a “qualified institutional buyer” as defined in Rule 144A(a) under the 1933 Act, (b) if such Buyer is not a natural person, an “Institutional Account” as defined in FINRA Rule 4512(c) and (c) a sophisticated investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including such Buyer’s participation in the transactions contemplated by this Agreement.

(d) General Solicitation. Such Buyer is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general advertisement. The purchase of the Securities by such Buyer has not been solicited by or through anyone other than the Company or the Target.

(e) Brokers. There is no broker, investment banker, financial advisor, finder or other Person which has been retained by or is authorized to act on behalf of the Buyer who is entitled to any fee or commission for which the Company or the Target will be liable in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby.

(f) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(g) Information. Such Buyer and its advisors, if any, have had an opportunity to review the Company’s SEC Documents and materials relating to the business, finances and operations of the Company and the Target and materials relating to the offer and sale of the Securities that the Buyer deems necessary in order to make an investment decision with respect to the Securities. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company and the Target. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer’s right to rely on the Company’s representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(h) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(i) Transfer or Resale. Such Buyer understands that the Securities are “restricted securities” and except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, or (B) pursuant to an exemption from such registration requirements; (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, “**Rule 144**”), and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Preferred Shares may be subject to a pledge created in favor of a Holder’s prime broker under and in accordance with its prime brokerage account with such broker, only if applicable contracts or other brokerage policy, rules or regulations require that a physical certificate be held by the Holder’s prime broker at such time be subject to such a pledge; provided, that, notwithstanding the existence of such pledge, the Preferred Shares may not be foreclosed upon or transferred in any manner that would violate the applicable Lock-Up Agreement. Such a pledge shall not be deemed a transfer, sale, or assignment of the Preferred Shares hereunder, and no Buyer effectuating such a pledge shall be required to provide the Company with any notice thereof or otherwise deliver any documentation to the Company pursuant to this Agreement or any other Transaction Document (as defined in Section 3(b)).

(j) Validity; Enforcement. This Agreement and the Registration Rights Agreement have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

(k) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the Registration Rights Agreement and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

(I) Residency. Such Buyer is a resident of that jurisdiction specified below its address on the Schedule of Buyers.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, “**Material Adverse Effect**” means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any Subsidiary (as defined below), taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents (as defined below). Other than the Persons (as defined below) set forth on Schedule 3(a), the Company has no Subsidiaries. “**Subsidiaries**” means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a “**Subsidiary**.”

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the other Transaction Documents by the Company, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Preferred Shares and the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Preferred Shares) have been duly authorized by the Company’s board of directors or other governing body, as applicable, and (other than the filing with the SEC of one or more Registration Statements (as defined in the Registration Rights Agreement) in accordance with the requirements of the Registration Rights Agreement, a Form D with the SEC and any other filings as may be required by any state securities agencies, the filing of the Certificate of Designations with the Secretary of State of the State of Delaware, and the notice and/or application(s) to the Principal Market for the issuance and sale of the Securities and the listing of the Conversion Shares for trading thereon in the time and manner required thereby (collectively, the “**Required Approvals**”)) no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or their shareholders or other governing body. This Agreement has been, and the other Transaction Documents to which it is a party will be prior to the Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. Prior to the Closing, the Certificate of Designations in the form attached hereto as Exhibit A will have been filed with the Secretary of State of the State of Delaware and will be in full force and effect, enforceable against the Company in accordance with its terms and has not have been amended. “**Transaction Documents**” means, collectively, this Agreement, the Preferred Shares, the Certificate of Designations, the Lock-Up Agreements the Royalty Agreements (as defined below), the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

(c) Issuance of Securities. The Preferred Shares are duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively “**Liens**”) with respect to the issuance thereof. As of the Closing, the Company shall have reserved from its duly authorized capital stock not less than 100% of the sum of the maximum number of Conversion Shares issuable upon conversion of the Preferred Shares (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designations). Upon issuance or conversion in accordance with the Preferred Shares, the Conversion Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Subject to the accuracy of the representations and warranties of the Buyers in this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities and the reservation for issuance of the Conversion Shares) will not (i) result in a violation of the Articles of Incorporation (as defined below) (including, without limitation, any certificate of designation contained therein), Bylaws (as defined below), certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of The NYSE American LLC (the “**Principal Market**”) and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected; except in the case of each of clauses (ii) and (iii), such as would not have or reasonably be expected to result in a Material Adverse Effect.

(e) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the Required Approvals) any Governmental Entity (as defined below) or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents. The Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which could reasonably lead to delisting or suspension of the Common Stock in the foreseeable future. “**Governmental Entity**” means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(f) Acknowledgment Regarding Buyer’s Purchase of Securities. The Company acknowledges and agrees that each Buyer is acting solely in the capacity of an arm’s length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer (other than such Person as set forth on Schedule 3(f) attached hereto, each an “**Insider Buyer**”) is (i) an officer or director of the Company or any of its Subsidiaries, (ii) an “affiliate” (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to its knowledge, a “beneficial owner” of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”)). The Company further acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer’s purchase of the Securities. The Company further represents to each Buyer that the Company’s and each Subsidiary’s decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(g) No General Solicitation; Placement Agent's Fees. Neither the Company, nor any of its Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby, including, without limitation, in connection with the sale of the Securities. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such claim. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the Securities.

(h) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or caused this offering of the Securities to require approval of shareholders of the Company for purposes of the 1933 Act or under any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act (other than pursuant to the Registration Rights Agreement) or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares will increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares pursuant to the terms of the Preferred Shares in accordance with this Agreement and the Certificate of Designations is, in each case, absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other shareholders of the Company.

(j) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested shareholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement), shareholder rights plan or other similar anti-takeover provision under the Articles of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company or any of its Subsidiaries.

(k) SEC Documents: Financial Statements. During the two (2) years prior to the date hereof, the Company has timely filed all reports, schedules, forms, proxy statements, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the “**SEC Documents**”). The Company has delivered or has made available to the Buyers or their respective representatives true, correct and complete copies of each of the SEC Documents requested by any such Buyer and not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles (“**GAAP**”), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). The reserves, if any, established by the Company or the lack of reserves, if applicable, are reasonable based upon facts and circumstances known by the Company on the date hereof and there are no loss contingencies that are required to be accrued by the Statement of Financial Accounting Standard No. 5 of the Financial Accounting Standards Board which are not provided for by the Company in its financial statements or otherwise. No other information provided by or on behalf of the Company to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(g) of this Agreement or in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the “**Financial Statements**”), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(l) Absence of Certain Changes. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries. Since the date of the Company's most recent audited financial statements contained in a Form 10-K, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Company Insolvent (as defined below). For purposes of this Section 3(l), "**Company Insolvent**" means, (i) with respect to the Company and its Subsidiaries, on a consolidated basis, (A) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (B) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (ii) with respect to the Company and each Subsidiary, individually, (A) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its respective total Indebtedness, (B) the Company or such Subsidiary (as the case may be) is unable to pay its respective debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature. Neither the Company nor any of its Subsidiaries has engaged in any business or in any transaction, and is not about to engage in any business or in any transaction, for which the Company's or such Subsidiary's remaining assets constitute unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. Other than the transactions contemplated by the Transaction Documents, no event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced, (ii) could have a material adverse effect on any Buyer's investment hereunder or (iii) could have a Material Adverse Effect.

(n) Conduct of Business: Regulatory Permits. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under its Articles of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any of its Subsidiaries or Bylaws or their organizational charter, certificate of formation, memorandum of association, articles of association, Articles of Incorporation or certificate of incorporation or bylaws, respectively. Neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. During the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

(o) Foreign Corrupt Practices. Neither the Company, the Company's subsidiary or any director, officer, agent, employee, nor any other person acting for or on behalf of the foregoing (individually and collectively, a "**Company Affiliate**") have violated the U.S. Foreign Corrupt Practices Act (the "**FCPA**") or any other applicable anti-bribery or anti-corruption laws, nor has any Company Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where such Company Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Company or its Subsidiaries in obtaining or retaining business for or with, or directing business to, the Company or its Subsidiaries.

(p) Sarbanes-Oxley Act. The Company and each Subsidiary is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. Except as disclosed in the SEC Documents, no current or former employee, partner, director, officer or shareholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or shareholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock of a company whose securities are traded on or quoted through an Eligible Market (as defined in the Certificate of Designations)), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. No employee, officer, shareholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, and (iii) for other standard employee benefits made generally available to all employees or executives (including stock option agreements outstanding under any stock option plan approved by the Board of Directors of the Company).

(r) Equity Capitalization.

(i) Definitions:

(A) "**Common Stock**" means (x) the Company's shares of common stock, \$0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(B) “**Preferred Stock**” means (x) the Company’s blank check preferred stock, \$0.0001 par value per share, the terms of which may be designated by the board of directors of the Company in a certificate of designations and (y) any capital stock into which such preferred stock shall have been changed or any share capital resulting from a reclassification of such preferred stock (other than a conversion of such preferred stock into Common Stock in accordance with the terms of such certificate of designations).

(ii) Authorized and Outstanding Capital Stock. As of April 11, 2025, the authorized capital stock of the Company consists of (A) 200,000,000 shares of Common Stock, of which, 6,103,813 are issued and outstanding and 3,671,882 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Preferred Shares) exercisable or exchangeable for, or convertible into, shares of Common Stock and (B) 5,000 shares of Preferred Stock, 2,600 of which are issued and outstanding. No shares of Common Stock are held in the treasury of the Company. “**Convertible Securities**” means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(iii) Valid Issuance; Available Shares; Affiliates. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. Schedule 3(r)(iii) sets forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Preferred Shares) and (B) that are, as of the date hereof, owned by Persons who are “affiliates” (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company’s issued and outstanding Common Stock are “affiliates” without conceding that any such Persons are “affiliates” for purposes of federal securities laws) of the Company or any of its Subsidiaries. Other than the Insider Buyers and as disclosed in the SEC Documents, to the Company’s knowledge, no Person owns 10% or more of the Company’s issued and outstanding shares of Common Stock (calculated based on the assumption that all Convertible Securities (as defined below), whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including “blockers”) contained therein without conceding that such identified Person is a 10% shareholder for purposes of federal securities laws).

(iv) Existing Securities; Obligations. Except as disclosed in the SEC Documents: (A) none of the Company’s or any Subsidiary’s shares, interests or capital stock is subject to preemptive rights or any other similar rights or Liens suffered or permitted by the Company or any Subsidiary; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act (except pursuant to the Registration Rights Agreement); (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or “phantom stock” plans or agreements or any similar plan or agreement.

(v) Organizational Documents. The Company has furnished to the Buyers true, correct and complete copies of the Company's Articles of Incorporation, as amended and as in effect on the date hereof (the "**Articles of Incorporation**"), and the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

(s) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries, (i) except as disclosed on Schedule 3(s), has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) has any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries; (iv) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) Litigation. Except as discussed in the SEC Documents, there is no action, suit, arbitration, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such. No director, officer or employee of the Company or any of its subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. After reasonable inquiry of its employees, the Company is not aware of any fact which might result in or form the basis for any such action, suit, arbitration, investigation, inquiry or other proceeding. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

(u) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim. The Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the Code. The net operating loss carryforwards ("NOLs") for United States federal income tax purposes of the consolidated group of which the Company is the common parent, if any, shall not be adversely effected by the transactions contemplated hereby. The transactions contemplated hereby do not constitute an "ownership change" within the meaning of Section 382 of the Code, thereby preserving the Company's ability to utilize such NOLs.

(v) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(w) Acknowledgement Regarding Buyers' Trading Activity. It is understood and acknowledged by the Company that, subject to compliance with the terms of the Lock-Up Agreements, (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Buyers have been asked by the Company or any of its Subsidiaries to agree, nor has any Buyer agreed with the Company or any of its Subsidiaries, to desist from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) any Buyer, and counterparties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Common Stock which was established prior to such Buyer's knowledge of the transactions contemplated by the Transaction Documents; (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Buyer may rely on the Company's obligation to timely deliver shares of Common Stock upon conversion or exchange, as applicable, of the Securities as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company. The Company further understands and acknowledges that following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the Press Release (as defined below), subject to compliance with the terms of the Lock-Up Agreements, one or more Buyers may engage in hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock) at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Conversion Shares deliverable with respect to the Securities are being determined and such hedging and/or trading activities (including, without limitation, the location and/or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing shareholders' equity interest in the Company both at and after the time the hedging and/or trading activities are being conducted. The Company acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Certificate of Designations or any other Transaction Document or any of the documents executed in connection herewith or therewith, subject to compliance with the terms of the Lock-Up Agreements.

(x) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

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

(z) Transfer Taxes. On the Closing Date, all stock transfer or other similar taxes which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(aa) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its Subsidiaries or any other business entity or enterprise with which the Company or any Subsidiary is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its Subsidiaries.

(bb) Money Laundering. The Company and its Subsidiaries are in compliance with, and have not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, but not limited, to (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(cc) Management. During the past three year period, no current or former officer or director or, to the knowledge of the Company, no current ten percent (10%) or greater shareholder of the Company or any of its Subsidiaries has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(dd) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents. In addition, on or prior to the date hereof, the Company had discussions with its accountants about its financial statements previously filed with the SEC. Based on those discussions, the Company has no reason to believe that it will need to restate any such financial statements or any part thereof.

(ee) No Disqualification Events. With respect to Securities to be offered and sold hereunder in reliance on Rule 506(b) under the 1933 Act (“**Regulation D Securities**”), none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company’s outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an “**Issuer Covered Person**” and, together, “**Issuer Covered Persons**”) is subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a “**Disqualification Event**”), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Buyers a copy of any disclosures provided thereunder.

(ff) Other Covered Persons. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyers or potential purchasers in connection with the sale of any Regulation D Securities.

(gg) No Additional Agreements. The Company does not have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(hh) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Buyers regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of the Company or any of its Subsidiaries to each Buyer pursuant to or in connection with this Agreement and the other Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Each press release issued by the Company or any of its Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed. All financial projections and forecasts that have been prepared by or on behalf of the Company or any of its Subsidiaries and made available to you have been prepared in good faith based upon reasonable assumptions and represented, at the time each such financial projection or forecast was delivered to each Buyer, the Company’s best estimate of future financial performance (it being recognized that such financial projections or forecasts are not to be viewed as facts and that the actual results during the period or periods covered by any such financial projections or forecasts may differ from the projected or forecasted results). The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

3A REPRESENTATIONS AND WARRANTIES OF TARGET

The Target represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. The Target is duly organized and validly existing and in good standing under the laws of the State of Delaware, and has the requisite power and authority to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted. The Target is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Target Material Adverse Effect (as defined below). As used in this Agreement, “**Target Material Adverse Effect**” means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Target and its subsidiaries, taken as a whole or (ii) the authority or ability of the Target to perform its obligations under any of the Transaction Documents (as defined below). Other than the Persons (as defined below) set forth on Schedule 3A(a), the Target has no Target Subsidiaries. “**Target Subsidiaries**” means any Person in which the Target, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a “**Target Subsidiary**.” The Target Subsidiaries and the Subsidiaries are collectively referred to herein as the “**BC Subsidiaries**”, and together with the BC Parties, the “**BC Entities**”)

(b) Authorization; Enforcement; Validity. The Target has the requisite power and authority to enter into and perform its obligations under this Agreement and the Merger Agreement, subject only to the adoption of the Merger Agreement in accordance with the terms thereof by the Target’s stockholders under (i) the Delaware General Corporation Law and (ii) the Target’s certificate of incorporation. The execution and delivery of this Agreement and the consummation by the Target of the transactions contemplated herein have been duly authorized by the Target’s board of directors. This Agreement has been duly executed and delivered by the Target, and, assuming the due authorization execution and delivery by they Buyer of this Agreement and by the Company, constitutes the legal, valid and binding obligation of the Target, enforceable against the Target in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law.

(c) No Conflicts. The execution, delivery and performance of this agreement, the Registration Rights Agreement and the Merger Agreement and the consummation by the Target of the transactions contemplated hereby and thereby will not (i) result in a violation of the certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Target or any of its Target Subsidiaries, or any capital stock or other securities of the Target or any of its Target Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Target or any of its Target Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations) applicable to the Target or any of its Target Subsidiaries or by which any property or asset of the Target or any of its Target Subsidiaries is bound or affected.

(d) Consents. Neither the Target nor any Target Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Target or any Target Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the Closing Date, and neither the Target nor any of its Target Subsidiaries are aware of any facts or circumstances which might prevent the Target or any of its Target Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents.

(e) No General Solicitation; Placement Agent's Fees. Neither the Target, nor any of its Target Subsidiaries or affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Target shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions for any broker, investment banker or financial advisor that has been retained by the Target relating to or arising out of the transactions contemplated hereby, in connection with the sale of the Securities. Neither the Target nor any of its Target Subsidiaries has engaged any placement agent or other agent in connection with the offer or sale of the Securities.

(f) No Integrated Offering. None of the Target, its Target Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise. None of the Target, its Target Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would require registration of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings of securities of the Target.

(g) Additional Representations and Warranties. The Target's representations and warranties set forth in the Merger Agreement in Section 3.2 (Capitalization), Section 3.3 (Subsidiaries), Section 3.4 (Authority; No Conflict; Required Filings and Consents) Section 3.5 (Financial Statements; Information Provided), Section 3.6 (No Undisclosed Liabilities), Section 3.7 (Absence of Certain Changes or Events), Section 3.9 (Owned and Leased Real Properties), Section 3.10 (Intellectual Property), Section 3.11 (Contracts), Section 3.12 (Litigation), Section 3.13 (Environmental Matters), Section 3.14 (Employee Benefit Plans), Section 3.16 (Permits and Regulatory Matters), Section 3.18 (Insurance), Section 3.21 (Controls and Procedures, Certifications and Other Matters), and Section 3.24 (Privacy and Data Protection) are hereby incorporated by reference and made by the Target, as qualified by the disclosures in the Merger Partner Disclosure Schedule (as defined in the Merger Agreement).

(h) Reliance by Buyers. The Target acknowledges that each Buyer will rely upon the truth and accuracy of, and the Target's compliance with, the representations, warranties, agreements, acknowledgements and understandings of the Target set forth in the Merger Agreement.

(i) Foreign Corrupt Practices. Neither the Target, the Target's subsidiary or any director or officer of the Target nor, to the Target's knowledge, any agent, employee, or any other person acting for or on behalf of the foregoing (individually and collectively, a "**Target Affiliate**") have (i) violated the FCPA or any other applicable anti-bribery or anti-corruption laws, or (ii) offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or Government Official or to any person under circumstances where such Target Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of:

(i) (A) influencing any act or decision of such Government Official in his/her official capacity, (B) inducing such Government Official to do or omit to do any act in violation of his/her lawful duty, (C) securing any improper advantage, or (D) inducing such Government Official to influence or affect any act or decision of any Governmental Entity, or

(ii) assisting the Target or its Target Subsidiaries in obtaining or retaining business for or with, or directing business to, the Target or its Target Subsidiaries.

(j) Payment of Taxes. The Target and the Target Subsidiaries have filed all material tax returns that are required to have been filed by them, and have paid all material taxes due and payable, except for such taxes, if any, as are being contested in good faith or as to which adequate reserves have been established by the Target or the Target Subsidiaries. There are no (i) examinations or audits of any tax return of the Target or the Target Subsidiaries that are pending or in progress involving any material taxes or (ii) unresolved written claims that have been received by the Target or the Target Subsidiaries from any governmental body in any jurisdiction where the Target or any such Target Subsidiary, as applicable, does not file tax returns that the Target or any such Target Subsidiary is subject to taxes in that jurisdiction. No extension or waiver of the statute of limitation period applicable to any material tax returns of the Target or material tax is currently in effect other than extensions of the time in which to file a tax return of the Target obtained in the ordinary course of business.

(k) Illegal or Unauthorized Payments; Political Contributions Neither the Target nor any of its Target Subsidiaries nor, to the best of the Target's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors or employees of the Target or any of its Target Subsidiaries, property, or services, whether or not in contravention of applicable law, (i) as a kickback or bribe to any Person or (ii) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Target or any of its Target Subsidiaries.

(l) Money Laundering. The Target and its Target Subsidiaries are in compliance with, and have not previously violated applicable U.S. and non-U.S. anti-money laundering laws and regulations and applicable regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, as applicable (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(m) Management. During the past five year period, no current or former officer or director or, to the knowledge of the Target, no current ten percent (10%) or greater shareholder of the Target or any of its Target Subsidiaries has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding or a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such person from, or otherwise limiting, the following activities:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the United States Commodity Futures Trading Commission or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any particular type of business practice; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such person to engage in any activity described in the preceding sub paragraph, or to be associated with persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(n) Information Provided. The Presentation dated April 11, 2025 provided to the Buyers in connection with the offering (the "**Presentation**") does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The information to be supplied by or on behalf of the Target for inclusion or incorporation by reference in the Information Statement (as defined in the Merger Agreement) shall not, at the time the Information Statement is filed with the SEC, or at any time it is amended or supplemented, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading (or, in the case of the information statement contained therein, not misleading in light of the circumstances under which it shall be made). The information to be supplied by or on behalf of the Target for inclusion in the Information Statement to be sent to the stockholders of the Company, shall not, on the date the Information Statement is first mailed to stockholders of the Company or at the Effective Time (as defined in the Merger Agreement), contain any statement that, at such time and in light of the circumstances under which it shall be made, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made in the Information Statement not false or misleading; or omit to state any material fact necessary to correct any statement in any earlier communication with respect Merger that has become false or misleading.

4. COVENANTS.

(a) Reasonable Best Efforts. Each Buyer shall use its reasonable best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 6 of this Agreement. Each BC Party shall use its reasonable best efforts to timely satisfy each of the covenants hereunder and conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Blue Sky. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable “Blue Sky” laws), and each BC Party shall comply with all applicable foreign, federal, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Buyers.

(c) Reporting Status. Until the date on which the Buyers shall have sold all of the Registrable Securities (the “**Reporting Period**”), the Company shall timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination. From the time Form S-3 is available to the Company for the registration of the Registrable Securities, the Company shall take all actions necessary to maintain its eligibility to register the Registrable Securities for resale by the Buyers on Form S-3.

(d) Use of Proceeds. The Company will use the proceeds from the sale of the Securities to (i) pay the balance in excess of \$100,000 of the May 10, 2024 promissory note between the Company and Camden Capital LLC, (ii) pay the full amount under the promissory note between the Company and Sullivan & Worcester LLP within 5 Business Day of the Closing Date, (iii) pay the full amount under the July 24, 2024 convertible promissory note between the Company and 3i, L.P. within 5 Business Day of the Closing Date, (iv) pay \$100,000 to A.G.P./Alliance Global Partners pursuant to the underwriting agreement, as amended, dated February 15, 2024, within 5 Business Day of the Closing Date and (v) pay the full amount under the February 25, 2025 promissory note between the Company and 3i, L.P. within 5 Business Day of the Closing Date, and will use the remaining proceeds from the sale of the Securities for working capital and general corporate purposes.

(e) Financial Information. For as long as the Company is required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act, the Company agrees to send the following to each Investor (as defined in the Registration Rights Agreement) during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any interim reports or any consolidated balance sheets, income statements, shareholders’ equity statements and/or cash flow statements for any period other than annual, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, (ii) unless the following are either filed with the SEC through EDGAR or are otherwise widely disseminated via a recognized news release service (such as PR Newswire), on the same day as the release thereof, e-mail copies of all press releases issued by the Company or any of its Subsidiaries and (iii) unless the following are filed with the SEC through EDGAR, copies of any notices and other information made available or given to the shareholders of the Company generally, contemporaneously with the making available or giving thereof to the shareholders.

(f) Listing. The Company shall promptly secure the listing or designation (as the case may be) of all of the Conversion Shares upon each national securities exchange, if any, upon which the Common Stock is then listed (subject to official notice of issuance) and shall maintain such listing of all Registrable Securities from time to time issuable under the terms of the Transaction Documents on such national securities exchange. The Company shall maintain the Common Stock's listing on The New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall reimburse Nomis Bay, for all reasonable costs and expenses incurred by it or its affiliates in connection with the structuring, documentation, negotiation and closing of the transactions contemplated by the Transaction Documents, a non-accountable amount of \$300,000 for the legal fees of outside counsel and disbursements of Kelley Drye & Warren LLP, counsel to Nomis Bay and a non-accountable amount of \$300,000 for the legal fees of Morgan, Lewis & Bockius LLP, special finance and collateral counsel to Nomis Bay (the "**Transaction Expenses**") which amounts shall be withheld by Nomis Bay from its Purchase Price at the Closing, provided, that the Company shall promptly reimburse Kelley Drye & Warren LLP and Morgan, Lewis & Bockius LLP on demand for all Transaction Expenses not so reimbursed through such withholding at the Closing. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, DTC (as defined below) fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(h) [Reserved].

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. The Company shall, on or before 9:00 a.m., New York time, on the first (1st) Business Day immediately following the date of receipt of the Merger Partner Written Consent and Public Company Written Consent (as defined in the Merger Agreement), issue a press release (the "**Press Release**") reasonably acceptable to the Buyers disclosing all the material terms of the transactions contemplated by the Transaction Documents. On or before 9:00 a.m., New York time, on the first (1st) Business Day immediately following the date of receipt of the Merger Partner Written Consent and Public Company Written Consent (as defined in the Merger Agreement), the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (and all schedules to this Agreement), the form of Certificate of Designations, the form of Lock-Up Agreements, and the form of the Registration Rights Agreement, and excluding the form of Royalty Agreements and Irrevocable Transfer Agent Instructions) (including all attachments, the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided to any of the Buyers by any BC Entity or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the filing of the 8-K Filing, each BC Party, acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between any BC Entity or any of their respective offices, directors, affiliates, employees or agents, on the one hand, and any Buyer not listed on Schedule 4(i) attached hereto (or any of their affiliates) (the "**Insider Buyers**") on the other hand, shall terminate.

(ii) Limitations on Disclosure. Except to the extent required by the terms and conditions of the transactions contemplated by the Transaction Documents, including this Agreement, or as required by any applicable securities law (but solely to the extent the Company complies in full with its disclosure obligations in connection therewith as also provided in the Transaction Documents, including this agreement, following any such disclosure), no BC Party shall, and the BC Parties shall cause each BC Entity and each of its and their respective officers, directors, employees and agents not to, provide any Buyer with any material, non-public information regarding any BC Entity from and after the date hereof without the express prior written consent of such Buyer (which may be granted or withheld in such Buyer's sole discretion). To the extent that any BC Entity delivers any material, non-public information to the Buyer without such Buyer's consent, each BC Party hereby covenants and agrees that such Buyer shall not have any duty of confidentiality with respect to such material, non-public information. Subject to the foregoing, neither the BC Entities nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of any Buyer, to make the Press Release and any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Buyer (which may be granted or withheld in such Buyer's sole discretion), except as otherwise required by law, rule or regulation, or in connection with any registration statement contemplated by the Registration Rights Agreement (to the extent such Investor has not elected in writing to have such Investor's Registrable Securities be excluded from such Registration Statement), the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of such Buyer in any filing, announcement, release or otherwise. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, each BC Party expressly acknowledges and agrees that no Buyer shall have (unless expressly agreed to by a particular Buyer after the date hereof in a written definitive and binding agreement executed by the applicable BC Party and such particular Buyer (it being understood and agreed that no Buyer may bind any other Buyer with respect thereto)), any duty of confidentiality with respect to any material, non-public information regarding any BC Entity.

(j) Additional Registration Statements. Until the Applicable Date (as defined below) and at any time thereafter during the Registration Period (as defined in the Registration Rights Agreement) while any Registration Statement is not effective or the prospectus contained therein is not available for use, the Company shall not file a registration statement or an offering statement under the 1933 Act relating to securities that are not the Registrable Securities (other than a registration statement on Form S-8 or such supplements or amendments to registration statements that are outstanding and have been declared effective by the SEC as of the date hereof (solely to the extent necessary to keep such registration statements effective)). “**Applicable Date**” means the earlier of (x) the first date on the initial Registration Statement (as defined in the Registration Rights Agreement) registering the resale by the Buyers of all the Registrable Securities pursuant to the Registration Rights Agreement is declared effective by the SEC (the “**Registration Statement Effective Date**”) (and each prospectus contained therein is available for use on such date) or (y) the first date on which all of the Registrable Securities are eligible to be resold by the Buyers (assuming for such purpose that no Buyer is an affiliate of the Company) pursuant to Rule 144 (or, if a Current Public Information Failure has occurred and is continuing, such later date after which the Company has cured such Current Public Information Failure).

(k) [Reserved].

(l) Reservation of Shares. So long as any of the Preferred Shares remain outstanding, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than 100% of the maximum number of shares of Common Stock issuable upon conversion of all the Preferred Shares then outstanding (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designations) (collectively, the “**Required Reserve Amount**”); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 4(l) be reduced other than proportionally in connection with any conversion and/or redemption, as applicable of Preferred Shares. If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of shareholders to authorize additional shares to meet the Company’s obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain shareholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(m) Conduct of Business. The business of the BC Entities shall not be conducted in violation of any law, ordinance or regulation of any Governmental Entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(n) Other Preferred Shares; Variable Securities. So long as any Preferred Shares remain outstanding, each of the BC Entities shall be prohibited from effecting or entering into an agreement to effect any Subsequent Placement (as defined below) involving a Variable Rate Transaction (other than pursuant to any Permitted ATM or Permitted Equity Line). “**Variable Rate Transaction**” means a transaction in which any BC Entity (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of one or more BC Entities or the market for the Common Stock, other than pursuant to a customary “weighted average” anti-dilution provision or (ii) enters into any agreement (including, without limitation, an equity line of credit or an “at-the-market” offering) whereby one or more BC Entities may sell securities at a future determined price (other than standard and customary “preemptive” or “participation” rights). Each Buyer shall be entitled to obtain injunctive relief against any BC Entity to preclude any such issuance, which remedy shall be in addition to any right to collect damages. “**Permitted ATM**” means any at-the-market offering of Common Stock pursuant to an at-the-market sales agreement or similar agreement, including under a registration statement filed with and declared effective by the SEC, provided that such offering is conducted in accordance with applicable securities laws. “**Permitted Equity Line**” means the committed equity financing facility pursuant to that certain Common Stock Purchase Agreement, dated as of July 26, 2024, by and between the Company and Tikkun Capital LLC (as amended, restated, supplemented or otherwise modified from time to time), and any transactions contemplated thereby, including the issuance and sale of shares thereunder.

(o) Participation Right. At any time on or prior to the second (2nd) anniversary of the Closing Date, no BC Entity shall, directly or indirectly, issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any “equity security” (as that term is defined under Rule 405 promulgated under the 1933 Act), any Convertible Securities (as defined below), any preferred stock or any purchase rights) (any such issuance, offer, sale, grant, disposition or announcement is referred to as a “**Subsequent Placement**”) unless the Company shall have first complied with this Section 4(o). The Company acknowledges and agrees that the right set forth in this Section 4(o) is a right granted by the Company, separately, to Nomis Bay, BPY, Boothbay and Ligand (each, a “**Major Buyer**”) as set forth on Schedule 4(o) hereof.

(i) At least five (5) Trading Days prior to any proposed or intended Subsequent Placement, the Company shall deliver to each Major Buyer a written notice (each such notice, a “**Pre-Notice**”), which Pre-Notice shall not contain any information (including, without limitation, material, non-public information) other than: (A) if the proposed Offer Notice (as defined below) constitutes or contains material, non-public information, a statement asking whether the Investor is willing to accept material non-public information or (B) if the proposed Offer Notice does not constitute or contain material, non-public information, (x) a statement that the Company proposes or intends to effect a Subsequent Placement, (y) a statement that the statement in clause (x) above does not constitute material, non-public information and (z) a statement informing such Major Buyer that it is entitled to receive an Offer Notice (as defined below) with respect to such Subsequent Placement upon its written request. Upon the written request of a Major Buyer within three (3) Trading Days after the Company’s delivery to such Major Buyer of such Pre-Notice, and only upon a written request by such Major Buyer, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver to such Major Buyer an irrevocable written notice (the “**Offer Notice**”) of any proposed or intended issuance or sale or exchange (the “**Offer**”) of the securities being offered (the “**Offered Securities**”) in a Subsequent Placement, which Offer Notice shall (A) identify and describe the Offered Securities, (B) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (C) identify the Persons (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (D) offer to issue and sell to or exchange with such Major Buyer in accordance with the terms of the Offer such Buyer’s pro rata portion of 25% of the Offered Securities, provided that the number of Offered Securities which such Major Buyer shall have the right to subscribe for under this Section 4(o) shall be based (x) on such Major Buyer’s pro rata portion of the aggregate number of the Preferred Shares purchased hereunder by all Buyers (the “**Basic Amount**”), and (y) with respect to each Major Buyer that elects to purchase its Basic Amount, any additional portion of the Offered Securities attributable to the Basic Amounts of other Major Buyers as such Major Buyer shall indicate it will purchase or acquire should the other Major Buyers subscribe for less than their Basic Amounts (the “**Undersubscription Amount**”).

(ii) To accept an Offer, in whole or in part, such Major Buyer must deliver a written notice to the Company no later than 5:30 pm (New York City time) on the first (1st) Business Day after such Major Buyer’s receipt of the Offer Notice (the “**Offer Period**”), setting forth the portion of such Major Buyer’s Basic Amount that such Major Buyer elects to purchase and, if such Major Buyer shall elect to purchase all of its Basic Amount, the Undersubscription Amount, if any, that such Major Buyer elects to purchase (in either case, the “**Notice of Acceptance**”). If the Basic Amounts subscribed for by all Major Buyers are less than the total of all of the Basic Amounts, then each Major Buyer who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, if the Undersubscription Amounts subscribed for exceed the difference between the total of all the Basic Amounts and the Basic Amounts subscribed for (the “**Available Undersubscription Amount**”), each Major Buyer who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Basic Amount of such Major Buyer bears to the total Basic Amounts of all Major Buyers that have subscribed for Undersubscription Amounts, subject to rounding by the Company to the extent it deems reasonably necessary. Notwithstanding the foregoing, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to each Major Buyer a new Offer Notice and the Offer Period shall expire on the first (1st) Business Day after such Major Buyer’s receipt of such new Offer Notice.

(iii) The Company shall have five (5) Business Days from the expiration of the Offer Period above (A) to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by a Major Buyer (the “**Refused Securities**”) pursuant to a definitive agreement(s) (the “**Subsequent Placement Agreement**”), but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and (B) to publicly announce (x) the execution of such Subsequent Placement Agreement, and (y) either (I) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (II) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(iv) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(o)(iii) above), then each Major Buyer may, at its sole option and in its sole discretion, withdraw its Notice of Acceptance or reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that such Major Buyer elected to purchase pursuant to Section 4(o)(ii) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to Major Buyers pursuant to this Section 4(o) prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Major Buyer so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Major Buyers in accordance with Section 4(o)(i) above.

(v) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, such Major Buyer shall acquire from the Company, and the Company shall issue to such Major Buyer, the number or amount of Offered Securities specified in its Notice of Acceptance, as reduced pursuant to Section 4(o)(iv) above if such Major Buyer has so elected, upon the terms and conditions specified in the Offer. The purchase by such Major Buyer of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and such Major Buyer of a separate purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to such Major Buyer and its counsel.

(vi) Any Offered Securities not acquired by a Major Buyer or other Persons in accordance with this Section 4(o) may not be issued, sold or exchanged until they are again offered to such Major Buyer under the procedures specified in this Agreement.

(vii) The Company and each Major Buyer agree that (x) neither the Subsequent Placement Agreement with respect to such Offer nor any other transaction documents related thereto (collectively, the “**Subsequent Placement Documents**”) shall include any term or provision whereby such Major Buyer shall be required to agree to any restrictions on trading as to any securities of the Company held prior to the Subsequent Placement or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, any agreement previously entered into with the Company or any instrument received from the Company without the prior written consent of such Major Buyer, and (y) if any Major Buyer elects to participate in the Offer, the Subsequent Placement Documents shall not include any term or provision whereby such Major Buyer shall be required to agree to any restrictions on trading as to any securities of the Company acquired in the Subsequent Placement that is not agreed to by all other participants in the Offer, and any registration rights set forth in such Subsequent Placement Documents shall be similar in all material respects to the registration rights contained in the Registration Rights Agreement.

(viii) Notwithstanding anything to the contrary in this Section 4(o) and unless otherwise agreed to by such Major Buyer, the Company shall either confirm in writing to such Major Buyer that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case, in such a manner such that such Major Buyer will not be in possession of any material, non-public information, by the tenth (10th) Business Day following delivery of the Offer Notice. If by such tenth (10th) Business Day, no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by such Major Buyer, such transaction shall be deemed to have been abandoned and such Major Buyer shall not be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide such Major Buyer with another Offer Notice and such Major Buyer will again have the right of participation set forth in this Section 4(o). The Company shall not be permitted to deliver more than one such Offer Notice to such Major Buyer in any sixty (60) day period, except as expressly contemplated by the last sentence of Section 4(o)(ii).

(ix) The restrictions contained in this Section 4(o) shall not apply in respect of the issuance of (i) shares of Common Stock or standard options to purchase Common Stock to directors, officers or employees of the Company in their capacity as such pursuant to an Approved Stock Plan (as defined below); (ii) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the date hereof, provided that the conversion, exercise or other method of issuance (as the case may be) of any such Convertible Security is made solely pursuant to the conversion, exercise or other method of issuance (as the case may be) provisions of such Convertible Security that were in effect on the date immediately prior to the date of this Agreement, the conversion, exercise or issuance price of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered, none of such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Buyers; (iii) the Conversion Shares, (iv) shares of Common Stock issued pursuant to any Permitted ATM or Permitted Equity Line and (v) the securities to be issued in the Business Combination in accordance with the terms of the Merger Agreement, as in effect as of the date hereof (each of the foregoing in clauses (i) through (v), collectively the “**Excluded Securities**”). “**Approved Stock Plan**” means any employee benefit plan which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer or director for services provided to the Company in their capacity as such.

(x) The Company shall not circumvent the provisions of this Section 4(o) by providing terms or conditions to one Major Buyer that are not provided to all.

(xi) In the event that a Subsequent Placement is an underwritten public offering or the direct issuance of securities to investors pursuant to an effective registration statement an SEC-registered offering, and if there would be any conflict with any securities laws which would prohibit the consummation of the Subsequent Placement due to the application of the rights in this Section 4(o), such rights shall be deemed to be a non-binding indication of interest to participate in the Subsequent Placement and the Company shall use its reasonable best efforts to offer and sell to the Major Buyer its Basic Amount on the same terms, conditions and pricing afforded to others participating in the Subsequent Placement.

(p) Passive Foreign Investment Company. Until the earlier of (i) the fifth anniversary of the Closing Date and (ii) the date on which no Preferred Shares remain outstanding, the Company shall conduct its business, and shall cause its Subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(q) [Reserved].

(r) [Reserved].

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

(t) [Reserved.]

(u) Conversion Procedures. The form of Conversion Notice (as defined in the Certificate of Designations) included in the Certificate of Designations set forth the totality of the procedures required of the Buyers in order to convert the Preferred Shares. Except as provided in Section 5(d), no additional legal opinion, other information or instructions shall be required of the Buyers to convert their Preferred Shares. The Company shall honor conversions of the Preferred Shares and shall deliver the Conversion Shares in accordance with the terms, conditions and time periods set forth in the Certificate of Designations. Without limiting the preceding sentences, no ink-original Conversion Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Conversion Notice be required by the Company in order to convert the Preferred Shares.

(v) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(w) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer or sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(x) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act), or any person acting on behalf of the Company or such affiliate will sell, offer for sale, or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities in a manner which would require the registration of the Securities under the 1933 Act or require shareholder approval under the rules and regulations of the Principal Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market, with the issuance of Securities contemplated hereby.

(y) Notice of Disqualification Events. The Company will notify the Buyers in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

(z) Shareholder Approval. The Company shall have obtained the prior written consent of the requisite shareholders (the “**Shareholder Consent**”) providing for the approval of the issuance of all of the Securities in compliance with the rules and regulations of the Principal Market (without regard to any limitations on conversion set forth in the Preferred Shares),(such affirmative approval being referred to herein as the “**Shareholder Approval**”) and informed the shareholders of the Company of the receipt of the Shareholder Consent by preparing and filing with the SEC, as promptly as practicable after the date hereof, an information statement on Schedule 14C as contemplated by the Merger Agreement.

(a a) No Waiver of Lock-Up Agreements. Neither Company, nor the Target, shall amend, waive, modify or fail to use reasonable best efforts to enforce any provision of any Lock-Up Agreement. For the avoidance of doubt, no Buyer shall be a third party beneficiary of any Lock-Up Agreement.

(b b) Merger Agreement. The Company shall not amend, modify, or waive any provision under the Merger Agreement (as the same exists on the date of this Agreement) in any manner without having received the prior approval of the Required Holders.

(cc) Closing Documents. On or prior to fourteen (14) calendar days after the Closing Date, the Company agrees to deliver, or cause to be delivered, to each Buyer and Kelley Drye & Warren LLP and Morgan, Lewis & Bockius LLP a complete closing set of the executed Transaction Documents, Securities and any other document required to be delivered to any party pursuant to Section 7 hereof or otherwise.

(dd) Tax Treatment. The parties hereto intend that the transactions described herein qualify for the Intended Tax Treatment, as defined in the Merger Agreement. Each of the parties shall use reasonable best efforts to cause such transactions to so qualify, and agree not to, and not to permit or cause any of their affiliates to, take any action or cause any action to be taken which would reasonably be expected to prevent or impede such transactions from so qualifying. Such transactions shall be reported by the parties for all tax purposes in accordance with the foregoing, unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS; LEGEND.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Preferred Shares in which the Company shall record the name and address of the Person in whose name the Preferred Shares have been issued (including the name and address of each transferee), the aggregate number of Preferred Shares held by such Person, the number of Conversion Shares issuable pursuant to the terms of the Preferred Shares held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of any Buyer or its legal representatives.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable, the “**Transfer Agent**”) in a form reasonably acceptable to each of the Buyers (the “**Irrevocable Transfer Agent Instructions**”) to issue certificates or credit shares, registered in the name of each Buyer or its respective nominee(s), for the Conversion Shares in such amounts as specified from time to time by each Buyer to the Company upon conversion of the Preferred Shares, which, if the Buyer complies with the applicable requirements of the Certificate of Designation or this Agreement with respect to the delivery of certain certificates and information with respect to the contemporaneous sale of the Conversion Shares, including the Resale Eligibility Conditions, shall be credited to the applicable balance accounts at The Depository Trust Company (“**DTC**”). The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5(b), and stop transfer instructions to give effect to Section 2(g) hereof, will be given by the Company to its transfer agent with respect to the Securities, and that there will be no other restrictions on the transfer of the Securities, other than restrictions under applicable securities laws and restrictions as provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(g), the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or credit shares to the applicable balance accounts on the books of the transfer agent (in the case of Preferred Shares) or on the books of the transfer agent or at DTC (in the case of Conversion Shares) in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment, provided that the Company has received customary representations and other documentation reasonably acceptable to the Company in connection therewith. In the event that such sale, assignment or transfer involves Conversion Shares sold, assigned or transferred pursuant to an effective registration statement or in compliance with Rule 144, the Company shall use reasonable best efforts to cause the transfer agent to issue such shares to such Buyer, assignee or transferee (as the case may be) without any restrictive legend in accordance with Section 5(d) below, provided that the Company has received customary representations and other documentation reasonably acceptable to the Company in connection therewith. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5(b) will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required. The Company shall cause its counsel to issue the legal opinion referred to in the Irrevocable Transfer Agent Instructions to the Company’s transfer agent on each Effective Date of a Registration Statement (as defined in the Registration Rights Agreement) registering Registrable Securities in accordance with the terms of the Registration Rights Agreement. Any fees (with respect to the transfer agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the removal of any legends on any of the Securities shall be borne by the Company. The “**Resale Eligibility Conditions**” shall refer to the following conditions: such Securities (i) (A) may then be sold by the holder of the Securities pursuant to an available and effective registration statement and (B) the holder provides such documentation or other information evidencing the sale of the Securities as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request or (ii) may be sold by the holder pursuant to Rule 144 of the 1933 Act, as applicable.

(c) Legends. Each Buyer understands that the Securities have been issued (or will be issued in the case of the Conversion Shares) pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth below, the Securities shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT (I) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR (II) PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AS EVIDENCED BY AN OPINION OF COUNSEL OF THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (III) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT.

(d) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 5(c) above or any other legend (i) following a sale pursuant to an effective registration statement (including a Registration Statement) covering the resale of such Securities under the 1933 Act to the extent such Buyer provides such documentation or other information evidencing the sale of the Securities as the Company, the Transfer Agent or legal counsel to the Company shall reasonably request (which, for the avoidance of doubt, shall not include a legal opinion), (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferee is not an affiliate of the Company), or (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 without volume or manner-of-sale restrictions and without the requirement for the Company to comply with current public information requirements (provided that a Buyer provides the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144 which shall not include an opinion of Buyer’s counsel), or (iv) if such legend is not required under applicable requirements of the 1933 Act (other than Rule 144, including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC) as evidenced by an opinion of counsel of the Buyer in a generally acceptable form. If a legend is not required pursuant to the foregoing, the Company shall no later than two (2) Trading Days (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date such Buyer delivers such legended certificate representing such Securities to the Company) following the delivery by a Buyer to the Company or the transfer agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Buyer as may be required above in this Section 5(d), as directed by such Buyer, either: (A) provided that the Company’s transfer agent is participating in the DTC Fast Automated Securities Transfer Program (“FAST”) and the Resale Eligibility Conditions are satisfied and such Securities are Conversion Shares, credit the aggregate number of shares of Common Stock to which such Buyer shall be entitled to such Buyer’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian (“DWAC”) system upon receipt of such Buyer broker’s request through DTC’s DRS/DWAC system or (B) if the Company’s transfer agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, issue and deliver (via reputable overnight courier) to such Buyer, a book entry position or certificate representing such Securities, registered in the name of such Buyer or its designee (the date by which such credit is so required to be made to the balance account of such Buyer’s or such Buyer’s designee with DTC or such certificate is required to be delivered to such Buyer pursuant to the foregoing is referred to herein as the “**Required Delivery Date**”, and the date such shares of Common Stock are actually delivered without restrictive legend to such Buyer or such Buyer’s designee with DTC, as applicable, the “**Share Delivery Date**”). The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Securities or the removal of any legends with respect to any Securities in accordance herewith. The Transfer Agent shall not be liable for any delay in delivery of shares caused by the Holder’s broker failing to initiate the electronic request in the FAST system.

(e) Failure to Timely Deliver; Buy-In. If the Company fails, for any reason or for no reason, to issue and deliver (or cause to be delivered) to a Buyer (or its designee) by the Required Delivery Date, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, a certificate for the number of Conversion Shares to which such Buyer is entitled and register such Conversion Shares on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, to credit the balance account of such Buyer or such Buyer's designee with DTC upon receipt of such Buyer broker request through DTC's DRS/DWAC system for such aggregate number of Conversion Shares submitted for legend removal by such Buyer pursuant to Section 5(d) above (a "**Delivery Failure**"), and if on or after such Trading Day such Buyer acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Buyer of shares of Common Stock submitted for legend removal by such Buyer pursuant to Section 5(d) above that such Buyer is entitled to receive from the Company (a "**Buy-In**"), then the Company shall, in such Buyer's discretion as set forth in a written request to the Company (which may be an e-mail), either (i) within two (2) Business Days after receipt of such Buyer's request, pay cash to such Buyer in an amount equal to such Buyer's total purchase price (including brokerage commissions, stock loans and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Buyer's (or such Buyer's designee) balance account at DTC shall terminate and such shares shall be cancelled; provided that until December 31, 2026, in lieu of paying the Buy-In Price in cash, the Company will increase the Stated Value of the Preferred Shares held by such Buyer, pro rata per share, by the amount of such applicable Buy-In Price, or (ii) within two (2) Business Day after receipt of such Buyer's request, promptly honor its obligation to so deliver to such Buyer a certificate or certificates or credit the balance account of such Buyer (or such Buyer's designee) with DTC upon receipt of such Buyer's broker request through DTC's DRS/DWAC system representing such aggregate number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to such Buyer in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Conversion Shares that the Company was required to deliver to such Buyer by the Required Delivery Date multiplied by (B) the average VWAP (as defined in the Certificate of Designations) of the Common Stock during the period commencing on the date of the delivery by such Buyer to the Company of the applicable Conversion Shares and ending on the applicable Required Delivery Deadline. In addition to the foregoing, if the Buyer is a Major Buyer, and on or prior to the Required Delivery Date, if the Transfer Agent is not participating in FAST or the Resale Eligibility Conditions are not satisfied, the Company shall fail to issue and deliver a certificate to a Major Buyer and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST and the Resale Eligibility Conditions are satisfied, the Transfer Agent shall fail to credit the balance account of such Major Buyer or such Major Buyer's designee with DTC upon receipt of such Buyer's broker request through DTC's DRS/DWAC system for such aggregate number of shares of Common Stock to which such Major Buyer submitted for legend removal by such Major Buyer pursuant to Section 5(d) and, after the occurrence of at least three (3) such Delivery Failures and/or Conversion Failures, as applicable, then, in addition to all other remedies available to such Buyer, the Company shall pay in cash to such Buyer on each day after the Share Delivery Date and during such Delivery Failure an amount equal to 0.5% of the product of (A) the sum of the number of shares of Common Stock not issued to such Major Buyer on or prior to the Required Delivery Date and to which such Major Buyer is entitled, multiplied by (B) the average VWAP of the Common Stock during the period beginning on the delivery by such Major Buyer to the Company of the applicable Conversion Notice and ending on the applicable Share Delivery Date. Nothing shall limit such Buyer's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Delivery Failure, this Section 5(e) shall not apply to the applicable Buyer the extent the Company has already paid such amounts in full to such Buyer with respect to such Delivery Failure, as applicable, pursuant to the analogous sections of the Certificate of Designations with respect to the Preferred Shares then held by such Buyer.

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

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

(a) The obligation of the Company hereunder to issue and sell the Preferred Shares to each Buyer at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(ii) Such Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(i) Such Buyer and each other Buyer shall have delivered to the Company the Purchase Price (less, in the case of any Buyer, the amounts withheld pursuant to Section 4(g) and, with respect to any Bridge Buyer, any amounts then due and payable with respect to any Bridge Notes) for the Preferred Shares being purchased by such Buyer at the Closing by wire transfer of immediately available funds in accordance with the Flow of Funds Letter.

(iii) Such Buyer shall have duly executed and delivered to the Company each of the Transaction Documents to which it is a party.

(iv) The representations and warranties of such Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

(v) All conditions to the closing of the Merger shall have been satisfied or waived (other than the Closing hereunder and other than those conditions which, by their nature, are to be satisfied at the closing of the transactions contemplated by the Merger Agreement, but subject to the satisfaction of such conditions as of the closing of the transactions contemplated by the Merger Agreement), and the closing of the Merger shall be set to occur substantially concurrently with the Closing hereunder.

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

(a) The obligation of each Buyer hereunder to purchase its Preferred Shares at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company shall have duly executed and delivered to such Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to such Buyer such aggregate number of Preferred Shares as set forth across from such Buyer's name in column (3) of the Schedule of Buyers as being purchased by such Buyer at the Closing pursuant to this Agreement.

(ii) Such Buyer shall have received the opinion of Sullivan & Worcester, the Company's counsel, dated as of the Closing Date, in the form reasonably acceptable to such Buyer.

(iii) The Company shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions, in the form reasonably acceptable to such Buyer, which instructions shall have been delivered to and acknowledged in writing by the Company's transfer agent.

(iv) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company in its jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Closing Date.

(v) [Reserved].

(vi) The Company shall have delivered to such Buyer a certified copy of the Articles of Incorporation and the Certificate of Designations as certified by the Nevada Secretary of State within ten (10) days of the Closing Date.

(vii) The Company shall have delivered to such Buyer a certificate, in the form acceptable to such Buyer, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form reasonably acceptable to such Buyer, (ii) the Articles of Incorporation of the Company and (iii) the Bylaws of the Company, each as in effect at the Closing.

(viii) Each and every representation and warranty of the Company shall be true and correct as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer.

(ix) The Company shall have delivered to such Buyer a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding on the Closing Date immediately prior to the Closing.

(x) The Common Stock (A) shall be listed on the Principal Market and (B) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (I) in writing by the SEC or the Principal Market or (II) by falling below the minimum maintenance requirements of the Principal Market.

(xi) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities, including without limitation, those required by the Principal Market, if any.

(xii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

- (xiii) Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.
- (xiv) The Company shall have obtained approval of the Principal Market to list the Conversion Shares.
- (xv) All conditions to the closing of the Merger shall have been satisfied or waived (other than the Closing hereunder and other than those conditions which, by their nature, are to be satisfied at the closing of the transactions contemplated by the Merger Agreement, but subject to the satisfaction of such conditions as of the closing of the transactions contemplated by the Merger Agreement), and the closing of the Merger shall be set to occur substantially concurrently with the Closing hereunder.
- (xvi) Each of the Lock-Up Agreements shall be effective and in full force and effect as of the Closing Date.
- (xvii) The Company, Target, Nomis Bay and Ligand shall have duly executed and delivered to such Buyer the royalty agreements to which they are a party, substantially in the forms of **Exhibit F** attached hereto (the "**Royalty Agreements**").
- (xviii) Each and every representation and warranty of the Target in any Transaction Document shall be true and correct as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Target shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Target at or prior to the Closing Date. Such Buyer shall have received a certificate, duly executed by the Chief Executive Officer of the Target, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form acceptable to such Buyer (the "**Target Officer's Certificate**").
- (xix) Such Buyer shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer of the Company, setting forth the wire amounts of each Buyer and the wire transfer instructions of the Company (the "**Flow of Funds Letter**").
- (xx) The Company shall have delivered to such Buyer the Shareholder Consent.
- (xxi) The Company shall have received at Closing at least \$50,000,000 (in cash or cancellation of bridge notes, as applicable) from Buyers that have executed this Agreement (and/or a joinder to this Agreement).
- (xxii) The Company and its Subsidiaries shall have delivered to such Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

8. TERMINATION.

This Agreement shall terminate and be void and of no further force and effect, and all obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) such date and time that the Merger Agreement is terminated in accordance with its terms, (b) upon the mutual written agreement of the Company, the Target and the Buyer, (c) if, on the Closing Date, any of the conditions of Closing set forth in Section 7 have not been satisfied as of the time required hereunder to be so satisfied or waived by the party entitled to grant such waiver and, as a result thereof, the transactions contemplated by this Agreement are not consummated, or (d) if the Closing has not occurred on or before the Outside Date (as defined in the Merger Agreement); provided, however, (i) the right to terminate this Agreement under this Section 8 shall not be available to such Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of such Buyer's breach of this Agreement and (ii) the abandonment of the sale and purchase of the Preferred Shares shall be applicable only to such Buyer providing such written notice, provided further that no such termination shall affect any obligation of the Company under this Agreement to reimburse such Buyer for the expenses described in Section 4(g) above. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each of the BC Parties hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude any Buyer from bringing suit or taking other legal action against any BC Party in any other jurisdiction to collect on any BC Party's obligations to such Buyer or to enforce a judgment or other court ruling in favor of such Buyer. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(c) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(d) Severability; Maximum Payment Amounts. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or any of its Subsidiaries (as the case may be), or payable to or received by any of the Buyers, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to any Buyer, or collection by any Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its Subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(c) Entire Agreement; Amendments. This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyers, any BC Entity, any of their affiliates and Persons acting on their behalf, including, without limitation, any transactions by any Buyer with respect to Common Stock or the Securities, and the other matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Buyer has entered into with, or any instruments any Buyer has received from, any BC Entity prior to the date hereof with respect to any prior investment made by such Buyer in any BC Entity or (ii) waive, alter, modify or amend in any respect any obligations of any BC Entity, or any rights of or benefits to any Buyer or any other Person, in any agreement entered into prior to the date hereof between or among any BC Entity and any Buyer, or any instruments any Buyer received from any BC Entity prior to the date hereof, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither any BC Party nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the BC Parties and the Required Holders (as defined below), and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable; provided that no such amendment shall be effective to the extent that it (A) applies to less than all of the holders of the Securities then outstanding or (B) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Required Holders may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on all Buyers and holders of Securities, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on any Buyer without such Buyer's prior written consent (which may be granted or withheld in such Buyer's sole discretion). No consideration (other than reimbursement of legal fees) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents, all holders of the Preferred Shares. From the date hereof and while any Preferred Shares are outstanding, no BC Entity shall be permitted to receive any consideration from a Buyer or a holder of Preferred Shares that is not otherwise contemplated by the Transaction Documents in order to, directly or indirectly, induce any BC Entity (i) to treat such Buyer or holder of Preferred Shares in a manner that is more favorable than to other similarly situated Buyers or holders of Preferred Shares, or (ii) to treat any Buyer(s) or holder(s) of Preferred Shares in a manner that is less favorable than the Buyer or holder of Preferred Shares that is paying such consideration; provided, however, that the determination of whether a Buyer has been treated more or less favorably than another Buyer shall disregard any securities of the Company purchased or sold by any Buyer. No BC Entity has, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, except for the Bridge Notes, each BC Party confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to any BC Entity or otherwise. As a material inducement for each Buyer to enter into this Agreement, each BC Party expressly acknowledges and agrees that (x) no due diligence or other investigation or inquiry conducted by a Buyer, any of its advisors or any of its representatives shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, such BC Party's representations and warranties contained in this Agreement or any other Transaction Document and (y) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as disclosed in the SEC Documents," nothing contained in any of the SEC Documents shall affect such Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, such BC Party's representations and warranties contained in this Agreement or any other Transaction Document. "**Required Holders**" means each of Nomis Bay and Ligand (collectively, the "**Lead Buyers**") for so long as either Lead Buyer continues to hold any Securities, and thereafter, holders of a majority of the aggregate stated value of the Securities then held by all remaining Investors (except, that Section 4(o) shall only be permitted to be amended, modified or waived with the consent of the Lead Buyers).

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses for such communications shall be:

If to the Company:

Channel Therapeutics Corporation
4400 Route 9 South, Suite 1000
Freehold, NJ 07728
Telephone:
Attention: Chief Executive Officer
E-Mail:

With a copy (for informational purposes only) to:

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

If to the Target:

LNHC, Inc.
555 Heritage Drive, Suite 200
Jupiter, FL 33458
Attention: Chief Executive Officer With a copy (for informational purposes only) to:

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

If to the Transfer Agent:

Nevada Agency and Transfer Company
50 West Liberty Street, Suite 880
Reno NV 89501
Telephone:
Attention: Amanda Cardinalli
E-Mail:

If to a Buyer, to its mailing address and e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

with a copy (for informational purposes only) to:

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

and

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

or to such other mailing address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change, provided that Kelley Drye & Warren LLP and Morgan, Lewis & Bockius LLP shall only be provided copies of notices sent to Nomis Bay. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and recipient's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of any of the Preferred Shares. No BC Party shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including, without limitation, by way of a Fundamental Transaction (as defined in the Certificate of Designations) (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Certificate of Designations). A Buyer may assign some or all of its rights hereunder in connection with any transfer of any of its Securities without the consent of any BC Party, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each holder of any Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnatee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnatee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company or any Subsidiary to such Buyer (including representations and warranties incorporated herein by reference) in any of the Transaction Documents, (ii) any breach of any covenant, agreement or obligation of the Company or any Subsidiary owed to such Buyer contained in any of the Transaction Documents or (iii) any cause of action, suit, proceeding or claim brought or made against such Indemnatee by a third party (including for these purposes a derivative action brought on behalf of the Company or any Subsidiary) or which otherwise involves such Indemnatee that arises out of or results from (A) the execution, delivery, performance or enforcement of any of the Transaction Documents, (B) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, or (C) the status of such Buyer or holder of the Securities either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 9(k) shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions that occur with respect to the Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for such Buyer (or its broker or other financial representative) to effect short sales or similar transactions in the future.

(m) Remedies. Each Buyer and in the event of assignment by Buyer of its rights and obligations hereunder, each holder of Securities, shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, each BC Party recognizes that in the event that it or any BC Entity fails to perform, observe, or discharge any or all of its or such BC Entity's (as the case may be) obligations under the Transaction Documents, any remedy at law would inadequate relief to the Buyers. Each BC Party therefore agrees that the Buyers shall be entitled to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and any BC Entity does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to such applicable BC Entity, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside; Currency. To the extent that a BC Entity makes a payment or payments to any Buyer hereunder or pursuant to any of the other Transaction Documents or any of the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to such BC Entity, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against any BC Entity in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the “**Judgment Currency**”) an amount due in US Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

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

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(2) being hereinafter referred to as the “**Judgment Conversion Date**”).

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(2) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from any BC Entity under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under the Transaction Documents are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and each BC Party acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Buyers are in any way acting in concert or as a group or entity, and no BC Entity shall assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and each BC Party acknowledges that the Buyers are not acting in concert or as a group, and no BC Entity shall assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Buyer to purchase Securities pursuant to the Transaction Documents has been made by such Buyer independently of any other Buyer. Each Buyer acknowledges that no other Buyer has acted as agent for such Buyer in connection with such Buyer making its investment hereunder and that no other Buyer will be acting as agent of such Buyer in connection with monitoring such Buyer's investment in the Securities or enforcing its rights under the Transaction Documents. Each BC Party and each Buyer confirms that each Buyer has independently participated with the BC Entities in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the BC Parties, not the action or decision of any Buyer, and was done solely for the convenience of the BC Entities and not because it was required or requested to do so by any Buyer. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between applicable BC Entities and a Buyer, solely, and not between the Company, its Subsidiaries and the Buyers collectively and not between and among the Buyers.

[signature pages follow]

IN WITNESS WHEREOF, each Buyer, the Target and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

CHANNEL THERAPEUTICS CORPORATION

By: /s/ Francis Knuettel II

Name: Francis Knuettel II

Title: Chief Executive Officer and Chief Financial Officer

IN WITNESS WHEREOF, each Buyer, the Target and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

TARGET:

LNHC INC.

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

IN WITNESS WHEREOF, each Buyer, the Target and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

[BUYER]

By: _____
Name:
Title:
Maximum Percentage:

SCHEDULE OF BUYERS

(1)	(2)	(3)	(4)	(5)
Buyer	Mailing Address and E-mail Address	Aggregate Number of Preferred Shares	Purchase Price	Legal Representative's Mailing Address and E-mail Address

FORM OF LOCK-UP AGREEMENT

[•], 2025

Channel Therapeutics Corporation
4400 Route 9 South, Suite 1000
Freehold, NJ 07728

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this “**Lock-Up Agreement**”) understands that (1) each of Channel Therapeutics Corporation, a Nevada corporation (“**CHRO**”), LNHC, Inc., a Delaware corporation (“**LNHC**”), and other investors thereto, has entered into a Securities Purchase Agreement (the “**SPA**”), dated as of the date hereof, and (2) each of CHRO, CHRO Merger Sub Inc., a Delaware corporation and a direct, wholly owned subsidiary of CHRO, LNHC and, solely for purposes of Article III thereof, Ligand Pharmaceuticals Incorporated, a Delaware corporation (“**Ligand**”), has entered into an Agreement and Plan of Merger, dated as of [•], 2025 (as the same may be amended from time to time, the “**Merger Agreement**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

As a condition and inducement to each of the parties to enter into the Merger Agreement and SPA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of CHRO, the undersigned will not, during the period commencing upon the Closing and ending on December 31, 2025 (the “**Restricted Period**”):

- (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Public Company Common Stock, Public Company Preferred Stock or any securities convertible into or exercisable or exchangeable for Public Company Common Stock or Public Company Preferred Stock, as applicable (including without limitation, Public Company Common Stock, Public Company Preferred Stock or such other securities which may be deemed to be beneficially owned (as such term is used in Rule 13d-3 of the Exchange Act) by the undersigned in accordance with the rules and regulations of the SEC and securities of CHRO which may be issued upon exercise of an option to purchase Public Company Common Stock, Public Company Preferred Stock or warrant or settlement of a CHRO restricted stock unit) that are currently or hereafter owned of record or beneficially (including holding as a custodian) by the undersigned (collectively, the “**Undersigned’s Shares**”), or publicly disclose the intention to make any such offer, sale, pledge, grant, transfer or disposition;
 - (ii) enter into any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned’s Shares regardless of whether any such transaction described in clause (i) above or this clause (ii) is to be settled by delivery of Public Company Common Stock, Public Company Preferred Stock or other securities, in cash or otherwise; or
 - (iii) make any demand for, or exercise any right with respect to, the registration of any shares of Public Company Common Stock, Public Company Preferred Stock or any security convertible into or exercisable or exchangeable for Public Company Common Stock or Public Company Preferred Stock, as applicable (other than such rights set forth in the Merger Agreement or the obligations of CHRO, LNHC and/or the combined company under the Registration Rights Agreement (as defined in the SPA)) (such foregoing restrictions set forth in clauses (i) through (iii), the “**Transfer Restrictions**”).
-

The Transfer Restrictions shall not apply to:

(a) transfers of the Undersigned's Shares:

- (i) if the undersigned is a natural person, (A) to any person related to the undersigned by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a "**Family Member**"), or to a trust formed for the direct or indirect benefit of the undersigned or any of the undersigned's Family Members, (B) to the undersigned's estate, following the death of the undersigned, by will, intestacy or other operation of Law, (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) by operation of Law pursuant to a qualified domestic order or in connection with a divorce settlement, or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);
- (ii) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company, or other entity that is an affiliate (as defined under Rule 12b-2 of the Exchange Act) of the undersigned, including investment funds or other entities under common control or management or advisement with the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), (B) as a distribution or dividend to equity holders, including, without limitation, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned's equity holders), (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) transfers or dispositions not involving a change in beneficial ownership or (E) with prior written consent of CHRO; or
- (iii) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided, that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value and each donee, heir, beneficiary or other transferee or distributee shall sign and deliver to CHRO a lock-up agreement in the form of this Lock-Up Agreement with respect to the shares of Public Company Common Stock, Public Company Preferred Stock or such other securities that have been so transferred or distributed;

(b) the exercise of an option to purchase Public Company Common Stock or Public Company Preferred Stock (including a net or cashless exercise of an option to purchase Public Company Common Stock or Public Company Preferred Stock), and any related transfer of shares of Public Company Common Stock or Public Company Preferred Stock to CHRO or sale of Public Company Common Stock or Public Company Preferred Stock in the open market, in each case, for the purpose of paying the exercise price of such options or for paying taxes (including estimated taxes) during the Restricted Period due as a result of the exercise of such options; provided, that, for the avoidance of doubt, the underlying shares of Public Company Common Stock or Public Company Preferred Stock held by the undersigned following such exercise and any such open market sales shall continue to be subject to the restrictions on transfer set forth in this Lock-Up Agreement;

(c) the disposition (including a forfeiture or repurchase) to CHRO of any shares of restricted stock granted pursuant to the terms of any employee benefit plan or restricted stock purchase agreement;

(d) the vesting of any restricted stock unit or settlement of any other equity award that represents the right to receive shares of Public Company Common Stock or Public Company Preferred Stock, and transfers to CHRO, or sales of Public Company Common Stock or Public Company Preferred Stock in the open market, in connection with the vesting of any restricted stock unit or settlement of any other equity award that represents the right to receive shares of Public Company Common Stock or Public Company Preferred Stock settled in Public Company Common Stock or Public Company Preferred Stock, in each case and as applicable, to pay any tax withholding obligations due during the Restricted Period; provided that, for the avoidance of doubt, the underlying shares of Public Company Common Stock or Public Company Preferred Stock held by the undersigned following such vesting or settlement and any such open market sales shall continue to be subject to the restrictions on transfer set forth in this Lock-Up Agreement;

(e) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act (a “**10b5-1 Plan**”) for the transfer of Public Company Common Stock or Public Company Preferred Stock; provided that such plan does not provide for any transfers of Public Company Common Stock or Public Company Preferred Stock during the Restricted Period;

(f) pursuant to a bona-fide third party tender offer, merger, consolidation or other similar transaction made to all holders of CHRO’s capital stock involving a change of control of CHRO, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned’s Shares shall remain subject to the restrictions contained in this Lock-Up Agreement; or

(g) pursuant to an order of a court or regulatory agency;

And provided, further, that, with respect to each of (a), (b), (c), (d) and (e) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the Exchange Act or other public announcement shall be made voluntarily in connection with such transfer or disposition during the Restricted Period; provided that (i) any filing under Section 16 of the Exchange Act made during the Restricted Period shall clearly indicate in the footnotes thereto that such filing relates to the circumstances described in (a), (b), (c), (d) or (e), as applicable and (ii) the foregoing shall not prevent the undersigned from filing a Form 13F, Schedule 13G or Schedule 13D, or any amendment thereto, or from disclosing its holdings in CHRO as required by law or regulation or its internal disclosure policies in the ordinary course of business.

Any attempted transfer in violation of the Transfer Restrictions will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the Transfer Restrictions, and will not be recorded on the share register of CHRO. In furtherance of the foregoing, the undersigned agrees that CHRO and any duly appointed transfer agent for the registration or transfer of the Undersigned's Shares are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Agreement. CHRO may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned's ownership of Public Company Common Stock or Public Company Preferred Stock:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

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

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

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

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

This Lock-Up Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Lock-Up Agreement (in counterparts or otherwise) by CHRO and the undersigned by facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or electronic transmission in .pdf format shall be sufficient to bind such parties to the terms and conditions of this Lock-Up Agreement.

(Signature Page Follows)

Print Name of Investor:

Very truly yours,

[_____]

Signature (for individuals):

Signature (for entities):

By:

Name: _____

Title: _____

Accepted and Agreed
Channel Therapeutics Corporation:

By:

Name: Francis Knuettel II

Title: Chief Executive Officer & Chief Financial Officer

[Signature Page to Lock-Up Agreement (Merger Partner Directors and Officers)]

FORM OF LOCK-UP AGREEMENT

[•], 2025

Channel Therapeutics Corporation
 4400 Route 9 South, Suite 1000
 Freehold, NJ 07728

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this “**Lock-Up Agreement**”) (1) has entered into a Securities Purchase Agreement (the “**SPA**”), dated as of the date hereof, with Channel Therapeutics Corporation, a Nevada corporation (“**CHRO**”), and LNHC, Inc., a Delaware corporation (“**LNHC**”), and (2) understands that each of CHRO, CHRO Merger Sub Inc., a Delaware corporation and a direct, wholly owned subsidiary of CHRO, LNHC and, solely for purposes of Article III thereof, Ligand Pharmaceuticals Incorporated, a Delaware corporation (“**Ligand**”), has entered into an Agreement and Plan of Merger, dated as of the date hereof (as the same may be amended from time to time, the “**Merger Agreement**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

As a condition and inducement to each of the parties to enter into the Merger Agreement and SPA, as applicable, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of CHRO, the undersigned will not, during the Restricted Period (as defined below):

- (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Subject Shares (as defined below), or publicly disclose the intention to make any such offer, sale, pledge, grant, transfer or disposition;
- (ii) enter into any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Subject Shares regardless of whether any such transaction described in clause (i) above or this clause (ii) is to be settled by delivery of Public Company Common Stock, Public Company Preferred Stock or other securities, in cash or otherwise; or
- (iii) make any demand for, or exercise any right with respect to, the registration of any Subject Shares (other than the obligations of CHRO, LNHC and/or the combined company under the Registration Rights Agreement (as defined in the SPA)) (such foregoing restrictions set forth in clauses (i) through (iii), the “**Transfer Restrictions**”).

As used in this Lock-Up Agreement:

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

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

The Transfer Restrictions shall not apply to:

- (a) transfers of the Undersigned’s Shares:
- (i) if the undersigned is a natural person, (A) to any person related to the undersigned by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a “**Family Member**”), or to a trust formed for the direct or indirect benefit of the undersigned or any of the undersigned’s Family Members, (B) to the undersigned’s estate, following the death of the undersigned, by will, intestacy or other operation of Law, (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) by operation of Law pursuant to a qualified domestic order or in connection with a divorce settlement, or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);
- (ii) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company, or other entity that is an affiliate (as defined under Rule 12b-2 of the Exchange Act) of the undersigned, including investment funds or other entities under common control or management or advisement with the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), (B) as a distribution or dividend to equity holders, including, without limitation, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned’s equity holders), (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) transfers or dispositions not involving a change in beneficial ownership or (E) with prior written consent of CHRO; or
- (iii) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided, that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value and each donee, heir, beneficiary or other transferee or distributee shall sign and deliver to CHRO a lock-up agreement in the form of this Lock-Up Agreement with respect to the shares of Public Company Common Stock, Public Company Preferred Stock or such other securities that have been so transferred or distributed;

(b) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act (a “**10b5-1 Plan**”) for the transfer of Public Company Common Stock or Public Company Preferred Stock; provided that such plan does not provide for any transfers of Public Company Common Stock or Public Company Preferred Stock during the Restricted Period;

(c) transfers, sales, dispositions, or the entering into of transactions (including, without limitation, any swap, hedge or similar agreement) by the undersigned of or relating to shares of capital stock or other securities of CHRO purchased or acquired by the undersigned on the open market, in a public offering by CHRO, or that otherwise do not involve or relate to shares of Public Company Common Stock or Public Company Preferred Stock issued pursuant to the SPA;

(d) pursuant to a bona-fide third party tender offer, merger, consolidation or other similar transaction made to all holders of CHRO’s capital stock involving a change of control of CHRO, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned’s Shares shall remain subject to the restrictions contained in this Lock-Up Agreement; or

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

And provided, further, that, with respect to each of (a) and (b) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the Exchange Act or other public announcement shall be made voluntarily in connection with such transfer or disposition during the Restricted Period; provided that (i) any filing under Section 16 of the Exchange Act made during the Restricted Period shall clearly indicate in the footnotes thereto that such filing relates to the circumstances described in (a) or (b), as applicable and (ii) the foregoing shall not prevent the undersigned from filing a Form 13F, Schedule 13G or Schedule 13D, or any amendment thereto, or from disclosing its holdings in CHRO as required by law or regulation or its internal disclosure policies in the ordinary course of business.

Any attempted transfer in violation of the Transfer Restrictions will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the Transfer Restrictions, and will not be recorded on the share register of CHRO. In furtherance of the foregoing, the undersigned agrees that CHRO and any duly appointed transfer agent for the registration or transfer of the Undersigned’s Shares are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Agreement. CHRO may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned’s ownership of Public Company Common Stock or Public Company Preferred Stock:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

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

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

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

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

This Lock-Up Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Lock-Up Agreement (in counterparts or otherwise) by CHRO and the undersigned by facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or electronic transmission in .pdf format shall be sufficient to bind such parties to the terms and conditions of this Lock-Up Agreement.

(Signature Page Follows)

Very truly yours,

Print Name of Investor:

[_____]

Signature (for individuals):

Signature (for entities):

By:

Name:

Title:

Accepted and Agreed
Channel Therapeutics Corporation:

By:

Name: Francis Knuettel II

Title: Chief Executive Officer & Chief Financial Officer

[Signature Page to Lock-Up Agreement (Other Current Financing Participants)]

FORM OF LOCK-UP AGREEMENT

[•], 2025

Channel Therapeutics Corporation
4400 Route 9 South, Suite 1000
Freehold, NJ 07728

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this “**Lock-Up Agreement**”) (1) has entered into a Securities Purchase Agreement (the “**SPA**”), dated as of the date hereof, with Channel Therapeutics Corporation, a Nevada corporation (“**CHRO**”), and LNHC, Inc., a Delaware corporation (“**LNHC**”), and (2) understands that each of CHRO, CHRO Merger Sub Inc., a Delaware corporation and a direct, wholly owned subsidiary of CHRO, LNHC and, solely for purposes of Article III thereof, Ligand Pharmaceuticals Incorporated, a Delaware corporation (“**Ligand**”), has entered into an Agreement and Plan of Merger, dated as of the date hereof (as the same may be amended from time to time, the “**Merger Agreement**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

As a condition and inducement to each of the parties to enter into the Merger Agreement and SPA, as applicable, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of CHRO, the undersigned will not, during the Restricted Period (as defined below):

- (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Subject Shares (as defined below), or publicly disclose the intention to make any such offer, sale, pledge, grant, transfer or disposition;
- (ii) enter into any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Subject Shares regardless of whether any such transaction described in clause (i) above or this clause (ii) is to be settled by delivery of Public Company Common Stock, Public Company Preferred Stock or other securities, in cash or otherwise; or
- (iii) make any demand for, or exercise any right with respect to, the registration of any Subject Shares (other than the obligations of CHRO, LNHC and/or the combined company under the Registration Rights Agreement (as defined in the SPA)) (such foregoing restrictions set forth in clauses (i) through (iii), the “**Transfer Restrictions**”).

As used in this Lock-Up Agreement:

- (i) the term “**Undersigned’s Shares**” means all shares of Public Company Common Stock or Public Company Preferred Stock acquired by, or issuable to the undersigned pursuant to the SPA;
-

- (ii) the term “**Subject Shares**” means: (1) until the Effective Date (as such term is defined in the Registration Rights Agreement), all of the Undersigned’s Shares, (2) from and after the Effective Date (as such term is defined in the Registration Rights Agreement) until the date that is six (6) months after the Closing Date, 75% of the Undersigned’s Shares, (3) from and after the date that is six (6) months after the Closing Date until the end of the Restricted Period, 55% of the Undersigned’s Shares.
- (iii) the term “**Restricted Period**” means the period commencing upon the Closing and ending on December 31, 2025; provided, however, that if at any time beginning on the date that is seven (7) months after the Closing Date, the reported last sale price of Public Company Common Stock on the NYSE American is at least 250% greater than the Purchase Price (as such term is defined in the SPA) per share for five (5) consecutive trading days, then the Restricted Period will immediately expire and all of the Undersigned’s Shares subject to the Transfer Restrictions will be automatically released from the Transfer restrictions contained in this Lock-Up Agreement.

The Transfer Restrictions shall not apply to:

- (a) transfers of the Undersigned’s Shares:
 - (i) if the undersigned is a natural person, (A) to any person related to the undersigned by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a “**Family Member**”), or to a trust formed for the direct or indirect benefit of the undersigned or any of the undersigned’s Family Members, (B) to the undersigned’s estate, following the death of the undersigned, by will, intestacy or other operation of Law, (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) by operation of Law pursuant to a qualified domestic order or in connection with a divorce settlement, or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);
 - (ii) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company, or other entity that is an affiliate (as defined under Rule 12b-2 of the Exchange Act) of the undersigned, including investment funds or other entities under common control or management or advisement with the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), (B) as a distribution or dividend to equity holders, including, without limitation, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned’s equity holders), (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) transfers or dispositions not involving a change in beneficial ownership or (E) with prior written consent of CHRO; or
 - (iii) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided, that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value and each donee, heir, beneficiary or other transferee or distributee shall sign and deliver to CHRO a lock-up agreement in the form of this Lock-Up Agreement with respect to the shares of Public Company Common Stock, Public Company Preferred Stock or such other securities that have been so transferred or distributed;

(b) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act (a “**10b5-1 Plan**”) for the transfer of Public Company Common Stock or Public Company Preferred Stock; provided that such plan does not provide for any transfers of Public Company Common Stock or Public Company Preferred Stock during the Restricted Period;

(c) transfers, sales, dispositions, or the entering into of transactions (including, without limitation, any swap, hedge or similar agreement) by the undersigned of or relating to shares of capital stock or other securities of CHRO purchased or acquired by the undersigned on the open market, in a public offering by CHRO, or that otherwise do not involve or relate to shares of Public Company Common Stock or Public Company Preferred Stock issued pursuant to the SPA;

(d) pursuant to a bona-fide third party tender offer, merger, consolidation or other similar transaction made to all holders of CHRO’s capital stock involving a change of control of CHRO, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned’s Shares shall remain subject to the restrictions contained in this Lock-Up Agreement; or

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

And provided, further, that, with respect to each of (a) and (b) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the Exchange Act or other public announcement shall be made voluntarily in connection with such transfer or disposition during the Restricted Period; provided that (i) any filing under Section 16 of the Exchange Act made during the Restricted Period shall clearly indicate in the footnotes thereto that such filing relates to the circumstances described in (a) or (b), as applicable and (ii) the foregoing shall not prevent the undersigned from filing a Form 13F, Schedule 13G or Schedule 13D, or any amendment thereto, or from disclosing its holdings in CHRO as required by law or regulation or its internal disclosure policies in the ordinary course of business.

In addition, notwithstanding anything in this Lock-Up Agreement to the contrary, the undersigned and its affiliates shall be entitled to purchase shares of Public Company Common Stock, from time to time and at CHRO’s sole discretion, in connection with that certain Common Stock Purchase Agreement, dated as of July 26, 2024 by and between CHRO and Tikkun Capital LLC (the “**CEF Purchase Agreement**”) and sell the shares of Public Company Stock purchased pursuant to the CEF Purchase Agreement at any time.

This Lock-Up Agreement shall not be construed so as to prohibit the holder of that certain Convertible Note in the aggregate principal amount of \$750,000 (the “**Note**”) from converting the Note into shares of Public Company Common Stock or Public Company Preferred Stock in satisfaction of CHRO’s obligations thereunder, nor from selling the shares of Public Company Common Stock or Public Company Preferred Stock converted in accordance with such Note.

Any attempted transfer in violation of the Transfer Restrictions will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the Transfer Restrictions, and will not be recorded on the share register of CHRO. In furtherance of the foregoing, the undersigned agrees that CHRO and any duly appointed transfer agent for the registration or transfer of the Undersigned's Shares are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Agreement. CHRO may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned's ownership of Public Company Common Stock or Public Company Preferred Stock:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

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

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

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

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

This Lock-Up Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Lock-Up Agreement (in counterparts or otherwise) by CHRO and the undersigned by facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or electronic transmission in .pdf format shall be sufficient to bind such parties to the terms and conditions of this Lock-Up Agreement.

(Signature Page Follows)

Very truly yours,

Print Name of Investor:

[_____]

Signature (for individuals):

Signature (for entities):

By:

Name: _____

Title: _____

Accepted and Agreed
Channel Therapeutics Corporation:

By:

Name: Francis Knuettel II

Title: Chief Executive Officer & Chief Financial Officer

[Signature Page to Lock-Up Agreement (3i, LP)]

FORM OF LOCK-UP AGREEMENT

[•], 2025

Channel Therapeutics Corporation
 4400 Route 9 South, Suite 1000
 Freehold, NJ 07728

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this “**Lock-Up Agreement**”) (1) has entered into a Securities Purchase Agreement (the “**SPA**”), dated as of the date hereof, with Channel Therapeutics Corporation, a Nevada corporation (“**CHRO**”), and LNHC, Inc., a Delaware corporation (“**LNHC**”), and (2) understands that each of CHRO, CHRO Merger Sub Inc., a Delaware corporation and a direct, wholly owned subsidiary of CHRO, LNHC and, solely for purposes of Article III thereof, Ligand Pharmaceuticals Incorporated, a Delaware corporation (“**Ligand**”), has entered into an Agreement and Plan of Merger, dated as of the date hereof (as the same may be amended from time to time, the “**Merger Agreement**”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

As a condition and inducement to each of the parties to enter into the Merger Agreement and SPA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of CHRO, the undersigned and any of its direct, or indirect, subsidiaries (or any other Person controlled by the undersigned) (collectively, the “**Controlled Affiliates**”) will not, during the period commencing upon the Closing and ending on the earlier of (x) December 31, 2025 and (y) the date of any waiver, termination or release with respect to the Nomis Bay Standstill Agreement (as defined in the SPA) (or any successor agreement thereto) (the “**Restricted Period**”):

- (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Public Company Common Stock (other than any pledge permitted by the SPA, but not the transfer of any shares of Public Company Common Stock pursuant to any such pledge), Public Company Preferred Stock or any securities convertible into or exercisable or exchangeable for Public Company Common Stock or Public Company Preferred Stock, as applicable (including without limitation, Public Company Common Stock, Public Company Preferred Stock or such other securities which may be deemed to be beneficially owned (as such term is used in Rule 13d-3 of the Exchange Act) by the undersigned or any of its Controlled Affiliates in accordance with the rules and regulations of the SEC and securities of CHRO which may be issued upon exercise of an option to purchase Public Company Common Stock, Public Company Preferred Stock or warrant or settlement of a CHRO restricted stock unit) that are currently or hereafter owned of record or beneficially (including holding as a custodian) by the undersigned or any of its Controlled Affiliates (collectively, the “**Undersigned’s Shares**”), or publicly disclose the intention to make any such offer, sale, pledge, grant, transfer or disposition;
 - (ii) enter into any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned’s Shares regardless of whether any such transaction described in clause (i) above or this clause (ii) is to be settled by delivery of Public Company Common Stock, Public Company Preferred Stock or other securities, in cash or otherwise; or
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- (iii) make any demand for, or exercise any right with respect to, the registration of any shares of Public Company Common Stock, Public Company Preferred Stock or any security convertible into or exercisable or exchangeable for Public Company Common Stock or Public Company Preferred Stock, as applicable (other than such rights set forth in the Merger Agreement or the obligations of CHRO, LNHC and/or the combined company under the Transaction Documents (as defined in the SPA)) (such foregoing restrictions set forth in clauses (i) through (iii), the “**Transfer Restrictions**”).

The Transfer Restrictions shall not apply to:

(a) transfers of the Undersigned’s Shares:

- (i) if the undersigned is a natural person, (A) to any person related to the undersigned by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a “**Family Member**”), or to a trust formed for the direct or indirect benefit of the undersigned or any of the undersigned’s Family Members, (B) to the undersigned’s estate, following the death of the undersigned, by will, intestacy or other operation of Law, (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) by operation of Law pursuant to a qualified domestic order or in connection with a divorce settlement, or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);
- (ii) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company, or other entity that is an affiliate (as defined under Rule 12b-2 of the Exchange Act) of the undersigned, including investment funds or other entities under common control or management or advisement with the undersigned (including, for the avoidance of doubt, where the undersigned is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), (B) as a distribution or dividend to equity holders, including, without limitation, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned’s equity holders), (C) as a bona fide gift or a charitable contribution, as such term is described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (D) transfers or dispositions not involving a change in beneficial ownership or (E) with prior written consent of CHRO; or

- (iii) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided, that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value and each donee, heir, beneficiary or other transferee or distributee shall sign and deliver to CHRO a lock-up agreement in the form of this Lock-Up Agreement with respect to the shares of Public Company Common Stock, Public Company Preferred Stock or such other securities that have been so transferred or distributed;

(b) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act (a “**10b5-1 Plan**”) for the transfer of Public Company Common Stock or Public Company Preferred Stock; provided that such plan does not provide for any transfers of Public Company Common Stock or Public Company Preferred Stock during the Restricted Period;

(c) pursuant to a bona-fide third party tender offer, merger, consolidation or other similar transaction made to all holders of CHRO's capital stock involving a change of control of CHRO, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned's Shares shall remain subject to the restrictions contained in this Lock-Up Agreement; or

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

And provided, further, that, with respect to each of (a) and (b) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the Exchange Act or other public announcement shall be made voluntarily in connection with such transfer or disposition during the Restricted Period; provided that (i) any filing under Section 16 of the Exchange Act made during the Restricted Period shall clearly indicate in the footnotes thereto that such filing relates to the circumstances described in (a) or (b), as applicable and (ii) the foregoing shall not prevent the undersigned or its Controlled Affiliate from filing a Form 13F, Schedule 13G or Schedule 13D, or any amendment thereto, or from disclosing its holdings in CHRO as required by law or regulation or its internal disclosure policies in the ordinary course of business.

Any attempted transfer in violation of the Transfer Restrictions will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the Transfer Restrictions, and will not be recorded on the share register of CHRO. In furtherance of the foregoing, the undersigned agrees that CHRO and any duly appointed transfer agent for the registration or transfer of the Undersigned's Shares are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Agreement. CHRO may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned's ownership of Public Company Common Stock or Public Company Preferred Stock:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

During the Restricted Period, subject to the exceptions set forth herein and otherwise set forth in the Transaction Documents, without the prior written consent of CHRO (evidenced by a resolution of the board of directors of CHRO), the undersigned will not, and will cause its Controlled Affiliates not to, either alone or acting in concert with other persons, directly or indirectly:

- (i) offer or propose to acquire or agree to acquire (or request permission to do so), whether by directly or indirectly, by market purchases, private purchases, tender or exchange offer, through the acquisition of control of another person, by joining or participating in a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) or otherwise, any shares of Public Company Common Stock, Public Company Preferred Stock or other equity securities of CHRO (or the beneficial ownership thereof) or any securities convertible or exchangeable into or exercisable for any shares of Public Company Common Stock, Public Company Preferred Stock or other equity securities of CHRO (or beneficial ownership thereof) (including any derivative securities or other rights decoupled from the underlying securities of CHRO), other than such shares acquired pursuant to the SPA;
- (ii) make, effect or commence any merger or other business combination involving CHRO;

- (iii) commence or complete, or propose to commence or complete, any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to CHRO;
- (iv) make, or in any way participate in, any “solicitation” of proxies to vote or consent, or seek to advise or influence any person with respect to the voting of, any securities of CHRO (all within the meaning of Section 14 of the Exchange Act);
- (v) form, join or in any way participate in a group unrelated to the undersigned with respect to, or otherwise act in concert with any person in respect of, any securities of CHRO;
- (vi) other than through a designee’s participation on the board of directors of CHRO (or applicable committee), make any public statement or have a discussion with any securityholder of CHRO seeking to: (1) control, change or influence the board of directors of CHRO, management or policies of CHRO, including any plans or proposals to change the voting standard with respect to director elections, the number of directors or the removal of any directors, or to fill any vacancies on the board of directors of CHRO, except as contemplated by the Merger Agreement; (2) cause any change in the capitalization, share repurchase programs and practices or dividend policy of CHRO; (3) cause any other change in CHRO’s management, business or corporate structure; (4) have CHRO waive or make amendments or modifications to the certificate of incorporation, bylaws or any other similar organizational documents thereof (including any amendments thereto as existing as of the date thereof) or policies of CHRO (each as may be amended from time to time), or other actions that may impede or facilitate the acquisition of control of CHRO by any person; (5) cause a class of securities of CHRO to be delisted from, or to cease to be authorized to be quoted on, any securities exchange; or (6) cause a class of securities of CHRO to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;
- (vii) deposit any of Undersigned’s Shares in any voting trust or similar arrangement (unless such securities remain subject to the restrictions set forth in this Agreement);
- (viii) negotiate with or provide any information to any person with respect to, or make any statement or proposal to any person with respect to, or make any public announcement or proposal or offer whatsoever with respect to, or act as a financing source for or otherwise invest in any other persons in connection with, or otherwise solicit, seek or offer to effect any transactions or actions described in the foregoing clauses (i) through (vii), or make any other proposal inconsistent with the terms of this Lock-Up Agreement or that otherwise could reasonably be expected to result in a public announcement regarding any such transactions or actions;
- (ix) publicly seek or publicly request permission with respect to, or otherwise seek to effect, any waiver, termination or amendment of the provisions of this Lock-Up Agreement (such foregoing restrictions set forth in clauses (i) through (viii), the “**Standstill Restrictions**”) or publicly make or publicly seek permission to make any public announcement with respect to any of the foregoing;
- (x) contest the validity or enforceability of the Standstill Restrictions;

(xi) enter into any agreement, arrangement or understanding with respect to any of the foregoing; or

(xii) advise, assist, or encourage any other persons in connection with any of the foregoing.

Additionally, during the Restricted Period, the undersigned shall not, and shall cause each of its Controlled Affiliates not to, engage in any short sales of any shares of Public Company Common Stock, Public Company Preferred Stock or other equity securities of CHRO or any securities convertible or exchangeable into or exercisable for any shares of Public Company Common Stock, Public Company Preferred Stock or other equity securities of CHRO (or beneficial ownership thereof). As used in this Lock-Up Agreement, “*short sales*” shall include without limitation, all “short sales” as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act, and all types of direct and indirect stock pledges (other than as permitted by the SPA), forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers, but shall exclude any sales marked “short exempt”.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement (including with respect to covenants and obligations that may bind the undersigned’s Affiliates). All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that if the Merger Agreement is terminated for any reason, the undersigned shall automatically, without any further actions by the parties hereto, be released from all obligations under this Lock-Up Agreement. The undersigned understands that CHRO is proceeding with the transactions contemplated by the Merger Agreement in reliance upon this Lock-Up Agreement. Notwithstanding anything to the contrary contained herein, this letter agreement will automatically terminate and the undersigned shall be released from all obligations under this letter agreement upon the earliest to occur, if any, of (i) LNHC advising the undersigned in writing that it has determined not to proceed with the transactions contemplated by the Merger Agreement or (ii) the Merger Agreement being terminated.

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

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

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

This Lock-Up Agreement is intended for the benefit of CHRO and the undersigned and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

This Lock-Up Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Lock-Up Agreement (in counterparts or otherwise) by CHRO and the undersigned by facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or electronic transmission in .pdf format shall be sufficient to bind such parties to the terms and conditions of this Lock-Up Agreement.

(Signature Page Follows)

Very truly yours,

Print Name of Investor:

[_____]

Signature (for individuals):

Signature (for entities):

By:

Name:

Title:

Accepted and Agreed

Channel Therapeutics Corporation:

By:

Name: Francis Knuettel II

Title: Chief Executive Officer & Chief Financial Officer

[Signature Page to Lock-Up Agreement (Lead Investors in Concurrent Financing)]

REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this “**Agreement**”), dated as of [], 2025, is by and among Channel Therapeutics Corporation, a Nevada corporation with offices located at 4400 Route 9 South, Suite 1000, Freehold, NJ 07728 (the “**Company**”), and the undersigned buyers (each, a “**Buyer**,” and collectively, the “**Buyers**”).

RECITALS

A. The Company is party to that certain Agreement and Plan of Merger by and among the Company, CHRO Merger Sub Inc., and LNHC, Inc. (“**LNHC**”), dated as of April 16, 2025 (the “**Merger Agreement**”), pursuant to which LNHC will become a wholly-owned subsidiary of the Company (the “**Merger**”).

B. The Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, dated as of April 16, 2025 (the “**Securities Purchase Agreement**”), to issue and sell to each Buyer, immediately prior to the effective time of the Merger, the Preferred Shares (as defined in the Securities Purchase Agreement) which will be convertible into Conversion Shares (as defined in the Securities Purchase Agreement) in accordance with the terms of the Certificate of Designations (as defined in the Securities Purchase Agreement).

C. To induce the Buyers to consummate the transactions contemplated by the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “**1933 Act**”), and applicable state securities laws.

D. Pursuant to the Merger Agreement, LNHC will receive shares of Public Company Common Stock (as defined therein) (the “**Merger Shares**”).

AGREEMENT

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

1. **Definitions.**

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

(b) **“Closing Date”** shall have the meaning set forth in the Securities Purchase Agreement.

(c) **“Effective Date”** means the date that the applicable Registration Statement has been declared effective by the SEC.

(d) **“Effectiveness Deadline”** means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the earlier of the (A) 12th calendar day after the Closing Date (or the 150th calendar day if subject to a full review by the SEC) and (B) 5th Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the earlier of the (A) 120th calendar day (or the 150th calendar day if subject to a full review by the SEC) following the date on which the Company was required to file such additional Registration Statement and (B) 5th Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review. If the Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(e) **“Filing Deadline”** means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the later of the 36th calendar day after the Closing Date and 15 calendar days after the due date (which shall include any extensions granted by a timely filed Form 12b-25) of the next periodic report required pursuant to Section 13 of the Exchange Act, and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company was required to file such additional Registration Statement pursuant to the terms of this Agreement.

(f) **“Investor”** means a Buyer or any transferee or assignee of any Registrable Securities, Preferred Shares to whom a Buyer assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee of any Registrable Securities, Preferred Shares assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(g) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or a government or any department or agency thereof.

(h) **“register,” “registered,” and “registration”** refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the 1933 Act and pursuant to Rule 415 and the declaration of effectiveness of such Registration Statement(s) by the SEC.

(i) **“Registrable Securities”** means (i) the Conversion Shares, (ii) the Merger Shares, and (iii) any capital stock of the Company issued or issuable with respect to the Conversion Shares, the Preferred Shares and/or the Merger Shares, as applicable, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock (as defined in the Certificate of Designations) are converted or exchanged and shares of capital stock of a Successor Entity (as defined in the Certificate of Designations) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on conversion of the Preferred Shares; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) upon the earliest to occur of (i) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the 1933 Act and such Registrable Securities have been disposed of by the Buyer in accordance with such effective Registration Statement, or (ii) such Registrable Securities have been previously sold in accordance with Rule 144

(j) **“Registration Statement”** means a registration statement or registration statements of the Company filed under the 1933 Act covering Registrable Securities.

(k) **“Required Holders”** means, as of any given time, the holders of a majority of the Registrable Securities as of such time (excluding any Registrable Securities held by the Company or any of its Subsidiaries as of such time).

(l) **“Required Registration Amount”** means, as of any date of determination, 100% of (x) the Merger Shares and (y) the maximum number of Conversion Shares then issuable upon conversion of the Preferred Shares (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Preferred Shares set forth in the Certificate of Designations), subject to adjustment as provided in Section 2(d) and/or Section 2(f).

(m) **“Rule 144”** means Rule 144 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration.

(n) **“Rule 415”** means Rule 415 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC providing for offering securities on a continuous or delayed basis.

(o) **“SEC”** means the United States Securities and Exchange Commission or any successor thereto.

2. Registration.

(a) **Mandatory Registration.** The Company shall prepare and, as soon as practicable, but in no event later than the Filing Deadline, file with the SEC an initial Registration Statement on Form S-3 covering the resale of all of the Registrable Securities; provided that such initial Registration Statement shall register for resale at least the number of shares of Common Stock equal to the Required Registration Amount as of the date such Registration Statement is initially filed with the SEC; provided further that if Form S-3 is unavailable for such a registration, the Company shall use such other form as is required by Section 2(c). Such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, shall contain (except if otherwise directed by the Required Holders) the “Selling Stockholders” and “Plan of Distribution” sections in substantially the form attached hereto as **Exhibit B**. The Company shall use its reasonable best efforts to have such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, declared effective by the SEC as soon as practicable, but in no event later than the applicable Effectiveness Deadline for such Registration Statement.

(b) [Reserved]

(c) Ineligibility to Use Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the resale of the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of all Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the resale of all the Registrable Securities has been declared effective by the SEC and the prospectus contained therein is available for use.

(d) Sufficient Number of Shares Registered. In the event the number of shares available under any Registration Statement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(h), the Company shall amend such Registration Statement (if permissible), or file with the SEC a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than (i) the later of the 30th calendar day after the necessity therefor arises and (ii) 15 calendar days after the due date (which shall include any extensions granted by a timely filed Form 12b-25) of the next periodic report required pursuant to Section 13 of the Exchange Act (but taking account of any Staff position with respect to the date on which the Staff will permit such amendment to the Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use its reasonable best efforts to cause such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC, but in no event later than the applicable Effectiveness Deadline for such Registration Statement. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the applicable Registration Statement is less than the product determined by multiplying (i) the Required Registration Amount as of such time by (ii) 0.90. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on conversion, amortization and/or redemption of the Preferred Shares (and such calculation shall assume (A) that the Preferred Shares are then convertible in full into shares of Common Stock at the then prevailing Conversion Rate (as defined in the Certificate of Designations), and (B) the initial outstanding principal amount of the Preferred Shares remains outstanding through the scheduled Maturity Date (as defined in the Certificate of Designations) and no redemptions of the Preferred Shares occur prior to the scheduled Maturity Date.

(e) [Reserved]

(f) Offering. Notwithstanding anything to the contrary contained in this Agreement, in the event the staff of the SEC (the “**Staff**”) or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities by, or on behalf of, the Company, or in any other manner, such that the Staff or the SEC do not permit such Registration Statement to become effective and used for resales in a manner that does not constitute such an offering and that permits the continuous resale at the market by the Investors participating therein (or as otherwise may be acceptable to each Investor) without being named therein as an “underwriter,” then the Company shall reduce the number of shares to be included in such Registration Statement by all Investors until such time as the Staff and the SEC shall so permit such Registration Statement to become effective as aforesaid. In making such reduction, the Company shall reduce the number of shares to be included by all Investors on a pro rata basis (based upon the number of Registrable Securities otherwise required to be included for each Investor) unless the inclusion of shares by a particular Investor or a particular set of Investors are resulting in the Staff or the SEC’s “by or on behalf of the Company” offering position, in which event the shares held by such Investor or set of Investors shall be the only shares subject to reduction (and if by a set of Investors on a pro rata basis by such Investors or on such other basis as would result in the exclusion of the least number of shares by all such Investors); provided, that, with respect to such pro rata portion allocated to any Investor, such Investor may elect the allocation of such pro rata portion among the Registrable Securities of such Investor. In addition, in the event that the Staff or the SEC requires any Investor seeking to sell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an “underwriter” in order to permit such Registration Statement to become effective, and such Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of such Investor, until such time as the Staff or the SEC does not require such identification or until such Investor accepts such identification and the manner thereof. Any reduction pursuant to this paragraph will first reduce all Registrable Securities other than those issued pursuant to the Securities Purchase Agreement. In the event of any reduction in Registrable Securities pursuant to this paragraph, an affected Investor shall have the right to require, upon delivery of a written request to the Company signed by such Investor, the Company to file a registration statement within twenty (20) days of such request (subject to any restrictions imposed by Rule 415 or required by the Staff or the SEC) for resale by such Investor in a manner acceptable to such Investor, and the Company shall following such request cause to be and keep effective such registration statement in the same manner as otherwise contemplated in this Agreement for registration statements hereunder, in each case until such time as: (i) all Registrable Securities held by such Investor have been registered and sold pursuant to an effective Registration Statement in a manner acceptable to such Investor or (ii) all Registrable Securities may be resold by such Investor without restriction (including, without limitation, volume limitations) pursuant to Rule 144 (taking account of any Staff position with respect to “affiliate” status) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (iii) such Investor agrees to be named as an underwriter in any such Registration Statement in a manner acceptable to such Investor as to all Registrable Securities held by such Investor and that have not theretofore been included in a Registration Statement under this Agreement (it being understood that the special demand right under this sentence may be exercised by an Investor multiple times and with respect to limited amounts of Registrable Securities in order to permit the resale thereof by such Investor as contemplated above).

(g) Piggyback Registrations. Without limiting any obligation of the Company hereunder or under the Securities Purchase Agreement, until the fifth anniversary of the Closing Date, if there is not an effective Registration Statement covering all of the Registrable Securities or the prospectus contained therein is not available for use and the Company shall determine to prepare and file with the SEC a registration statement or offering statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities (other than on Form S-4 or Form S-8 (each as promulgated under the 1933 Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans), then the Company shall deliver to each Investor a written notice of such determination and, if within fifteen (15) days after the date of the delivery of such notice, any such Investor shall so request in writing, the Company shall include in such registration statement or offering statement all or any part of such Registrable Securities such Investor requests to be registered; provided, however, the Company shall not be required to register any Registrable Securities pursuant to this Section 2(g) that are eligible for resale pursuant to Rule 144 without restriction (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or that are the subject of a then-effective Registration Statement.

(h) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time such Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee or assignee (as the case may be) that becomes an Investor shall be allocated a pro rata portion of the then-remaining number of Registrable Securities included in such Registration Statement for such transferor or assignee (as the case may be). During the Registration Period, any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement, at the written request of any Investor, shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement.

(i) No Inclusion of Other Securities. The Company shall in no event include any securities other than Registrable Securities on any Registration Statement filed in accordance herewith without the prior written consent of the Required Holders.

(j) No Underwriter Status. No Investor shall be named as an “underwriter” in any Registration Statement without such Investor’s prior written consent; provided, that if the SEC requires that an Investor be identified as a statutory underwriter in a Registration Statement (after giving effect to any “cutback” pursuant to Rule 415), such Investor will have the option, in its sole and absolute discretion, to either (i) have the opportunity to withdraw from such Registration Statement upon its prompt written request to the Company or (ii) be included as such in the Registration Statement.

3. Related Obligations.

The Company shall use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof, and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to all the Registrable Securities (but in no event later than the applicable Filing Deadline) and use its best efforts to cause such Registration Statement to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). Subject to any applicable Suspension Period, the Company shall keep each Registration Statement effective (and the prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investors on a delayed or continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earliest of: (i) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement (disregarding any reduction pursuant to Section 2(f)) without restriction pursuant to Rule 144 (including, without limitation, volume or manner-of-sale restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable), (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement and (iii) the fifth anniversary of the Closing Date (the “**Registration Period**”). Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that, when filed and at all times while effective, each Registration Statement (including, without limitation, all amendments and supplements thereto) and the prospectus (including, without limitation, all amendments and supplements thereto) used in connection with such Registration Statement (1) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading and (2) will disclose (whether directly or through incorporation by reference to other SEC filings to the extent permitted) all material information regarding the Company and its securities.

(b) Subject to Section 3(q) of this Agreement, the Company shall prepare and file with the SEC such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep each such Registration Statement effective at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company required to be covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement; provided, however, by 8:30 a.m. (New York time) on the Business Day immediately following each Effective Date, the Company shall file with the SEC in accordance with Rule 424(b) under the 1933 Act the final prospectus to be used in connection with sales pursuant to the applicable Registration Statement (whether or not such a prospectus is technically required by such rule). In the case of amendments and supplements to any Registration Statement which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 3(b)) by reason of the Company filing a report on Form 8-K, Form 10-Q or Form 10-K or any analogous report under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), the Company shall, if permitted under the applicable rules and regulations of the SEC, have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) As far in advance as reasonably practicable, but in any event not less than five (5) Business Days prior to the filing of each Registration Statement and not less than one (1) Business Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Investor copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Investor, and (ii) use commercially reasonable efforts to cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Investor, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Required Holders (as defined below) shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than three (3) Trading Days after the Investors have been so furnished copies of a Registration Statement or one (1) Trading Day after the Investors have been so furnished copies of any related Prospectus or amendments or supplements thereto. The Company shall promptly furnish to the Investors, without charge, (i) copies of any correspondence from the SEC or the Staff to the Company or its representatives relating to each Registration Statement, provided that such correspondence shall not contain any material, non-public information regarding the Company or any of its Subsidiaries (as defined in the Securities Purchase Agreement), (ii) after the same is prepared and filed with the SEC, one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) upon the effectiveness of each Registration Statement, one (1) copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with the Investors in performing the Company's obligations pursuant to this Section 3.

(d) If requested by an Investor, the Company shall promptly furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) after the same is prepared and filed with the SEC, at least one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of each Registration Statement, a copy of the prospectus included in such Registration Statement and all amendments and supplements thereto and (iii) such other documents, including, without limitation, copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

(e) The Company shall use its reasonable best efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(f) The Company shall notify the Investors in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, may include an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company or any of its Subsidiaries) (which notice shall be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made), and, subject to Section 3(q), promptly prepare a supplement or amendment to such Registration Statement and such prospectus contained therein to correct such untrue statement or omission. The Company shall also promptly notify each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to each Investor by facsimile or e-mail on the same day of such effectiveness and by overnight mail), and when the Company receives written notice from the SEC that a Registration Statement or any post-effective amendment will be reviewed by the SEC, (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be reasonably necessary; and (iv) of the receipt of any request by the SEC or any other federal or state governmental authority for any additional information relating to the Registration Statement or any amendment or supplement thereto or any related prospectus. The Company shall respond as promptly as practicable to any comments received from the SEC with respect to each Registration Statement or any amendment thereto.

(g) The Company shall (i) use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of each Registration Statement or the use of any prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and (ii) notify each Investor who holds Registrable Securities of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, at the request of any Investor, the Company shall furnish to such Investor, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request certificates, dated as of such date, of the Company's Chief Executive Officer, Chief Financial Officer and/or Secretary representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(i) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, upon the written request of such Investor, the Company shall make available for inspection by (i) such Investor, (ii) legal counsel for such Investor and (iii) one (1) firm of accountants or other agents retained by such Investor (collectively, the "**Inspectors**"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, each Inspector shall agree in writing to hold in strict confidence and not to make any disclosure (except to such Investor) or use of any Record or other information which the Company's board of directors determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (1) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (2) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document (as defined in the Securities Purchase Agreement). Such Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and such Investor, if any) shall be deemed to limit any Investor's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required to be disclosed in such Registration Statement pursuant to the 1933 Act, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at such Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(k) Without limiting any obligation of the Company under the Securities Purchase Agreement, the Company shall use its reasonable best efforts to (i) cause all of the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) if, despite the Company's best efforts to satisfy the preceding clause (i) the Company is unsuccessful in satisfying the preceding clause (i), without limiting the generality of the foregoing, to use its best efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority ("FINRA") as such with respect to such Registrable Securities. In addition, the Company shall cooperate with each Investor and any broker or dealer through which any such Investor proposes to sell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as requested by such Investor. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 3(j).

(l) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts (as the case may be) as the Investors may reasonably request from time to time and registered in such names as the Investors may request.

(m) If requested by an Investor, the Company shall as soon as practicable after receipt of notice from such Investor and subject to Section 3(o) hereof, (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement or prospectus contained therein if reasonably requested by an Investor holding any Registrable Securities.

(n) The Company shall use its best efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(o) If required, the Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the applicable Effective Date of each Registration Statement.

(p) The Company shall otherwise use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration statement hereunder.

(q) Upon the occurrence of any event contemplated by the first sentence of Section 3(f), clauses (ii) and (iii) of the second sentence of Section 3(f) and Section 3(g), as promptly as reasonably possible under the circumstances taking into account the Company's good faith determination of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Investors in accordance with the first sentence of Section 3(f), clauses (ii) and (iii) of the second sentence of Section 3(f) and Section 3(g) above to suspend the use of any prospectus until the requisite changes to such prospectus have been made, then the Investors shall suspend use of such Prospectus; provided that the Company shall only be entitled to exercise its right under this Section 3(o) to suspend the availability of a Registration Statement and Prospectus up to two (2) occasions in any 12-month period for a period not to exceed 45 consecutive days or a total of ninety (90) calendar days, in each case in any such 12-month period (each, a "**Suspension Period**"). The Company will use its reasonable best efforts to ensure that the use of the prospectus may be resumed as promptly as is reasonably practicable.

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

(s) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Buyers in this Agreement or otherwise conflicts with the provisions hereof.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated filing date of each Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor with respect to such Registration Statement, which shall include a questionnaire in the form attached to this Agreement as **Exhibit A** (a "**Selling Shareholder Questionnaire**"). Each Investor agrees to furnish to the Company a completed Selling Shareholder Questionnaire by the end of the tenth (10th) Business Day following the date on which such Investor receives a request in accordance with this Section. The Company shall not be required to include Registrable Securities in the Registration Statement for any Investor that has not provided such Selling Shareholder Questionnaire. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of each Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, FINRA filing fees (if any) and fees and disbursements of counsel for the Company shall be paid by the Company. The Company shall reimburse one legal counsel for Nomis Bay for its fees and disbursements in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement which amount shall be limited to \$5,000 for each registration statement and one legal counsel for Ligand for its fees and disbursements in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement which amount shall be limited to \$5,000 for each registration statement. In no event shall the Company be responsible for any underwriting, broker or similar fees or commissions of any Investor.

6. Indemnification.

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor and each of its directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each Person, if any, who controls such Investor within the meaning of the 1933 Act or the 1934 Act and each of the directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) of such controlling Persons (each, an **"Investor Indemnified Person"**), against any losses, obligations, claims, damages, liabilities, contingencies, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several, (collectively, **"Claims"**) incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an Investor Indemnified Person is or may be a party thereto (**"Indemnified Damages"**), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered (**"Blue Sky Filing"**), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading or (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement (the matters in the foregoing clauses (i) through (iii) being, collectively, **"Violations"**). Subject to Section 6(c), the Company shall reimburse the Investor Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Investor Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Investor Indemnified Person for such Investor Indemnified Person expressly for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d); (ii) shall not apply with respect to Claims arising from the use by such Investor of an outdated, defective or otherwise unavailable prospectus after the Company has notified such Investor in writing that the Prospectus is outdated, defective or otherwise unavailable for such use by such Investor as a result of an event of the type specified in the first sentence of Section 3(f), clauses (ii) and (iii) of the second sentence of Section 3(f) and Section 3(g), and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Investor Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, a “**Company Indemnified Person**”), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c) and the below provisos in this Section 6(b), such Investor will reimburse an Company Indemnified Person any legal or other expenses reasonably incurred by such Company Indemnified Person in connection with investigating or defending any such Claim; provided, however, the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed, provided further that such Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Company Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(c) Promptly after receipt by any person entitled to indemnify hereunder (an **"Indemnified Person"**) under this Section 6 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Indemnified Person shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person; provided, however, an Indemnified Person shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Indemnified Person in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Indemnified Person and the indemnifying party, and such Indemnified Person shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Person and the indemnifying party (in which case, if such Indemnified Person notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party, provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnified Person. The Indemnified Person shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Person reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Person of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnified Person. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person under this Section 6, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6 of this Agreement, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144, the Company agrees to:

- (a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood and agreed that nothing herein shall limit any obligations of the Company under the Securities Purchase Agreement) and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting, submission and posting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company with the SEC if such reports are not publicly available via EDGAR, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. Assignment of Registration Rights.

Each Investor may transfer or assign its respective rights hereunder in the manner and to the Persons as permitted under the Securities Purchase Agreement; provided in each case that (i) such Investor agrees in writing with the transferee or assignee to assign such rights and related obligations under this Agreement, and for the transferee or assignee to assume such obligations, and a copy of such agreement is furnished to the Company within a reasonable time after such transfer or assignment (as the case may be); (ii) the Company is, within a reasonable time after such transfer or assignment (as the case may be), furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred or assigned, (iii) at or before the time the Company received the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein, (iv) immediately following such transfer or assignment (as the case may be) the further disposition of such securities by such transferee or assignee (as the case may be) is restricted under the 1933 Act or applicable state securities laws if so required, and (v) the transferee is an “accredited investor,” as that term is defined in Rule 501 of Regulation D.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders; provided that any such amendment or waiver that complies with the foregoing, but that disproportionately, materially and adversely affects the rights and obligations of any Investor relative to the comparable rights and obligations of the other Investors shall require the prior written consent of such adversely affected Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company, provided that no such amendment shall be effective to the extent that it (1) applies to less than all of the holders of Registrable Securities or (2) imposes any obligation or liability on any Investor without such Investor's prior written consent (which may be granted or withheld in such Investor's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) Solely for purposes of this Agreement, a Person is deemed to be a holder of Registrable Securities whenever such Person owns, or is deemed to own, of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party) or electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with a nationally recognized overnight delivery service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses, facsimile numbers and email addresses for such communications shall be:

If to the Company:

Channel Therapeutics Corporation.

Telephone: () -

Facsimile: () -

Attention: Chief Executive Officer

Email:

With a copy (for informational purposes only) to:

Telephone: () -

Facsimile: () -

Attention: _____

Email:

If to the Transfer Agent:

Telephone: () -
Facsimile: () -
Attention: _____
Email: _____

If to a Buyer, to its address, facsimile number and/or email address set forth on the Schedule of Buyers attached to the Securities Purchase Agreement, with copies to such Buyer's representatives as set forth on the Schedule of Buyers, or to such other address, facsimile number, and/or email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or email containing the time, date, recipient facsimile number or email address and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof. The Company and each Investor acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by any other party hereto and to enforce specifically the terms and provisions hereof (without the necessity of showing economic loss and without any bond or other security being required), this being in addition to any other remedy to which any party may be entitled by law or equity.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

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

(f) This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein constitute the entire agreement among the parties hereto and thereto solely with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto solely with respect to the subject matter hereof and thereof; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Investor has entered into with the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Investor in the Company, (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries or any rights of or benefits to any Investor or any other Person in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Investor and all such agreements shall continue in full force and effect or (iii) limit any obligations of the Company under any of the other Transaction Documents.

(g) Subject to compliance with Section 9 (if applicable), this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto. This Agreement is not for the benefit of, nor may any provision hereof be enforced by, any Person, other than the parties hereto, their respective permitted successors and assigns and the Persons referred to in Sections 6 and 7 hereof.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(i) This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an email which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party. Notwithstanding anything to the contrary set forth in Section 10, terms used in this Agreement but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by each Investor.

(l) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the outstanding Preferred Shares then held by the Investors have been converted for Registrable Securities without regard to any limitations on redemption, amortization and/or conversion of the Preferred Shares then held by Investors have been converted into Registrable Securities without regard to any limitations on conversion of the Preferred Shares.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor under this Agreement and the other Transaction Documents are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under this Agreement or any other Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute the Investors as, and the Company acknowledges that the Investors do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Investors are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Investors are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by this Agreement or any of the other the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained herein was solely in the control of the Company, not the action or decision of any Investor, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Investor. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and an Investor, solely, and not between the Company and the Investors collectively and not between and among Investors.

[signature page follows]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

CHANNEL THERAPEUTICS CORPORATION

By: _____
Name:
Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYERS:

NOMIS BAY LTD

By: _____
Name:
Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

LIGAND PHARMACEUTICALS INCORPORATED

By:

Name:

Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

[OTHER BUYERS]

By: _____
Name:
Title:

April 17, 2025

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Commissioners:

We have read the statements made by Channel Therapeutics Corporation under Item 4.01 of its Form 8-K dated April 17, 2025. We agree with the statements concerning our Firm in such Form 8-K; we are not in a position to agree or disagree with other statements of Channel Therapeutics Corporation contained therein.

Very truly yours,

/s/ Marcum llp

Marcum llp



Corporate Presentation

Q 2 2 0 2 5

CONFIDENTIAL

Disclaimers

Important Information for Investors

This confidential presentation ("Presentation") is for informational purposes only and is being provided to interested parties solely in their capacity as potential investors for the purpose of evaluating a potential private offering of securities (the "Purpose") by Channel Therapeutics Corporation f/k/a Chromocell Therapeutics Corporation (collectively with its subsidiaries, "CHRO"), in connection with a potential business combination between CHRO and LNHC Inc. (collectively with its wholly owned subsidiary Pelthos Therapeutics Inc., "LNHC") (the "Proposed Transaction"). By accepting this Presentation, you acknowledge and agree that all of the information contained herein is confidential, that you will use such information only for the Purpose and that you shall not use such information in any way that is detrimental to CHRO or LNHC. The information contained herein does not purport to be all-inclusive and none of CHRO, LNHC, or any of their respective affiliates or respective control persons, officers, directors, employees or representatives makes any representation or warranty, express or implied, as to the accuracy, completeness or reliability of the information contained in this Presentation. You should consult your own counsel and tax and financial advisors as to legal and related matters concerning the matters described herein, and, by accepting this Presentation, you confirm that you are not relying upon the information contained herein to make any investment or other decision.

This Presentation has been prepared by LNHC. While LNHC believes that the financial and other information contained herein is accurate, LNHC expressly disclaims any and all liability for the contents of, or omissions from, this Presentation and for any other written or oral communication transmitted or made available to a recipient. This Presentation includes certain statements and estimates provided by LNHC with respect to LNHC's historical and anticipated performance as well as LNHC's relative position within its market and industry. Such statements and estimates reflect various assumptions by LNHC (some of which may not be stated) that may or may not prove to be accurate. None of LNHC or its affiliates or employees, directors, officers, contractors, advisors, members, successors, representatives or agents makes any representations or warranties (express or implied) concerning the accuracy or completeness of this Presentation, nor shall have they have any liability for any representations or warranties (expressed or implied) contained in, or for any omissions from or errors in, this Presentation or any other written or oral communications transmitted to the recipient in the course of its evaluation of LNHC and/or the Proposed Transaction. Only those particular representations and warranties that may be made in a definitive agreement when, as and if one is executed, and subject to such limitations and restrictions as may be specified in such definitive agreement, shall have any legal effect.

The projections and estimates of LNHC's financial and operating performance throughout this Presentation have been provided to assist parties who may be interested in the Proposed Transaction but are not to be viewed as facts and should not be relied upon as a representation of future results. The assumptions underlying the estimates and projections contained herein are subject to significant economic and competitive uncertainties and contingencies beyond LNHC's control. Also, judgments based upon past performance may not be necessarily indicative of future performance or industry trends. Consequently, no assurances are made or implied as to the reliability of such projections or estimates and the inclusion of the projections and estimates herein should not be regarded as a representation that the projected results will be achieved. No independent accounting firm has examined or reviewed the financial estimates or projections contained herein, and accordingly, no conclusion or any form of assurance with respect thereto is provided.

Certain information contained in this Presentation relates to or is based on studies, publications, surveys and CHRO's own internal estimates and research. In this Presentation, LNHC relies on, and refers to, publicly available information and statistics regarding market participants in the sector in which LNHC competes and other industry data. Any comparison of LNHC to any other entity assumes the reliability of the information available to LNHC. LNHC obtained this information and statistics from third-party sources, including reports by market research firms and company filings. In addition, all of the market data included in this Presentation involve a number of assumptions and limitations, and there can be no guarantee as to the accuracy or reliability of such assumptions. Finally, while LNHC believes its internal research is reliable, such research has not been verified by any independent source and LNHC has not independently verified the information.

This Presentation and the information contained herein shall be subject to the terms of the Confidentiality and Non-Disclosure Agreement previously executed by the recipient. The recipient agrees not to use or disclose to any person or entity any information contained in this Presentation, the fact that it obtained confidential information concerning LNHC, the fact that discussions or negotiations are taking place, or have taken place, concerning the Proposed Transaction involving LNHC, or any of the other terms, conditions or other facts with respect to the Proposed Transaction.

In furnishing this Presentation, neither CHRO nor LNHC undertakes an obligation to provide the recipient with access to any additional information or to update or correct any information provided. This Presentation shall not be deemed an indication of the state of affairs of LNHC nor shall it constitute an indication that there has been no change in the business or affairs of LNHC since the date hereof. LNHC and CHRO expressly reserve the right, without giving reason, at any time and in any respect, to terminate discussions with any or all parties, to reject any or all proposals and to negotiate with any party with respect to the Proposed Transaction.

No person is authorized to give any information not contained in this Presentation. No other information has been authorized by LNHC to be provided other than the information contained herein. Any information not contained herein must not be relied upon as having been authorized by LNHC. Except as otherwise indicated, this Presentation reflects information made available as of the date on the cover page of this summary. Neither the delivery of this Presentation nor any transaction made hereunder shall, under any circumstances, create the implication that there has been no change in the affairs of LNHC since the respective dates at which the information is given herein or the date hereof. The information contained in this Presentation should not be assumed to have been updated at any time subsequent to the date shown on the first page of this Presentation and the delivery of this Presentation does not constitute a representation by any person that such information will be updated at any time after the date of this Presentation.

Disclaimers (cont.)

Private Placement

This Presentation does not constitute an offer to sell or the solicitation of an offer to buy any securities of CHRO or LNHC, nor does it constitute an offer to sell or a solicitation of an offer to buy any securities from any person in any state or other jurisdiction in which such offer or solicitation would be unlawful. Furthermore, nothing contained in this Presentation shall be deemed to be a recommendation to buy or sell securities of CHRO or LNHC, nor shall it be relied upon to make personal investment decisions. Recipients of this Presentation should not construe the contents hereof to constitute legal, tax, regulatory, financial, accounting or other advice. Any recipient of this Presentation should seek advice from its own independent tax advisor, legal counsel and/or other advisor with respect to such matters.

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Risk Factors

Both CHRO and LNHG are subject to various risks associated with their businesses and their industries. In addition, the Proposed Transaction, including the possibility that the Proposed Transaction may not be completed, poses a number of risks to each company and its respective securityholders. All references to "we," "us" or "our" refer to the businesses of CHRO and LNHG prior to the consummation of the Proposed Transaction. The risks described below make up a non-exhaustive list of the key risks related to CHRO and LNHG's businesses and the factors that could cause actual results to differ from the forward-looking statements described in this Presentation. This list has been prepared solely for potential private placement investors in connection with the Proposed Transaction and not for any other purpose. You should carefully consider these risks and uncertainties, as well as other risks set forth in the section entitled "Risk Factors" in CHRO's most recent quarterly report on Form 10-Q, its most recent annual report on Form 10-K and its other SEC filings. You should also carry out your own due diligence and consult with your own financial and legal advisors concerning the risks and suitability of an investment in this private placement transaction before making an investment decision. The list below is qualified in its entirety by disclosures contained in future documents filed or furnished in respect of the Proposed Transaction with the SEC:

- Our limited operating history make it difficult to evaluate our future prospects and the risks and challenges we may encounter. We have incurred significant losses since inception, we have not generated any revenue from product sales to date and may never do so.
- We depend heavily on the commercial success of ZELSUVMI, which was approved for marketing by the FDA but has not commercially launched yet. There is no assurance that our commercialization efforts will be successful or that we will be able to generate profit at the levels or within the timing we expect.
- Our discussions to acquire the complimentary FDA-approved product may not be consummated or we may not realize the expected benefits of such transaction.
- Even if the Proposed Transaction and the proposed private placement transaction are successful, we will require substantial additional capital to finance our operations in the future. If we are unable to raise such capital when needed, or on acceptable terms, we may be forced to delay, reduce or eliminate our development and pre-clinical programs, current or future clinical trials or future commercialization efforts.
- Our expectations regarding our cash runway and ability to reach data inflection points are based on numerous assumptions that may prove to be untrue; we may be required to raise capital sooner than anticipated and our exposure to certain contingent liabilities and contractual obligations may be greater than anticipated.
- We operate in an intensely competitive market that includes companies with greater financial, technical and marketing resources than us.
- Failure to manage our growth effectively could cause our business to suffer and have a material adverse effect on our operating results and financial condition as well as our ability to execute our business strategy, as:
- As our costs increase, we may experience fluctuations in our operating results, which could make our future operating results difficult to predict or cause operating results to fall below analysts' and investors' expectations.
- Our clinical trials of our other product candidates may not be successful. We may be unable to advance such product candidates through clinical development for safety or efficacy or other reasons, or commercialize our product candidates, if approved, and we may experience significant delays in doing so.
- Our current or future product candidates may cause adverse or other undesirable side effects that could delay or prevent their regulatory approval, limit the commercial profile of an approved label or result in significant negative consequences following marketing approval, if any.
- If we are unable to obtain and maintain patent and other intellectual property protection for our technology and product candidates or if the scope of the intellectual property protection obtained is not sufficiently broad, or we are delayed in bringing product candidates to market such that those products have a shorter period of patent exclusivity than we expect, our competitors could develop and commercialize technology and product candidates similar or identical to ours, and our ability to successfully commercialize our technology and/or product candidates may be impaired.
- We may be subject to intellectual property rights claims by third parties, which are costly to defend, could require us to pay significant damages and may disrupt our business and operations.
- We are party to license agreements with third parties pursuant to which we obtained licenses for certain intellectual property rights utilized in the development of our product candidates; termination of these rights or the failure to comply with obligations under these agreements could materially harm our business and prevent us from developing or commercializing our product candidates.
- The conditions to complete the Proposed Transaction may not be satisfied, we may not realize the expected benefits of the Proposed Transaction, or we may uncover liabilities following the consummation of the Proposed Transaction that we had not anticipated.
- The shares acquired in the proposed private placement transaction will be subject to registration with the SEC, and upon registration, the share price may be volatile due to a variety of factors, such as changes in the competitive environment in which we operate, the regulatory framework of the industry in which we will operate, developments in our business and operations and changes in our capital structure.

Merger of Pelthos Therapeutics and Channel Therapeutics (1/2)

Creates commercial stage therapeutics company focused on infectious skin diseases

Overview	<ul style="list-style-type: none">• Pelthos Therapeutics Inc./LNHC ("Pelthos"), wholly owned subsidiaries of Ligand Pharmaceuticals, intend to merge with Channel Therapeutics, Inc. (NYSE American: CHRO), ("Channel")• The combined company will focus on commercializing Pelthos' FDA approved product, Zelsuvmi™ (berdazimer) topical gel, 10.3%, a nitric oxide (NO) releasing agent for the topical treatment of <i>Molluscum contagiosum</i> in adults and pediatric patients 1 year of age or older• The combined company will retain and evaluate Channel's non-opioid pain therapeutic programs for the treatment of eye pain and surgical pain• Transactions contemplated by merger agreement are subject to approval by the boards of directors of both companies• Concurrent \$50M private placement to be consummated immediately prior to close via shares issued by CHRO• Upon close, Channel is expected to be renamed "Pelthos Therapeutics, Inc."
Management and Board	<ul style="list-style-type: none">• Pelthos management team to lead company, with former Channel CEO Frank Knuettel assuming the role of Pelthos CFO• Combined company's board of directors will include Pelthos CEO Scott Plesha, two of Pelthos' current directors, Matt Pauls and Peter Greenleaf, two directors selected by Ligand, and two directors from Channel's current board of directors

Merger of Pelthos Therapeutics and Channel Therapeutics (2/2)

Creates commercial stage therapeutics company focused on infectious skin diseases

Transaction Summary

- To fund the pre-launch and commercialization activities for Zelsuvmi™, expected to launch in mid-2025, the lead PIPE investors provided \$12.1 million in bridge loans and anticipate lending up to an additional \$24 million in bridge loans prior to closing
 - Bridge loans will be repaid at closing and offset against the lead investors' \$50M investment commitments in the PIPE
- The combined company is expected to have approximately \$12M of cash at close assuming a Q3 2025 closing
- Pelthos intends to execute on a \$25M venture debt term loan and \$7M receivables line prior to closing, which would increase cash at closing to \$37M
- Assuming entry into the term loan and receivables line, the combined company's existing capital resources are expected to fund the launch of Zelsuvmi™ in the US and achieve cash-flow breakeven from operations in 2027
- Pelthos is in advanced discussions on the acquisition of a second FDA-approved, highly complementary pediatric infectious disease product that can be acquired for an estimated \$4.4M up front with \$7.2M of contingent milestones and royalties¹
 - The combined company's board of directors will evaluate this acquisition opportunity
 - If completed, additional capital will be required to support the commercialization of the acquired product
- The combined company's estimated cash runway assumes no investment in product acquisitions or any other acquisition opportunities, or pre-clinical or clinical development activities, and no other financings
- Pre-merger Channel stockholders are expected to own approximately 8% of the combined Company, pre-merger Pelthos stockholders are expected to own approximately 34% of the combined Company, and pre-merger private placement investors are expected to own approximately 58% of the combined Company

¹) The parties have not entered into any definitive agreement for this potential acquisition and there can be no assurance that it will be consummated.

Introduction to Pelthos Therapeutics

Scalable biopharmaceutical company with an FDA approved product with launch targeted in mid-2025

Company Overview

- Pelthos is a biopharmaceutical company with a validated, novel, nitric oxide technology platform, primarily focused on commercializing innovative therapeutic products for skin diseases
- Pelthos' lead product, Zelsuvmi™, is an FDA-approved, designated Novel Product for *Molluscum contagiosum* ("MC"), a highly-infectious dermatological infection, indicated for patients >1 year
 - *Molluscum contagiosum* has an estimated prevalence of up to 5% of the US population, approximately 17 million people^{1,2}, with an annual incidence estimated to be 3-6 million people, predominantly children, people with compromised immune systems, and people sexually active with a partner infected with molluscum^{3,4}
 - First and only at-home treatment for molluscum that can be administered by patients, parents or other caregivers rather than by medical professionals over multiple visits to an office or other medical setting⁵
 - Unique mechanism of action with robust patent protection of 10+ years from approval⁶
 - Zelsuvmi™ demonstrated statistically significant, consistent, and clinically meaningful efficacy at every point measured over the entire 12-week length of the largest Phase 3 clinical study ever done for molluscum contagiosum⁷
- Ligand Pharmaceuticals acquired the rights to Zelsuvmi™ and associated assets in September 2023
- Utilizes a proprietary nitric oxide technology platform to manufacture the Active Pharmaceutical Ingredient ("API") at commercial scale in a sole source, ~15,000 sq ft purpose-built facility at the company's headquarters in Research Triangle Park, NC

1) US Census Bureau. QuickFacts: United States. 2022. 2) Hebert AA, Bhatia N, Del Rosso JQ. Molluscum contagiosum: epidemiology, considerations, treatment options, and therapeutic gaps. J Clin Aesthet Dermatol. 2023 Aug;16(8 Suppl 1):S4-S11. 3) Olsen JR, Gallacher J, Piguet V, Francis NA. Epidemiology of molluscum contagiosum in children: a systematic review. Fam Pract. 2016 Apr;33(2):130-6. 4) US Census Bureau. United States population by age and sex. 2022. 5) Eichenfield LF, McFalls W, Brabec B, Siegfried E, Kwong P, McBride M, et al. Safety and efficacy of VP-102, a proprietary, drug-device combination product containing cantharidin, 0.7% (w/v), in children and adults with molluscum contagiosum: two phase 3 randomized clinical trials. JAMA Dermatol. 2020;156(12):1315-23. 6) Zelsuvmi FDA Orange Book Filings 7) Browning JC et al. Efficacy and Safety of Topical Nitric Oxide-Releasing Berdazimer Gel in Patients With Molluscum Contagiosum: A Phase 3 Randomized Clinical Trial. JAMA Dermatol. 2022 Aug 1;158(8):671-678.

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Product Market Overview

3-6M

Child
Prevalence^{3,4}

~17M

U.S.
Patient
Population

Key Product Benefits

Novel Method
of Action

Broad Utility

Compelling
Safety Profile

Convenience &
Flexibility

Phase 3 Clinical Highlights

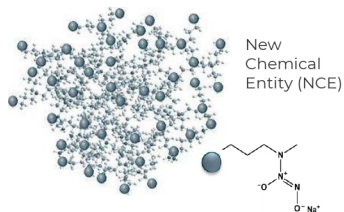
In clinical trials Zelsuvmi™ patients achieved a **mean and median reduction in lesion count of 58% and 82%**, respectively, after 12 weeks

Nitricil™ is Pelthos' Clinically Proven Proprietary Nitric Oxide-Based Technology Platform

Nitricil™

- ✓ **Stable storage¹**
 - Druggable form of nitric oxide with shelf-life stability
- ✓ **Therapeutic quantities¹**
 - High loading capacity
- ✓ **Tunability¹**
 - pH-controlled hydrolysis that releases nitric oxide
- ✓ **Engineered macromolecule¹**
 - Targets nitric oxide delivery to the skin
 - Minimizes systemic exposure

Berdazimer Sodium



Nitric Oxide Overview

- **Science – Molecule of the Year (1992)**
- **Nobel Prize in medicine (1998) awarded for nitric oxide as a signaling molecule in the cardiovascular system**
- **>200,000 peer reviewed manuscripts**
- **Broad spectrum antimicrobial, anti-bacterial, and anti-viral**
- **Immunomodulatory agent²**
 - Decreases key biomarkers for inflammation
 - Inhibits T cell proliferation
 - Results in NO-derived regulatory T-cells

Pelthos' patent-protected Nitricil™ technology overcomes the challenges associated with nitric oxide delivery to create macromolecular new chemical entities¹



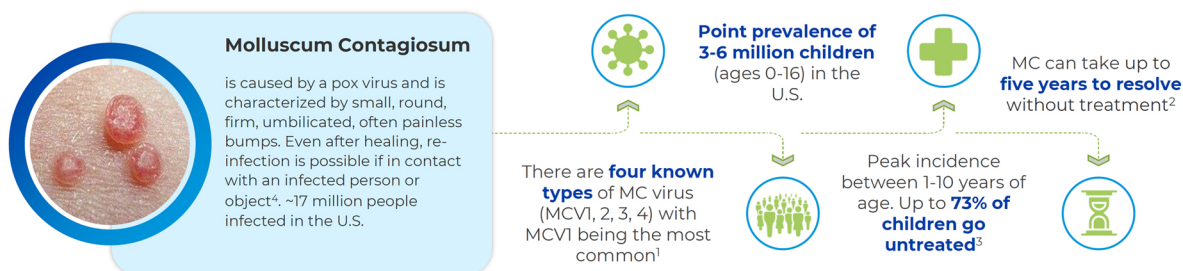

Pelthos
Therapeutics

Zelsuvmi™

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Molluscum Contagiosum

A highly infectious viral condition primarily affecting children 1 year of age or older



Untreated Molluscum Contagiosum Has Severe Effects

Infection, Persistence, and Spread

Auto-inoculation²

Highly contagious to others

↑ risk of secondary bacterial infections²

Pain & Skin Irritation

Potential worsening of atopic dermatitis

Itching, redness

Visible and Psychological Impacts

Inflammation

Anxiety

Social withdrawal

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1) Hebert AA, Bhatia N, Del Rosso JQ. Molluscum Contagiosum: Epidemiology, Considerations, Treatment Options, and Therapeutic Gaps. J Clin Aesthet Dermatol. 2023 Aug;16(8 Suppl 2):S4-S11. PMID: 37636018; PMCID: PMC10453394. 2) Ludmann P. American Academy of Dermatology. Molluscum contagiosum. 4 October 2023. 3) Basdag H, Rainer BM, Cohen BA. Molluscum contagiosum: to treat or not to treat? Experience with 170 children in an outpatient clinic setting in the northeastern United States. Pediatr Dermatol. 2015;32(3):353-357. doi:10.1111/pde.12504. 4) Schaffer JV, Berger EM. Molluscum Contagiosum. JAMA Dermatol. 2016;152(9):1072. doi:10.1001/jamadermatol.2016.2367. 5) CDC. Clinical Overview of Molluscum Contagiosum. Jan 2025.

Zelsuvmi™ Is the First and Only At-Home Treatment for MC That Offers a First-Line Efficacious and Safe Treatment Option

Zelsuvmi™ Vision

Zelsuvmi™ is the **first and only at-home treatment** that could **revolutionize how MC is treated** today for patients greater than 1 year old



FDA-approved treatment for MC

Approved by the FDA in January 2024 with anticipated launch in mid-2025



Safely reduces lesion count, minimizing pain or scarring

Reduces lesion counts from an average of 20 to ≤ 1 in 43.5% of patients within 12 weeks, with no keloid or hypertrophic scarring¹



First product to be administered from the convenience of home

The **first and only at-home, practical treatment option** that can be applied by patients or caregivers, reducing the need for in-office visits

¹) Browning JC et al. Efficacy and Safety of Topical Nitric Oxide-Releasing Berdazimer Gel in Patients With Molluscum Contagiosum: A Phase 3 Randomized Clinical Trial. JAMA Dermatol. 2022 Aug 1;158(8):871-878.

Zelsuvmi™ Has the Potential to Shift MC Treatment Paradigm

Current Options



- Other available topical treatment **requires in-office visits every 3 weeks²**



- **Painful, destructive** treatments³



- Necessitates travel to HCP offices, adding to the **time burden for MC patients and caregivers²**



- Remaining treatment options such as off-label drugs / natural remedies have **unproven efficacy⁴**

Zelsuvmi™
(berdazimer) topical gel, 10.3%

**Breakthrough Product,
Breakthrough Results**

58.1%
Mean MC Lesion
reduction count⁽¹⁾

Zelsuvmi™

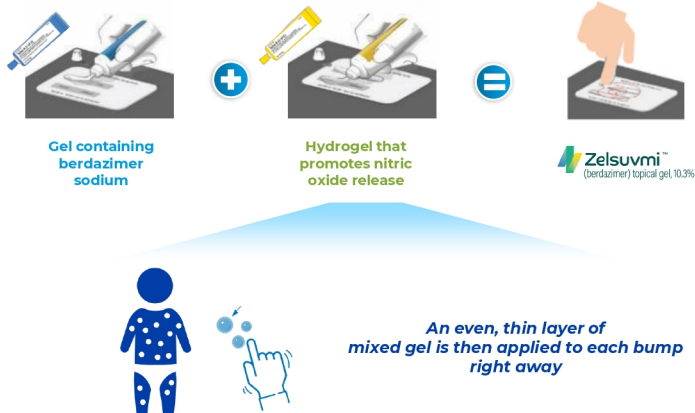
- **Daily** application that can be **started Immediately**
- **Attractive safety profile** demonstrated in clinical trials with no / minimal scarring^{5,6}
- **First FDA approved medication** for molluscum that can be applied at home by patients or caregivers⁵
- **Demonstrated, proven efficacy** across key primary and secondary endpoints in clinical trials⁶

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1)Least-squares mean count reduction. See Figure 9: Browning JC, Hebert A, Enloe C, Cartwright M, Maeda-Chubachi T. Berdazimer Gel 10.3% is a Clinically Meaningful Therapeutic Intervention for Molluscum Contagiosum. Abstract and poster presented at Fall Clinical 2024, Las Vegas, NV, October 24-27, 2024. 2) Eichenfield LF, Kwong P, Gonzalez ME, et al. Safety and Efficacy of VP-102 (Cantharidin, 0.7% w/v) in Molluscum Contagiosum by Body Region: Post hoc Pooled Analyses from Two Phase III Randomized Trials. J Clin Aesthet Dermatol. 2023;14(10):42-47. 3) Hebert AA, Bhatia N, Del Rosso JQ. Molluscum Contagiosum: Epidemiology, Considerations, Treatment Options, and Therapeutic Gaps. J Clin Aesthet Dermatol. 2023;16(8 Suppl 1):54-57. 4) Ong SK, Huft I, Sieghfried E. Analysis of over-the-counter products marketed to treat molluscum contagiosum. Pediatr Dermatol. 2023;38(5):1400-1403. doi:10.1111/pde.14776. 5) Zelsuvmi Package Insert. 6) Sugarmann JL, Hebert A, Browning JC, et al. Berdazimer gel for molluscum contagiosum: An integrated analysis of 3 randomized controlled trials. J Am Acad Dermatol. 2024;90(2):299-308. doi:10.1016/j.jaad.2023.09.066Ong

Zelsuvmi™ Is Easy to Apply and Can be Administered at Home

Application Overview



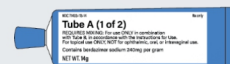
Zelsuvmi™'s simple, safe, and effective at-home administration is a novel therapeutic for the treatment of this infectious condition

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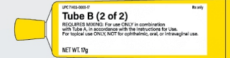
Packaging Overview



Zelsuvmi™ (berdazimer) topical gel, 10.3% is supplied in a carton containing two tubes (NDC 83787-103-31)

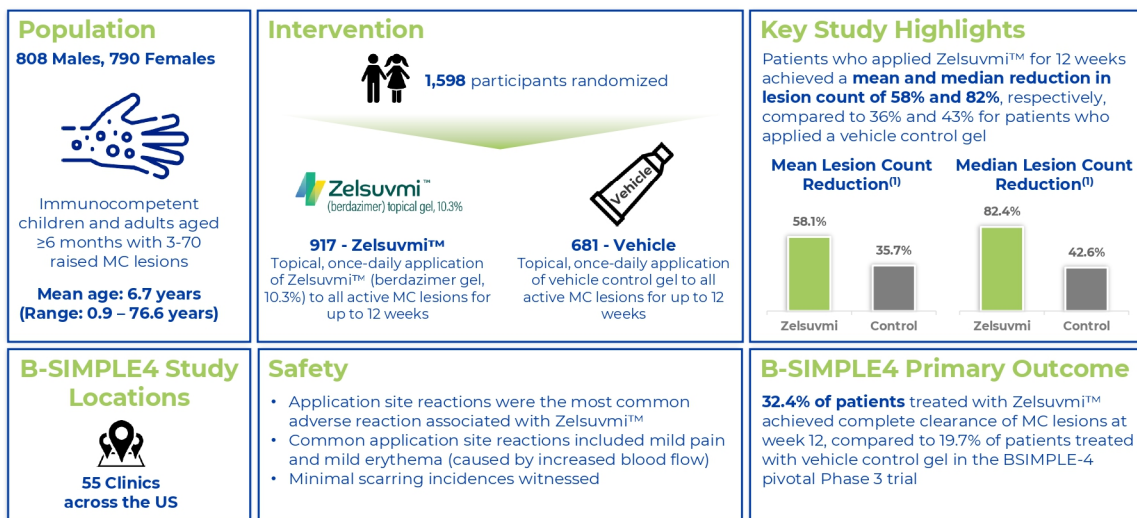


Tube A (14 g) with blue label containing berdazimer sodium in an opaque white to off-white gel (NDC 83787-113-14)



Tube B (17 g) with yellow label containing translucent to opaque white to off-white gel (NDC 83787-0000-17)

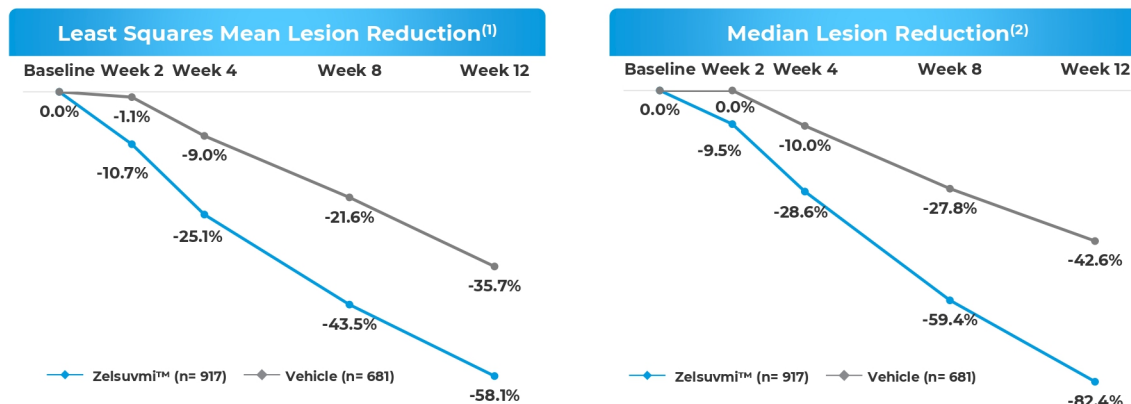
Zelsuvmi™ Efficacy Shown in Phase 3 Clinical Trials



⁽¹⁾ p-value <0.0001, favoring Zelsuvmi™.
Source: Sugarman JL, Hebert A, Browning JC, Paller AS, Stripling S, Green LJ, Cartwright M, Enloe C, Wells N, Maeda-Chubachi T. Berdazimer gel for molluscum contagiosum: An integrated analysis of 3 randomized controlled trials. J Am Acad Dermatol. 2023 Oct 5;50(9):9622(23):02890-6. doi: 10.1016/j.jaad.2023.09.066.Epub ahead of print. PMID: 37804936.

Phase 3 Trials

Zelsuvmi™ showed statistically significant benefit vs. vehicle after 2 weeks of therapy and throughout the entire 12-week length of the Phase 3 studies



P<0.0001 at all time points, favoring Zelsuvmi™

1) Figure 9: Browning JC, Hebert A, Enloe C, Cartwright M, Maeda-Chubachi T. Berdazimer Gel 10.3% is a Clinically Meaningful Therapeutic Intervention for Molluscum Contagiosum. Abstract and poster presented at Fall Clinical 2024, Las Vegas, NV, October 24-27, 2024. 2) Figure 10: Browning JC, Hebert A, Enloe C, Cartwright M, Maeda-Chubachi T. Berdazimer Gel 10.3% is a Clinically Meaningful Therapeutic Intervention for Molluscum Contagiosum. Abstract and poster presented at Fall Clinical 2024, Las Vegas, NV, October 24-27, 2024.

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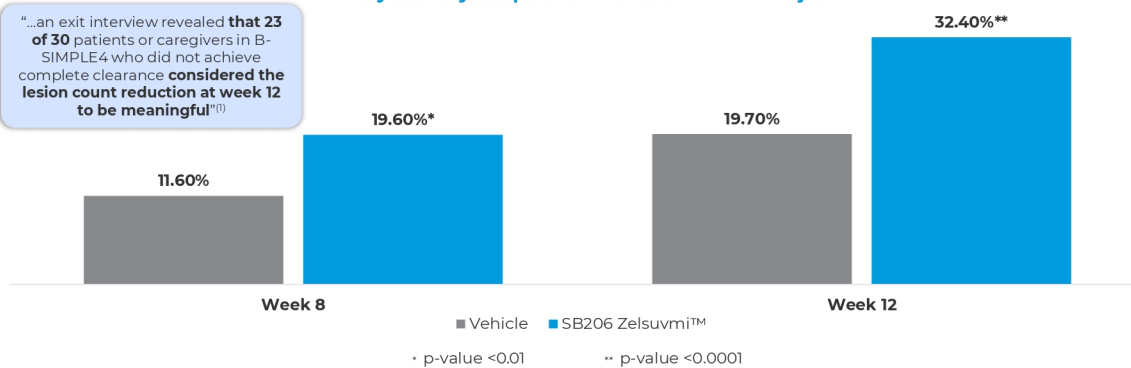
B-SIMPLE4 Phase 3 Trial

Complete clearance is hard to achieve due to the nature of molluscum and similar dermatological conditions

Percentage of Subjects With Complete Clearance of Treatable Lesions

Primary Efficacy Endpoint at Week 12 N= 891 Subjects

"...an exit interview revealed that 23 of 30 patients or caregivers in B-SIMPLE4 who did not achieve complete clearance **considered the lesion count reduction at week 12 to be meaningful**"⁽¹⁾



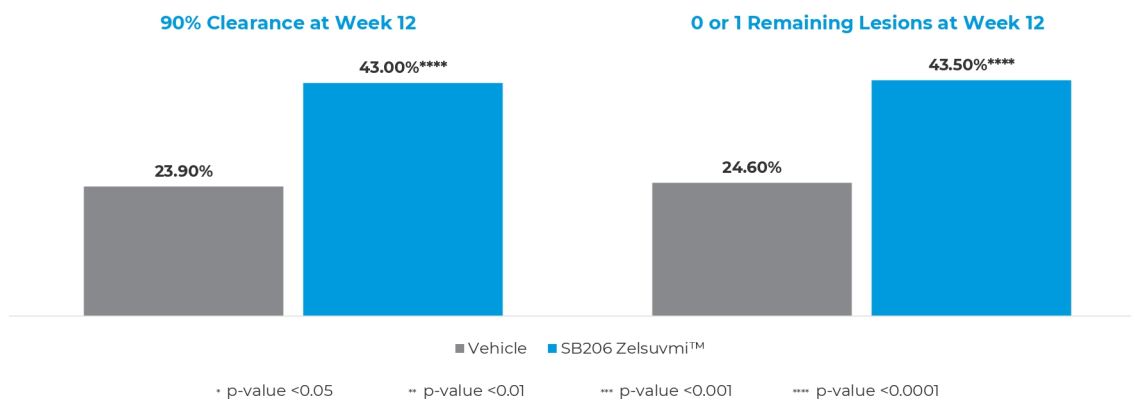
(1) Browning JC, Cartwright M, Thoria I Jr, Martin SA, Olayinka-Amao O, Maeda-Chubachi T. A Patient-Centered Perspective of Molluscum Contagiosum as Reported by B-SIMPLE4 Clinical Trial Patients and Caregivers: Global Impression of Change and Exit Interview Substudy Results. *Ann J Clin Dermatol*. 2023 Jan;24(1):119-133. doi: 10.1007/s40257-022-00733-9. Epub 2022 Oct 26. PMID: 36287306; PMCID: PMC9870629.
Source: Total enrollment of 891 (1:1 randomization). Two previously completed Phase 3 studies reported directionally similar results and both are included in the NDA submission as confirmatory studies. Data on File. Pelthos. 2025.

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B-SIMPLE4 Phase 3 Trial (cont.)

Zelsuvmi™ showed significant benefit over vehicle, including 43.5% of patients administered Zelsuvmi™ having zero or one remaining lesions after 12 weeks

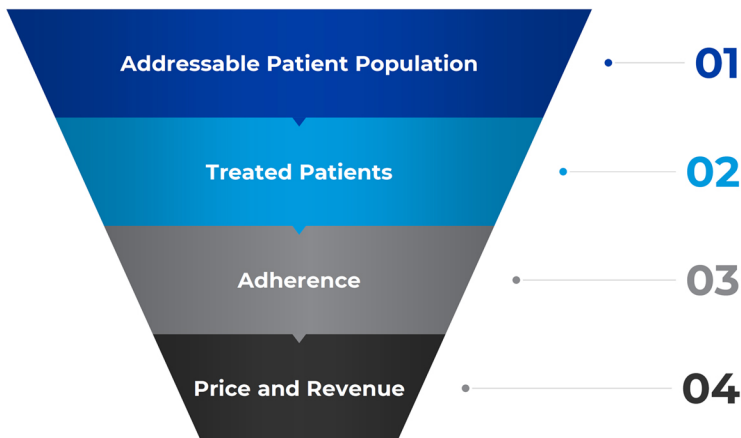
Secondary Endpoints



(1) Browning JC et al. Efficacy and Safety of Topical Nitric Oxide-Releasing Berdazimer Gel in Patients With Molluscum Contagiosum: A Phase 3 Randomized Clinical Trial. JAMA Dermatol. 2022 Aug 1;158(8):871-873.
Source: Total enrollment of 891 (1:1 randomization). Two previously completed Phase 3 studies reported directionally similar results and both are included in the NDA submission as confirmatory studies

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Activating Key Leverage Points Is Essential to Maximize the Commercial Potential of Zelsuvmi™



Key Leverage Points

Driving efficient disease awareness and patient presentation to physicians will be critical to drive diagnosis and build the market, given the large population of undiagnosed MC patients

Educating HCPs on the significant Zelsuvmi™ lesion reduction data will be critical to drive **urgency to treat**, converting untreated and complementing procedure-treated patients with Zelsuvmi™

Investing in strategies to **educate on therapy administration and the importance of persistence** will be necessary to maximize adherence

Developing best-in-class patient access to reduce Zelsuvmi™ adoption barriers and accelerate uptake

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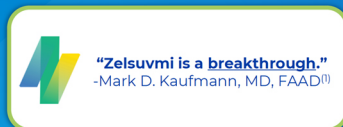
Zelsuvmi™ is a Breakthrough Product

"When this becomes available, it will be a **gamechanger in treating molluscum.**"
-Dermatologist

"There is nothing else like it for molluscum. It works differently than destruction."
-Dermatologist

"Finally, I will be able to send the mom home with something instead of insisting they bring their child back for multiple procedures."
-Dermatologist / Pediatric Dermatologist

"To me, 40-45% experiencing 90% clearance after 12 weeks... I'm talking about [dealing with molluscum for] 3 years, **but 3 months?** I would be highly impressed... 90% is really good enough for me. She's got 12-ish spots now, and if that were 1-2, she would have more functionality and **be able to use her whole hand... 90% would make it so much more manageable.**"
-Patient / Caregiver Feedback



*Molluscum contagiosum clinical experts, including KOLs and study investigators, are available for questions upon request

Source: Pelthos discussions with key opinion leaders (KOLs) in the pediatric, dermatology, and infectious disease community
(1) Zelsuvmi™ FDA approval press release

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Channel Therapeutics' Pipeline Programs

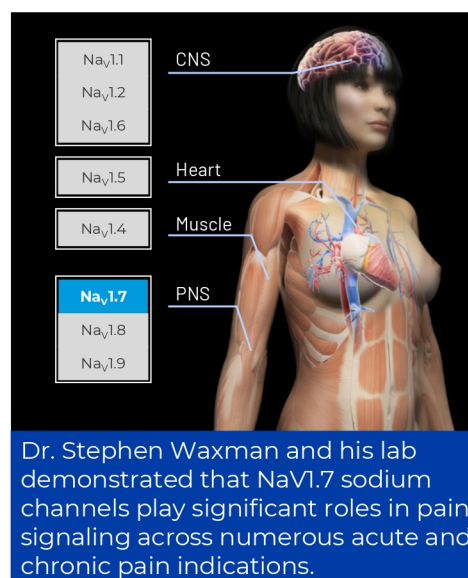
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Sodium Channels (Navs) and Pain

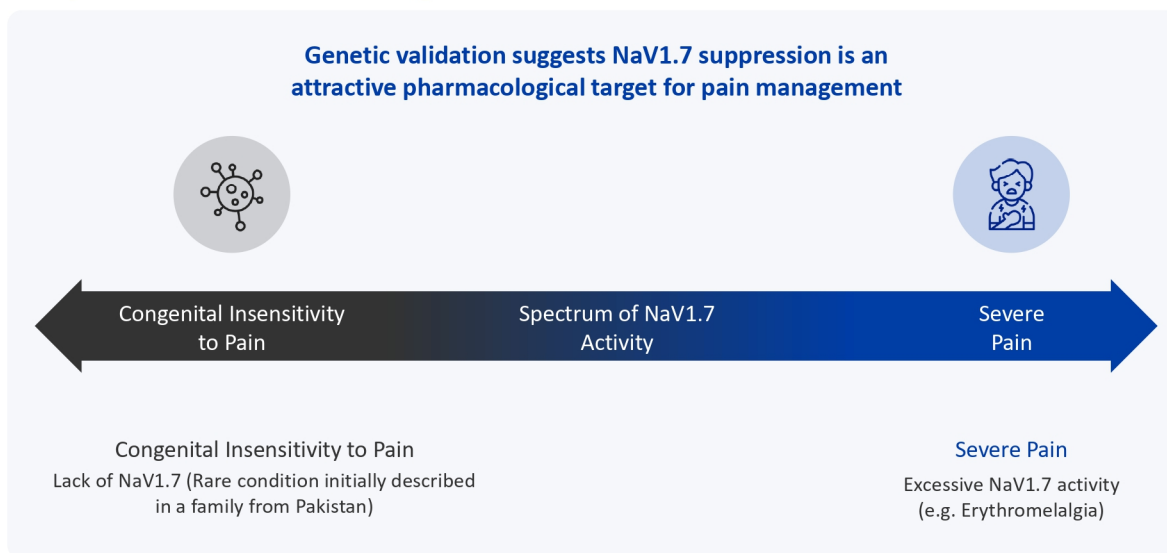
Pain Perception

Sodium channels play a crucial role in pain transmission.

- Action potentials are the electrical waves that the body uses to send information through nerves.
 - These action potentials are created through fluxes of various ions, including sodium ions, across the nerve fiber wall.
 - Nav1.7 is thought to be responsible for a slow initial upward start of the action potential that leads to a rapid upward component that is thought to be mediated by Nav1.8.
 - In this respect, Nav1.7 and Nav1.8 may work together to allow a signal to progress through a nerve fiber.



Why NaV1.7 is a Good Target for Pain Treatment



CC8464 (Neuropathic Pain) – Development Status

▸ Preclinical

- Potent inhibitor of human NaV1.7; Subtype selective
- Demonstrated *in vivo* efficacy in several rodent models of pain: Acute, chronic neuropathic, inflammatory, visceral and post-surgical
- No CNS and muscle/motor dysfunction effects

▸ Chemistry, Manufacturing, and Controls (CMC)

- Drug Substance: scaled up, cGMP API available
- Drug Product: tablet (active, 3 strengths and placebo) available for Phase 2.

▸ Toxicology

- Did not exhibit genotoxicity
- Toxicology data supports up to 3-month dosing in human clinical trials

▸ Clinical

- Four Phase 1 trials completed
- Occurrence of rashes may be addressed with gradual dose-escalation protocols
- Clinical data supports a Proof of Concept ("POC") study

▸ Strategy

- Four novel depot and one novel injectable formulations of CC8464 have been created. The intent is to use these to allow for nerve blocks for post-operative pain for several days after surgery (e.g. shoulder surgery, knee surgery).
- Animal efficacy and PK studies are ongoing.

▸ Potential model for POC Study

- Demonstrate pain reduction in an experimental pain model utilizing interscalene nerve blocks combined with a painful stimuli to the arm
- Alternative human pain models are still being considered

Eye Pain

Eye pain is common with both acute and chronic etiologies that include:

Corneal Induced Chronic Pain from Dry Eye/LASIK, Post Photorefractive keratectomy (PRK) surgery, second eye cataract surgery, acute corneal abrasion, Ectropion/ Entropion, Acute closed angle glaucoma, Uveitis, Iritis/Scleritis

Existing therapies include topical NSAIDS (e.g. Bromfenac) and topical steroids coupled with systemic analgesics/opiates. Chronic use of local anesthetic drops is contraindicated and dangerous.



► Prevalence – Corneal Abrasion Example

- Common
- There are approximately 3.75 million cases of corneal abrasion or foreign bodies in the United States every year

► Incidence - Dry Eye Disease Example

- Common
- There are approximately 16 million cases of dry eye disease in the United States every year

▸ **Strategy**

- Conduct ocular safety test in rabbits – completed. Showed that up to 20mg/mL eye drops were safe (GLP chronic tox and ocular irritation studies all clean)
- Conduct ocular efficacy in acute and chronic animal models – completed. Showing fast onset and durable effect at single and multiple doses in a dry eye model (mouse)

▸ **Potential model for POC Study**

- Demonstrate pain reduction with first study expected to target moderate to severe dry eye pain
- Protocol and investigator brochure are prepared for the IRB review in Australia

Key Highlights



FDA Approved Product

In January 2024, the FDA approved Zelsuvmi™ as the first and only at-home treatment aimed to revolutionize how MC is treated today for patients ≥ 1 year old



Significant Unmet Need and Sizeable Market Opportunity

Molluscum contagiosum is a highly contagious skin infection that currently affects 3-6M children in the US and up to 5% of the general population



Zelsuvmi™ Differentiated Characteristics

Zelsuvmi™ is a topical gel that uses proprietary nitric oxide release technology and is applied once daily at-home with minimal use restrictions; opportunity to replace and complement current approved treatment options that are painful and require in-person visits



Strong, Impactful Clinical Results

In the combined results from the three Phase 3 clinical trials, patients who applied Zelsuvmi™ for 12 weeks achieved a mean and median reduction in lesion count of 58% and 82%, respectively, compared to 36% and 43% for patients who applied a vehicle control gel



Barriers to Entry

Pelthos' bespoke manufacturing processes require a dedicated line and manufacturing of API under extremely high pressures with stringent safety protocols and procedures; robust set of FDA Orange Book listed patents



Biopharmaceutical Platform Poised for Growth

Pelthos is strategically positioned to execute and integrate complex, synergistic acquisitions, serving as a platform for investors seeking a strong foothold in the specialty biopharmaceutical market



Financial Opportunity

Zelsuvmi™ has a planned US commercial launch in mid-2025; Channel Therapeutics' pipeline also has several sodium channel targeting programs



Ligand Subsidiary Pelthos Therapeutics to Combine with Channel Therapeutics

Proposed transaction will raise \$50 million in equity capital and enhance a publicly traded biopharmaceutical company focused on launching Pelthos' ZELSUVMI™

ZELSUVMI is an FDA-designated novel drug and the first and only prescription medication approved for the treatment of Molluscum contagiosum infections administered at home by parents, patients, and caregivers

Ligand is entitled to a 13% royalty on worldwide sales of ZELSUVMI

Transaction is expected to close in the summer of 2025

JUPITER, Fla. and FREEHOLD, N.J., April 17, 2025 – Ligand Pharmaceuticals Incorporated (“Ligand”) (Nasdaq: LGND) and Channel Therapeutics Corporation (“Channel”) (NYSE American: CHRO), a pioneer in the development of non-opioid pain treatment therapeutics, today announced the signing of a definitive merger agreement to combine Ligand’s wholly owned subsidiaries, Pelthos Therapeutics Inc. and LNHC, Inc. (collectively “Pelthos”) with CHRO Merger Sub Inc., a wholly owned subsidiary of Channel. The merger will be supported by \$50 million in capital raised from a group of strategic investors led by Murchinson (“Investor Group”). Upon completion of the transaction, the combined company will operate under the name Pelthos Therapeutics Inc. and trade on the NYSE American exchange under the ticker PTHS.

The combined company will initially focus on accelerating the commercialization of Pelthos’ ZELSUVMI™ (berdazimer) topical gel, 10.3%, for the treatment of *Molluscum contagiosum* infections (“molluscum”) in adults and pediatric patients one year of age and older.¹ ZELSUVMI was approved by the U.S. Food and Drug Administration (FDA) in 2024 and is the first and only prescription therapy for molluscum infections approved for use at home by patients, parents, and caregivers. The combined company will also retain Channel’s existing NaV 1.7 development programs for the treatment of various types of chronic pain, acute and chronic eye pain, and post-surgical nerve blocks. An update on Channel’s animal efficacy study for its eye pain program will be forthcoming.

“This transaction presents a compelling opportunity to launch a commercial-ready product, with significant financial backing from Murchinson, that has the potential to deliver both near and long-term value to our shareholders,” said Todd Davis, CEO of Ligand. “We executed a complex restructuring to acquire the Pelthos assets, incubated the technology that became ZELSUVMI, achieved FDA approval for this first-in-class medication, and assembled a world-class team, to bring this therapy to market. Our ability to identify highly differentiated assets and execute customized transactions to maximize their value with equity and royalty rights distinguishes Ligand’s business model and value creation strategy.”

¹ Please see ZELSUVMI™ (berdazimer) topical gel full prescribing information available at <https://www.fda.gov/drugsatfda> for important safety information or www.zelsuvi.com

Frank Knuettel II, CEO of Channel Therapeutics, commented, “We are very excited about the merger with Pelthos. We have performed extensive due diligence on the ZELSUVMI market opportunity and their team and operations, and we believe this is an extraordinary opportunity for current Channel shareholders. Strategically, it provides the potential for near-term revenue generation from an FDA-approved drug, the opportunity to advance Channel’s existing NaV 1.7 programs, and expanded capitalization from strong, long-standing investors.”

Molluscum contagiosum is a poxvirus and one of the most common skin infections seen by dermatologists, pediatric dermatologists, and pediatricians, afflicting an estimated 16.7 million people in the United States.^{2,3} Molluscum infections spread to others through contact with infected persons or contaminated objects like towels, toys, furniture, swimming pools, and other surfaces. Children are the most vulnerable to molluscum infections. Adults with weakened immune systems or who are sexually active with a molluscum-infected partner are also particularly vulnerable. Molluscum infections present with raised, flesh-colored or red bumps that can appear anywhere on the body, including the face, hands, trunk, genitals, back of the knees, armpits, and other sensitive areas. People with molluscum may suffer discomfort from itching, secondary bacterial infections from scratching, or atopic dermatitis, as well as immense social stigma from having visible molluscum lesions, which typically last for months and frequently last for years.

Scott Plesha, CEO of Pelthos, added, “There is a significant unmet medical need for an easy-to-use, safe, and efficacious treatment option for molluscum that can be applied by patients, parents, or caregivers at home via prescription. We believe ZELSUVMI will complement pediatric and adult dermatologists’, general pediatricians’ and all other health care providers current efforts to treat molluscum while reducing the need for repeated invasive in-office procedures and the associated wait times needed to treat this highly infectious disease. Having commercialized both dermatology and pain management products, I am excited to lead the combined company into this next growth phase.”

Transaction Details

Under the terms of the merger agreement Channel will acquire 100% of the issued and outstanding equity interests of Pelthos, and will change its name to Pelthos Therapeutics Inc. In connection with the transaction, Ligand has agreed to invest \$18 million in the combined company and the Investor Group has agreed to invest \$32 million for a total of \$50 million.

Upon completion of the transaction, Mr. Plesha will become CEO of the combined company and Mr. Knuettel will become CFO. The Board of Directors will consist of Mr. Plesha, two independent directors, Peter Greenleaf and Matt Pauls, two board members appointed by Ligand, and an additional two independent directors that are reasonably acceptable to Murchinson, both of which are current Channel board members.

² US Census Bureau. QuickFacts: United States.2022. <https://www.census.gov/quickfacts/fact/table/US/PST045222>

³ Hebert AA, et al. J Clin Aesthet Dermatol. 2023 Aug;16(8 Suppl 1):S4-S11

The transaction is expected to close in the summer of 2025, subject to customary closing conditions.

Advisors

Latham & Watkins LLP is serving as lead counsel to Ligand. Raymond James & Associates, Inc. is serving as financial advisor to Ligand and Pelthos. Sullivan & Worcester LLP is serving as Channel's legal counsel. Kelley Drye & Warren LLP represented Murchinson.

About ZELSUVMI™ (berdazimer) topical gel, 10.3%

ZELSUVMI (berdazimer) topical gel, 10.3% is a nitric oxide (NO) releasing agent indicated for the topical treatment of *Molluscum contagiosum* in adults and pediatric patients one year of age and older. ZELSUVMI received a novel drug designation from the U.S. Food and Drug Administration in 2024 and is the first and only approved topical prescription medication that can be applied by patients, parents, or caregivers at home, outside of a physician's office, or other medical setting to treat this highly contagious viral skin infection. The product was developed using Pelthos' proprietary nitric oxide-based technology platform, NITRICIL™. Ligand acquired the rights to ZELSUVMI and all the assets related to the NITRICIL technology platform from Novan, Inc. in September 2023. Complete prescribing information and important safety information is available at www.zelsuvmi.com.

About Pelthos Therapeutics

Pelthos Therapeutics is a biopharmaceutical company committed to commercializing innovative, safe, and efficacious therapeutic products to help patients with unmet treatment burdens. The company's lead product ZELSUVMI™ (berdazimer) topical gel, 10.3%, for the treatment of *Molluscum contagiosum*, was approved by the U.S. Food and Drug Administration in 2024. In addition to ZELSUVMI, Pelthos has a pipeline of potential product candidates that utilize its proprietary nitric oxide-based technology platform, NITRICIL™. Pelthos is a subsidiary of Ligand Pharmaceuticals and will remain so until the completion of the transaction. More information is available at www.pelthos.com. Follow Pelthos on [LinkedIn](#) and [X](#).

About Murchinson

Founded by Marc J. Bistricher in 2012, Murchinson seeks to identify and invest in high-value opportunities across global markets. The firm leverages a disciplined, patient, and innovative investment approach to uncover value. Murchinson seeks to identify undervalued assets and opportunities in complex, evolving industries—particularly where innovation, regulatory shifts, and strategic changes create the potential for significant value creation. The firm is committed to generating superior, risk-adjusted returns by focusing on investments that have strong underlying fundamentals, operational improvement potential, and sustainable growth drivers. Learn more at www.murchinsonltd.com.

About Channel

Channel Therapeutics Corporation is a clinical-stage biotechnology company focused on developing and commercializing novel, non-opioid, non-addictive therapeutics to alleviate pain. Channel's initial clinical focus is to selectively target the sodium ion-channel known as NaV1.7 for the treatment of various types of chronic pain, acute and chronic eye pain and post-surgical nerve blocks. For company updates and to learn more about Channel, visit www.channeltherapeutics.com or follow us on social media.

About Ligand Pharmaceuticals

Ligand is a biopharmaceutical company enabling scientific advancement through supporting the clinical development of high-value medicines. Ligand does this by providing financing, licensing our technologies or both. Our business model seeks to generate value for stockholders by creating a diversified portfolio of biotech and pharmaceutical product revenue streams that are supported by an efficient and low corporate cost structure. Our goal is to offer investors an opportunity to participate in the promise of the biotech industry in a profitable and diversified manner. Our business model is based on funding programs in mid- to late-stage drug development in return for economic rights, purchasing royalty rights in development stage or commercial biopharmaceutical products and licensing our technology to help partners discover and develop medicines. We partner with other pharmaceutical companies to attempt to leverage what they do best (late-stage development, regulatory management and commercialization) in order to generate our revenue. We operate two infrastructure-light royalty generating technology IP platform technologies. Our Captisol® platform technology is a chemically modified cyclodextrin with a structure designed to optimize the solubility and stability of drugs. Our NITRICIL™ platform technology facilitates tunable dosing, permitting an adjustable drug release profile to allow proprietary formulations that target a broad range of indications. We have established multiple alliances, licenses and other business relationships with the world's leading pharmaceutical companies including Amgen, Merck, Pfizer, Jazz, Gilead Sciences and Baxter International. For more information, please visit www.ligand.com. Follow Ligand on [X](#) and [LinkedIn](#).

We use our investor relations website and X as a means of disclosing material non-public information and for complying with our disclosure obligations under Regulation FD. Investors should monitor our website and our X account, in addition to following our press releases, SEC filings, public conference calls and webcasts.

Forward-Looking Statements

This press release contains forward-looking statements, as defined in Section 21E of the Securities Exchange Act of 1934, regarding Ligand and Channel's current expectations. All statements, other than statements of historical fact, could be deemed to be forward-looking statements. In some instances, words such as "plans," "believes," "expects," "anticipates," and "will," and similar expressions, are intended to identify forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect our good faith beliefs (or those of the indicated third parties) and speak only as of the date hereof. These forward-looking statements include, without limitation, references to our expectations regarding (i) our belief that investors should feel encouraged that Pelthos has a strong development path towards successfully launching drugs with considerable market opportunities, (ii) the timing of clinical and regulatory events of us and our partners, (iii) the timing of the initiation or completion of preclinical studies and clinical trials by us and our partners; (iv) the timing of product launches, including ZELSUVMI; (v) guidance regarding projected financial results for 2025 and beyond, and (vii) the timing and likelihood of closing the merger between Pelthos and Channel, and (vii) the listing of the combined company on the NYSE American, (viii) the anticipated benefits of the merger between Pelthos and Channel and (ix) the combined company's opportunities, strategy and plans following the merger. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Factors that could cause actual results to differ materially from those set forth in such forward-looking statements include, but are not limited to, risks and uncertainties related to there being no guarantee that the trading price of the combined company's Common Stock will be indicative of the combined company's value or that the combined company's Common Stock will become an attractive investment in the future; we may rely on collaborative partners for milestone payments, royalties, materials revenue, contract payments and other revenue projections and may not receive expected revenue; we and our partners may not be able to timely or successfully advance any product(s) in our internal or partnered pipeline or receive regulatory approval and there may not be a market for the product(s) even if successfully developed and approved; and changes in general economic conditions, including as a result of war, conflict, epidemic diseases, the implementation of tariffs, and ongoing or future litigation could expose us to significant liabilities and have a material adverse effect on us. These and other risks and uncertainties are described more fully in our filings with the U.S. Securities and Exchange Commission. The information in this press release is provided only as of the date of this press release, and we undertake no obligation to update any forward-looking statements contained in this press release based on new information, future events, or otherwise, except as required by law.

No Offer or Solicitation

This communication is not intended to and shall not constitute an offer to buy or sell or the solicitation of an offer to buy or sell any securities, or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made, except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

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