

**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) July 25, 2024

NEURONETICS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38546
(Commission
File Number)

33-1051425
(I.R.S. Employer
Identification No.)

3222 Phoenixville Pike, Malvern, PA
(Address of principal executive offices)

19355
(Zip Code)

Registrant's telephone number, including area code (610) 640-4202

(Former name or former address, if changed since last report.) Not applicable.

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

Title of each class	Trading Symbol (s)	Name on each exchange on which registered
Common Stock (\$0.01 par value)	STIM	The Nasdaq Global Market

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:

- 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))

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

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.

On July 25, 2024, Neuronetics, Inc. (the “Company”) entered into a Credit Agreement and Guaranty with Perceptive Credit Holdings IV, LP, (“Perceptive”) as collateral agent and other lenders defined in the agreement (the “Perceptive Facility”) that replaced the Company’s previous \$60.0 million credit facility with SLR Investment Corp. (formerly known as Solar Capital Ltd.) (“Solar”, and such facility, the “Solar Facility”).

The Perceptive Facility permits the Company to borrow up to an aggregate amount of \$90.0 million in three tranches of term loans, a “Tranche 1 Loan”, a “Tranche 2 Loan” and a “Tranche 3 Loan.” On July 25, 2024, the Company borrowed an aggregate amount of \$50.0 million, which was the aggregate amount available under the Tranche 1 Loan portion of the Perceptive Facility. Under the Tranche 2 Loan portion of the Perceptive Facility, the Company is permitted to borrow, at its election, up to an aggregate amount of \$15.0 million, (i) upon the Company achieving a specified amount of trailing twelve months net revenue, and (ii) assuming there has been no event of default under the Perceptive Facility prior to such election. The Tranche 2 Loan portion of the Perceptive Facility must be borrowed on or before December 31, 2025. Under the Tranche 3 Loan portion of the Perceptive Facility, the Company may request to borrow, at the consent of the Majority Lenders (as defined in the Perceptive Facility), up to an aggregate amount of \$25.0 million. The Tranche 3 Loan portion of the Perceptive Facility must be borrowed on or before June 30, 2026. All amounts borrowed under the Perceptive Facility are due on July 25, 2029.

Each of the Tranche 1 Loan, Tranche 2 Loan and Tranche 3 Loan accrues interest from the date of borrowing through the date of repayment at a floating per annum rate of interest equal to the sum of 7.00% plus the greater of (a) 4.50% and (b) One-Month Term SOFR (as defined in the Perceptive Facility). There will be no scheduled repayments of the principal on the Tranche 1 Loan, Tranche 2 Loan and Tranche 3 Loan prior to the maturity date.

If the Company prepays either the Tranche 1 Loan, Tranche 2 Loan or Tranche 3 Loan prior to their scheduled maturity date, the Company will also be required to pay prepayment fees to Perceptive equal to 6% of the principal amount of such term loan then-prepaid if prepaid on or before the first anniversary of the closing date, 5% of the principal amount of such term loan then-prepaid if prepaid after the first anniversary and on or before the second anniversary of the closing date, 4% of the principal amount of such term loan then-prepaid if prepaid after the second anniversary and on or before the third anniversary of the closing date, and 3% of the principal amount of such term loan then-prepaid if prepaid after the third anniversary and on or before the fourth anniversary of the closing date.

The Company’s obligations under the credit facility are secured by a first priority security interest in substantially all of its assets, including its intellectual property. The Perceptive Facility requires the Company to comply with certain financial covenants as well as customary affirmative and negative covenants.

The Perceptive Facility related to the credit facility contains events of default, including, without limitation, events of default upon: (i) failure to make payment pursuant to the terms of the agreement; (ii) violation of covenants; (iii) material adverse changes to the Company's business; (iv) insolvency; (v) material cross-defaults; (vi) significant judgments, orders or decrees for payments by the Company; (vii) incorrectness of representations and warranties; (viii) significant adverse ERISA events; (ix) failure by the Company to be registered with the United States Securities and Exchange Commission in good standing; and (x) failure by the Company to maintain a valid and perfected lien on the collateral securing the borrowing.

As consideration for the Perceptive Facility, the Company agreed to issue to Perceptive warrants to purchase up to 1,462,500 shares of the Company's common stock, with a warrant exercisable into 1,125,000 shares of the Company's common stock issued on the closing date (the "Initial Warrant"). The per share exercise price for the Initial Warrant is equal to the lower of (x) the 10-day volume weighted average price of the Company's common stock on the business day immediately prior to the closing date and (y) the 10-day volume weighted average price of the common stock ended on August 31, 2024. In addition to the Initial Warrant, an additional warrant will be issued for 337,500 shares of common stock concurrently with the borrowing of the Tranche 2 Loan. The per share exercise price for the additional warrant will be equal to the exercise price of the Initial Warrant. Each warrant will be exercisable, in whole or in part, until the tenth anniversary of the applicable date of issuance.

The foregoing summary description of the Perceptive Facility for the Perceptive Facility and the Perceptive Facility does not purport to be complete and is qualified in its entirety by reference to the credit agreement for the Perceptive Facility, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

Simultaneously with the Company's entry into the Perceptive Facility, on July 25, 2024, the Company prepaid in full all outstanding obligations under, and terminated, its existing Loan and Security Agreement, dated as of March 2, 2020, as amended, with SLR Investment Corp. (formerly known as Solar Capital Ltd.) ("Solar"), as collateral agent, and the lenders listed on Schedule 1.1 thereto, for a credit facility (the "Solar Facility"). The material terms and conditions of the Solar Facility were described in the Company's Current Reports on Form 8-K filed on March 3, 2020, December 8, 2020, February 22, 2022, April 4, 2023, October 3, 2023 and the Company's Annual Report on Form 10-K filed on March 7, 2024 and such descriptions are incorporated herein by reference. In connection with this prepayment, the Company paid total consideration of approximately \$64.643 million, which consisted of (i) \$60.0 million of remaining principal amount outstanding, (ii) approximately \$0.5 million of accrued and unpaid interest, (iii) \$2.97 million in connection with the Fourth Amendment Final Fee, and (iv) \$1.2 million in connection with a prepayment fee. The Company funded the repayment of the Solar Facility using a portion of the proceeds from the Perceptive Facility.

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

The disclosure set forth in Item 1.01 of the Current Report on Form 8-K is hereby incorporated by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
4.1	Form of Warrant
4.2	Form of Note
4.3	Form of Security Agreement
10.1	Credit Agreement and Guaranty, dated July 25, 2024, by and among Neuronetics, Inc., as the borrower, certain Subsidiaries of Neuronetics, Inc. from time to time party thereto, as guarantors, the lenders from time to time party thereto, and PERCEPTIVE CREDIT HOLDINGS IV, LP, in its capacity as the administrative agent for the lenders
99.1	Neuronetics Announces the Closing of up to \$90 Million Senior Secured Credit Facility with Perceptive Advisors
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

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.

NEURONETICS, INC.
(Registrant)

Date: July 30, 2024

By: /s/ Stephen Furlong
Name: Stephen Furlong
Title: VP, Finance and Chief Financial Officer
(Principal Financial and Accounting Officer)

FORM OF WARRANT CERTIFICATE

WARRANT CERTIFICATE

THIS WARRANT CERTIFICATE AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SHARES IS EFFECTIVE UNDER THE SECURITIES ACT AND IS QUALIFIED UNDER APPLICABLE STATE AND FOREIGN LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE SECURITIES ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE AND FOREIGN LAW AND, IN EACH CASE, IF THE COMPANY REQUESTS, AN OPINION SATISFACTORY TO THE COMPANY TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.

Issuer: Neuronetics, Inc.
Warrant Shares Issuable: [1,125,000]¹[337,500]² shares of Common Stock
Warrant Certificate No.:
Issue Date: (the “*Issue Date*”)

FOR VALUE RECEIVED, NEURONETICS, INC., a Delaware corporation (the “*Company*”), hereby certifies that PERCEPTIVE CREDIT HOLDINGS IV, LP, a Delaware limited partnership (the “*Initial Holder*”) and, together with its successors and permitted transferees and assigns, a “*Holder*”) is entitled to purchase, at the per share Exercise Price, up to [one million one hundred and twenty-five thousand][three hundred thirty-seven thousand five hundred] ([1,125,000][337,500]) fully paid and nonassessable shares of the Company’s Common Stock, all subject to the terms, conditions and adjustments set forth below in this Warrant Certificate.

This Warrant Certificate has been issued as a condition precedent to, among other things, the making of loans under and pursuant to of the Credit Agreement and Guaranty, dated as of July 25, 2024 (as amended or otherwise modified from time to time, the “*Credit Agreement*”), among the Company, as the borrower, certain Subsidiaries of the Company from time to time party thereto, as guarantors, the lenders from time to time party thereto, and the Initial Holder, in its capacity as the administrative agent for the lenders.

Section 1. Definitions. Capitalized terms used in this Warrant Certificate but not otherwise defined herein will have the meanings ascribed thereto in the Credit Agreement as in effect on the Issue Date. The following terms when used herein have the following meanings:

“*Aggregate Exercise Price*” means, with respect to any exercise of this Warrant Certificate for Warrant Shares pursuant to **Section 3**, an amount equal to the product of (i) the number of Warrant Shares in respect of which this Warrant Certificate is then being exercised pursuant to **Section 3**, multiplied by (ii) the Exercise Price.

¹ Warrant Shares issuable upon exercise in full of the Closing Date Warrant Certificate.

² Warrant Shares issuable upon exercise in full of the Delayed Draw Date Warrant Certificate.

“*Assignment*” has the meaning set forth in **Section 6**.

“*Bloomberg*” has the meaning set forth within the definition of “*VWAP*”.

“*Cashless Exercise*” has the meaning set forth in **Section 3(b)**.

“*Certificate of Incorporation*” means the Ninth Amended and Restated Certificate of Incorporation of the Company, filed with the Secretary of State of Delaware on July 2, 2018, as amended by the Certificate of Amendment, dated May 30, 2019, filed with the Secretary of State of Delaware.

“*Common Stock*” means the Company’s common stock, par value \$0.01 per share, having ordinary voting rights, as provided in the Company’s Certificate of Incorporation.

“*Company*” has the meaning set forth in the preamble.

“*Convertible Securities*” means any Equity Interests that, directly or indirectly, are convertible into or exchangeable for Common Stock.

“*Credit Agreement*” has the meaning set forth in the preamble.

“*Determination Date*” has the meaning set forth in the definition of “*VWAP*”.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Exercise Certificate*” has the meaning set forth in **Section 3(a)(i)**.

“*Exercise Date*” means, for any given exercise of this Warrant Certificate, whether in whole or in part, a Business Day on which the conditions to such exercise as set forth in **Section 3** have been satisfied at or prior to 5:00 p.m., New York City time.

“*Exercise Period*” means the period from (and including) the Issue Date to (and including) 5:00 p.m., New York City time, on Expiration Date.

“*Exercise Price*” means a per Warrant Share price equal to the lower of (x) \$1.92 and (y) the VWAP for the period of ten (10) consecutive trading days ended on August 31, 2024, as adjusted from time to time as provided herein.

“*Expiration Date*” means []³, 2034.

“*Fair Market Value*” means, as of any time of determination, (i) if the Warrant Shares are traded on a Trading Market, the VWAP for the Warrant Shares for the trading day immediately preceding the day on which such determination is being made, or (ii) if the Warrant Shares are not listed, quoted or otherwise available for trading on a Trading Market (so that there is no such

³ 10th anniversary of the Closing Date/Delayed Draw Date.

preceding day on which the Warrant Shares traded on a Trading Market), the “**Fair Market Value**” of the Warrant Shares shall be the fair market value per Warrant Shares (including, if applicable, any Common Stock or other Equity Interests issuable upon conversion of the Warrant Shares) as reasonably determined in good faith by the Company’s Board, such determination to be subject to **Section 9(a)** or **Section 9(b)** hereof, as applicable.

“**Holder**” has the meaning set forth in the preamble.

“**Independent Advisor**” has the meaning set forth in **Section 9(a)**.

“**Initial Holder**” has the meaning set forth in the preamble.

“**Issue Date**” means the date designated as such on the first page of this Warrant Certificate.

“**Marketable Securities**” means Equity Interests meeting each of the following requirements: (i) the issuer thereof is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, and is current in its filing of all required reports and other information under the Securities Act and the Exchange Act; (ii) such Equity Interests are traded on a Trading Market; and (iii) if delivered (or to be delivered) to a Holder, such Holder would not be restricted from publicly re-selling any or all of such Equity Interests delivered to it, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, or (y) arises in connection with a customary market stand-off provision (or similar underwriters’ lock-up) that does not extend beyond 180 days from the date of delivery of such Equity Interests to such Holder.

“**Nasdaq**” means The Nasdaq Stock Market, Inc.

“**NYSE**” means the New York Stock Exchange.

“**Options**” means any warrants, options or similar rights to subscribe for or purchase Equity Interests of the Company, including its Common Stock, Preferred Stock or Convertible Securities.

“**OTC Bulletin Board**” means the National Association of Securities Dealers, Inc. OTC Bulletin Board.

“**Preferred Stock**” has the meaning set forth in Certificate of Incorporation as in effect on the date hereof.

“**Public Offering**” means, with respect to any Person, any sale of Equity Interests of such Person pursuant to an offering that is underwritten on a firm commitment basis by a nationally recognized investment banking firm and, as a result of which, such Person becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act immediately following such offering.

“**Registration Statement**” means, with respect to any Public Offering by the Company of its Common Stock, a registration statement of the Company that covers the offer and sale of any such Common Stock, including any prospectus, amendments or supplements to such Registration Statement, including post-effective amendments and all exhibits and all materials incorporated by reference in such Registration Statement.

“**Rule 144**” means Rule 144 promulgated under the Securities Act.

“**Sale of the Company**” means an event or transaction or series of related events or transactions pursuant to which, directly or indirectly, either (x) any Person or group of Persons acting jointly or otherwise in concert (other than the Holder) acquires ownership, directly or indirectly, beneficially or of record, of Equity Interests of the Company having more than fifty percent (50%) of the aggregate ordinary voting power, determined on a fully-diluted, as-if-converted or exercised basis, whether such right is exercisable immediately or only after the passage of time, or (y) all or substantially all of the assets or businesses of the Company and its Subsidiaries, taken as a whole, are transferred or sold, including by way of lease, transfer, conveyance or other disposition (including, without limitation, by way of irrevocable, exclusive license arrangements).

“**SEC**” means the Securities and Exchange Commission or any successor thereto.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Trading Market**” means, with respect to the Warrant Shares, the principal US exchange or market on which such Warrant Shares are quoted or available for trading, including the Nasdaq, the NYSE, the OTC Bulletin Board, “pink sheets” or otherwise.

“**Unrestricted Conditions**” has the meaning set forth in **Section 10(a)(ii)**.

“**VWAP**” means, with respect to any Equity Interest, as of any day of determination (a “**Determination Date**”), the volume weighted average sale price for such Equity Interest on the trading day immediately preceding such Determination Date on the Trading Market for such Equity Interest as reported by, or based upon data reported by, Bloomberg Financial Markets or an equivalent, reliable reporting service reasonably acceptable to the Holder and the Company (collectively, “**Bloomberg**”) or, if the volume weighted average sale price has not been reported for such Equity Interest by Bloomberg for such trading day, then the last closing trade price of such Equity Interest as reported by Bloomberg, or, if no last closing trade price is reported for such Equity Interest by Bloomberg, the average of the bid prices of any market makers for such Equity Interest that are listed in the over the counter market by the Financial Industry Regulatory Authority, Inc. or on the OTC Bulletin Board (or any successor) or in the “pink sheets” (or any successor) by the OTC Markets Group, Inc.; provided that if VWAP cannot be calculated for such Equity Interest on such date in the manner provided above (including because the applicable Equity Interest is not listed or publicly traded), the VWAP shall be the Fair Market Value of such Equity Interest (determined as provided in **clause (ii)** of the definition of Fair Market Value).

“**Warrant Certificate**” means this Warrant Certificate and all subsequent warrant certificates issued upon division, combination or transfer of, or in substitution for, this Warrant Certificate.

“**Warrant Register**” has the meaning set forth in **Section 5**.

“**Warrant Shares**” means the shares of Common Stock purchasable upon exercise of this Warrant Certificate in accordance with the terms of this Warrant Certificate and any Equity Interests into which such Common Stock shall have been (or may be) converted, exchanged or reclassified following the Issue Date.

“**Warrant Shares Deemed Outstanding**” means, at any given time, the sum of (i) the number of shares of Warrant Shares actually outstanding at such time, plus (ii) the number of Warrant Shares issuable upon exercise of Options actually outstanding at such time, plus (iii) the number of Warrant Shares issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as actually outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time; provided that Warrant Shares Deemed Outstanding at any given time shall not include shares owned or held by or for the account of the Company or any of its wholly-owned Subsidiaries.

Section 2. Term of Warrant Certificate. Subject to the terms and conditions hereof, from time to time during the Exercise Period, the Holder of this Warrant Certificate may exercise this Warrant Certificate for all or any part of the Warrant Shares purchasable hereunder (subject to adjustment as provided herein).

Section 3. Exercise of Warrant Certificate.

(a) **Exercise Procedure.** This Warrant Certificate may be exercised from time to time on any Business Day during the Exercise Period, for all or any portion of the unexercised Warrant Shares, upon:

(i) delivery to the Company of a duly completed and executed Exercise Certificate in the substantially form attached hereto as **Exhibit A** (each, an “**Exercise Certificate**”), which certificate will specify the number of Warrant Shares to be purchased and the Aggregate Exercise Price; and

(ii) substantially contemporaneously with the delivery of the Exercise Certificate, payment to the Company of the Aggregate Exercise Price in accordance with **Section 3(b)**; provided that, notwithstanding anything to the contrary herein, in no event shall the Exercise Price be lower than the par value of a Warrant Share.

(b) **Payment of the Aggregate Exercise Price.** Payment of the Aggregate Exercise Price shall be made, at the option of the Holder as expressed in the Exercise Certificate, by any of the following methods:

(i) by wire transfer of immediately available funds to an account designated in writing by the Company, in the amount of such Aggregate Exercise Price;

(ii) by instructing the Company to withhold a number of Warrant Shares then issuable upon exercise of this Warrant Certificate with an aggregate Fair Market Value as of the Exercise Date equal to such Aggregate Exercise Price; or

(iii) any combination of the foregoing.

In the event of any withholding of Warrant Shares pursuant to **Section 3(b)(ii)** or **(iii)** (solely to the extent of such withholding, a “*Cashless Exercise*”) where the number of such Warrant Shares whose aggregate value is not a whole number, the number of such shares withheld by the Company shall be rounded up to the nearest whole share and the Company shall make a cash payment to the Holder (by wire transfer of immediately available funds to an account designated by the Holder) in an amount calculated as provided pursuant to **Section 3(e)** below.

For purposes of Rule 144, it is acknowledged and agreed that, so long as the Initial Holder remains the holder of the security for Rule 144 purposes, (i) the Warrant Shares issuable upon any exercise of this Warrant Certificate in any Cashless Exercise transaction shall be deemed to have been acquired on the Issue Date, and (ii) the holding period for any Warrant Shares issuable upon the exercise of this Warrant Certificate in any Cashless Exercise transaction shall be deemed to have commenced on the Issue Date; provided that the Company makes no representation or warranty regarding the commencement of the holding period of any Warrant Share.

(c) **Automatic Cashless Exercise.** To the extent this Warrant Certificate has not been exercised in full by the Holder prior to the date of any of the following events or circumstances, any portion of this Warrant Certificate that remains unexercised on such date shall be deemed to have been exercised automatically pursuant to a Cashless Exercise, in whole (and not in part), on the Business Day immediately preceding the earlier of (i) the occurrence of the Expiration Date; provided that, in the event that as of the Business Day immediately preceding the Expiration Date the Fair Market Value of a Warrant Share is less than the Exercise Price then in effect, then such automatic Cashless Exercise shall not occur and (ii) the consummation of a Sale of the Company; provided that (x) as a result of such Sale of the Company the consideration to be received by the Company or its shareholders upon consummation thereof consists solely of cash, Marketable Securities or a combination thereof and (y) in the event that as of the Business Day immediately preceding the consummation of such Sale of the Company the Fair Market Value of a Warrant Share is less than the Exercise Price then in effect, then such automatic Cashless Exercise shall not occur.

(d) **Delivery of Stock Certificates.** With respect to any exercise of this Warrant Certificate by the Holder, upon receipt by the Company of an Exercise Certificate and delivery of the Aggregate Exercise Price, the Company shall, within two (2) Business Days, deliver in accordance with the terms hereof to or upon the order of the Holder that number of Warrant Shares for the portion of this Warrant Certificate so exercised on such date, together with cash in lieu of any fraction of a share, as provided in **Section 3(e)** below. If such Warrant Shares are issued in certificated form, the Company shall deliver a certificate or certificates representing the number of Warrant Shares as the Holder shall request in the Exercise Certificate. If such Warrant Shares are issued in uncertificated form, the Company shall deliver upon request a confirmation evidencing the issuance and registration of such shares. Except as otherwise provided herein, upon any exercise hereof this Warrant Certificate shall be deemed to have been exercised and such certificate or certificates of Warrant Shares shall be deemed to have been issued, and the Holder shall be deemed to have become a holder of record of such Warrant Shares for all purposes, as of the Exercise Date.

(e) **Fractional Shares.** The Company shall not be required to issue a fractional Warrant Share upon exercise of any Warrant Certificate. As to any fraction of a Warrant Share that the Holder would otherwise be entitled upon such exercise, the Company shall pay to such Holder an amount in cash (by wire transfer of immediately available funds to an account designated by the Holder) equal to the product of (i) such fraction multiplied by (ii) the Fair Market Value of one Warrant Share on the Exercise Date.

(f) Surrender of this Warrant Certificate; Delivery of New Warrant Certificate.

(i) The Holder shall not be required to physically surrender this Warrant Certificate to the Company until this Warrant Certificate has been exercised in full, in which event, the Holder shall, at the written request of the Company, surrender this Warrant Certificate to the Company for cancellation within three (3) Business Days after the date the final Exercise Certificate is delivered to the Company. Partial exercises of this Warrant Certificate resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares issuable hereunder by an amount equal to the applicable number of Warrant Shares that have been issued hereunder as a result of previous exercises and withheld in connection with Cashless Exercises, in each case subject to adjustment as provided herein. The Holder and the Company shall maintain records showing the number of Warrant Shares issued and purchased, the date of such issuances and purchases and the number of Warrant Shares withheld in connection with Cashless Exercises. The Holder and any assignee, by acceptance of this Warrant Certificate, acknowledge and agree that, by reason of the provisions of this **Section 3(f)**, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be fewer than the amount stated on the face hereof.

(ii) To the extent that there are unexpired and unexercised Warrant Shares remaining under the Warrant Certificate, the Holder may request from time to time that the Company (and the Company shall), upon surrender of this Warrant Certificate, deliver to the Holder one or more new Warrant Certificates evidencing the rights of the Holder to subscribe for the unexpired, unexercised and not withheld (in connection with Cashless Exercises) Warrant Shares called for by this Warrant Certificate. Unless otherwise agreed upon by the Holder in its sole discretion, any such new Warrant Certificate shall in all other respects be identical to this Warrant Certificate.

(g) Certain Covenants With Respect to the Issuance of Warrant Certificate and Warrant Shares. With respect to the exercise of this Warrant Certificate and the issuance of Warrant Shares hereunder, the Company hereby, covenants and agrees that it will:

(i) cause any Warrant Certificate issued in substitution for or replacement of this Warrant Certificate to be, upon issuance, duly authorized;

(ii) cause all Warrant Shares issuable upon the exercise of this Warrant Certificate (or any substitute or replacement Warrant Certificate) to be, upon issuance, and the Company shall take all such actions as may be necessary or appropriate in order that such Warrant Shares are, validly issued, fully paid and non-assessable, issued without violation of any pre-emptive or similar rights of any shareholder of the Company and free and clear of all Liens and similar encumbrances;

(iii) take all such actions as may be necessary to (x) comply with **Section 3(i)** below and (y) ensure that all Warrant Shares issuable upon exercise hereof are issued without violation by the Company of any applicable Law or any requirements of any U.S. or non-U.S. securities exchanges upon which the Warrant Shares may be listed at the time of such exercise; and

(iv) pay all expenses in connection with, and all governmental charges that may be imposed with respect to, the issuance or delivery of Warrant Shares issuable upon exercise of their Warrant Certificate (for purposes hereof, to the extent any income taxes are imposed against the Holder such taxes will not be considered governmental charges).

(h) **Conditional Exercise.** Notwithstanding any other term or provision hereof, if an exercise of all or any portion of this Warrant Certificate is to be made in connection with a Public Offering, a Sale of the Company or other possible liquidity transaction or event, such exercise may, at the election of the Holder, be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the actual consummation of such transaction or event.

(i) **Reservation of Shares.** The Company shall at all times during the Exercise Period reserve and keep available out of its authorized but unissued Common Stock or (if applicable) other Equity Interests constituting Warrant Shares, solely for the purpose of issuance upon the exercise of this Warrant Certificate, the maximum number of Warrant Shares or other Equity Interests issuable upon the exercise of this Warrant Certificate or the conversion or exchange of Warrant Shares issuable upon such exercise. The Company shall not increase the par value of any Warrant Shares receivable upon the exercise of this Warrant Certificate above the Exercise Price then in effect as of the date hereof, and shall take all such actions within its power as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant Certificate.

(j) **Rule 144 Compliance.** With a view to making available to the Holder the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a holder to sell securities of the Company to the public without registration or pursuant to a Registration Statement, the Company shall:

(i) use reasonable commercial efforts to make and keep adequate public information available, as required by clause (c) of Rule 144;

(ii) use reasonable commercial efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(iii) furnish, or otherwise make available to the Holder so long as the Holder owns Warrant Shares, promptly upon request, a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and the Exchange Act, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed or furnished by the Company as such holder may reasonably request in connection with the sale of Common Stock without registration.

(k) Ownership Cap. To the extent that the Initial Holder (or one or more of its controlled Affiliates) is a Holder hereof, the Company shall not knowingly effect the exercise of this Warrant Certificate, and the Initial Holder shall not have the right to exercise this Warrant Certificate to the extent that, after giving effect to such exercise, the Initial Holder (together with its Affiliates) would beneficially own in excess of 9.99% of the Equity Interests of the Company having ordinary voting rights outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of such voting Equity Interests beneficially owned by the Initial Holder and its Affiliates shall include the number of Warrant Shares issuable upon exercise of this Warrant Certificate with respect to which the determination of such aggregate number is being made, but shall exclude Warrant Shares that do not have ordinary voting rights or that would be issuable upon (i) exercise of the remaining, unexercised portion of this Warrant Certificate beneficially owned by the Initial Holder and its Affiliates or (ii) exercise or conversion of the unexercised or unconverted portion of any other Equity Interests of the Company beneficially owned by the Initial Holder and its Affiliates (including, without limitation, any Convertible Securities) subject to a limitation on conversion or exercise analogous to the limitations contained in this **Section 3(k)**. Except as set forth in the preceding sentence, for purposes of this **Section 3(k)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Warrant Certificate, in determining the number of outstanding Equity Interests of the Company having ordinary voting rights the Initial Holder of this Warrant Certificate may rely on the number of such outstanding Equity Interests as reflected in the most recent of (i) if available, the Company's Form 10-K, Form 10-Q or other public filing with the SEC, as the case may be, (ii) a more recent public announcement by the Company or (iii) any other notice by the Company or its transfer agent setting forth the number of such Equity Interests outstanding. In addition, upon the written request of the Initial Holder, the Company shall, within three (3) Business Days, confirm to the Initial Holder the number of its shares of Equity Interests having ordinary voting rights then outstanding.

Section 4. Adjustment to Number of Warrant Shares, Exercise Price, etc. The number of Warrant Shares issuable upon exercise of this Warrant Certificate shall be subject to adjustment from time to time as provided in this **Section 4**.

(a) Adjustment to Number of Warrant Shares Upon Reorganizations, Reclassifications, etc. In the event of any changes in the number of Warrant Shares Deemed Outstanding (or the number of outstanding Equity Interests into which Warrant Shares may be exercisable or convertible into) by reason of redemptions, recapitalizations, reclassifications, combinations or exchanges of shares, splits or reverse splits, separations, reorganizations, liquidations, substitutions, replacements or the like, the number and class of Warrant Shares available upon exercise of this Warrant Certificate in the aggregate and the Exercise Price per share shall be correspondingly adjusted as may be necessary (but only to the extent necessary) in order to give the Holder of this Warrant Certificate, upon exercise hereof, the total number, class, and kind of shares as the Holder would have owned (or would have had the right to own upon exercise hereof) had this Warrant Certificate been exercised immediately prior to any such event and had the Holder continued to hold such Warrant Shares until after the event requiring adjustment. The form of this Warrant Certificate need not be changed because of any adjustment in the number of Warrant Shares subject to this Warrant Certificate.

(b) **Adjustment to Number of Warrant Shares Upon Certain Dividends, etc.** If the Company declares or pays a dividend or distribution on the outstanding shares of its Common Stock payable in cash, Equity Interests or other property (or prior to the exercise of this Warrant Certificate in full the holders of Common Stock become entitled to receive any such dividend or distribution), then upon exercise of this Warrant Certificate, for each Warrant Share acquired as a result of such exercise, the Holder shall receive, without additional cost to the Holder, the total amount, number and kind of cash, Equity Interests or other property which the Holder would have received had the Holder owned the Warrant Shares of record as of the date such dividend or distribution occurred.

(c) **Certificate as to Adjustment.**

(i) As promptly as reasonably practicable following any change or adjustment of the type described above in this **Section 4**, but in any event not later than three (3) Business Days thereafter, the Company shall furnish to the Holder a certificate of a Responsible Officer setting forth in reasonable detail such change or adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Company of a written request by the Holder, but in any event not later than three (3) Business Days thereafter, the Company shall furnish to the Holder a certificate of a Responsible Officer certifying the number of Warrant Shares or the amount, if any, of other Equity Interests, securities or assets then issuable upon exercise of the Warrant Certificate.

(d) **Notices.** In the event that, at any time during the Exercise Period, the Company shall take a record of the holders of its outstanding capital stock (or other Equity Interests at the time issuable upon exercise of this Warrant Certificate) for the purpose of:

(i) entitling or enabling such holders to receive any dividend or other distribution, to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other securities;

(ii) (x) any capital reorganization of the Company, any reclassification of any outstanding securities, any consolidation or merger of the Company with or into another Person, any Public Offering of the Company's Equity Interests, or (y) a Sale of the Company; or

(iii) the voluntary or involuntary dissolution, liquidation, winding-up or similar event of the Company (including by way of a bankruptcy or equivalent insolvency proceeding);

then, and in each such case, the Company shall send or cause to be sent to the Holder at least five (5) Business Days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying in reasonable detail, as the case may be, (A) the record date for such dividend, distribution or other right, action or event, and a description of such dividend, distribution or other right, action or event, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, or winding-up or other right, action or event is proposed to take place, and the date, if any is to be fixed, as of which the books of the Company shall close or a record shall be taken with respect to

which the holders of record of its capital stock (or such other Equity Interests at the time issuable upon exercise of the Warrant Certificate) shall be entitled to exchange their shares of capital stock (or such other Equity Interests), for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, winding-up or other right, action or event and the amount per share and character of such exchange applicable to the Warrant Certificate and the Warrant Shares.

Section 5. Warrant Register. The Company shall keep and properly maintain at its principal executive offices a register (the “*Warrant Register*”) for the registration of this Warrant Certificate and any transfers thereof. The Company may deem and treat the Person in whose name this Warrant Certificate is registered on such register as the Holder thereof for all purposes, and the Company shall not be affected by any notice to the contrary, except any assignment, division, combination or other transfer of this Warrant Certificate effected in accordance with the provisions of this Warrant Certificate.

Section 6. Transfer of Warrant Certificate. Subject to **Section 10**, this Warrant Certificate and all rights hereunder are transferable, in whole or in part, by the Holder without charge to the Holder, upon surrender of this Warrant Certificate to the Company at its then principal executive offices with a properly completed and duly executed instrument of assignment in substantially the form attached hereto as **Exhibit B** (an “*Assignment*”). Upon such compliance, surrender and delivery, the Company shall execute and deliver a new Warrant Certificate or Warrant Certificates in the name of the assignee or assignees and in the denominations specified in such Assignment, and shall issue to the assignor a new Warrant Certificate evidencing the portion of this Warrant Certificate, if any, not so assigned, and this Warrant Certificate shall promptly be cancelled.

Section 7. The Holder Not Deemed a Shareholder; Limitations on Liability. Except as otherwise specifically provided herein (including in **Section 4** above), (i) prior to the Exercise Date, the Holder shall not be entitled to receive dividends, nor shall anything contained in this Warrant Certificate be construed to confer upon the Holder, as such, any of the rights of a shareholder of the Company or any right to receive dividends or subscription rights, and (ii) prior to the registration of the Holder in the share register of the Company with respect to the Warrant Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant Certificate, the Holder shall not be entitled to vote, nor shall anything contained in this Warrant Certificate be construed to confer upon the Holder, as such, any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise) or receive notice of meetings. In addition, nothing contained in this Warrant Certificate shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant Certificate or otherwise) or as a shareholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this **Section 7**, the Company shall provide the Holder with copies of the same notices and other information given to all holders of Common Stock, contemporaneously with the giving thereof to such holders.

Section 8. Replacement on Loss; Division and Combination.

(a) **Replacement of Warrant Certificate on Loss.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant Certificate and upon delivery of a customary indemnity reasonably satisfactory to it (it being understood that a written indemnification agreement or affidavit of loss of the Holder shall be a sufficient indemnity) and, in case of mutilation, upon surrender of such Warrant Certificate for cancellation to the Company, the Company at its own expense shall execute and deliver to the Holder, in lieu hereof, a new Warrant Certificate of like tenor and exercisable for an equivalent number of Warrant Shares as this Warrant Certificate so lost, stolen, mutilated or destroyed; provided that, in the case of mutilation, no indemnity shall be required if this Warrant Certificate in identifiable form is surrendered to the Company for cancellation.

(b) **Division and Combination of Warrant Certificate.** Subject to compliance with the applicable provisions of this Warrant Certificate as to any transfer or other assignment which may be involved in such division or combination, this Warrant Certificate may be divided or, following any such division of this Warrant Certificate, subsequently combined with other Warrant Certificates, upon the surrender of this Warrant Certificate or Warrant Certificates to the Company at its then principal executive offices, together with a written notice specifying the names and denominations in which new Warrant Certificates are to be issued, signed by each applicable Holder or its agents or attorneys. Subject to compliance with the applicable provisions of this Warrant Certificate as to any transfer or assignment which may be involved in such division or combination, the Company shall at its own expense execute and deliver a new Warrant Certificate or Warrant Certificates in exchange for this Warrant Certificate or Warrant Certificates so surrendered in accordance with such notice. Such new Warrant Certificate or Warrant Certificates shall be of like tenor to the surrendered Warrant Certificate or Warrant Certificates and shall be exercisable in the aggregate for an equivalent number of Warrant Shares as this Warrant Certificate or Warrant Certificates so surrendered in accordance with such notice.

Section 9. Disputes; No Impairment, etc. The parties hereto agree as follows:

(a) **Disputes.** In the event of any dispute which arises between the Holder and the Company (including the Board of the Company) with respect to any calculation or determination of the adjusted Exercise Price, the number of Warrant Shares, other Equity Interests, Fair Market Value, cash or other property issuable upon exercise of this Warrant Certificate, the amount or type of consideration due to the Holder in connection with any event, transaction or other matter described in **Section 4** above or any other matter involving this Warrant Certificate or the Warrant Shares that is not resolved by the parties after good faith discussions and efforts to reach resolution, upon the request of the Holder the disputed issue(s) shall be submitted to a firm of independent investment bankers or public accountants of recognized national standing, which (i) shall be chosen by the Company and be reasonably satisfactory to the Holder and (ii) shall be independent of the Company (an “**Independent Advisor**”), for determination, and such determination by the Independent Advisor shall be binding upon the Company and the Holder with respect to this Warrant Certificate, any Warrant Shares issued or issuable in connection herewith, the Exercise Price therefor, or any other matter in dispute, as the case may be, absent manifest error. Costs and expenses of the Independent Advisor shall be shared 50/50 by the Company and the Holder.

(b) **Equitable Equivalent.** In case any event shall occur as to which the provisions of **Section 9(a)** above are not strictly applicable but the failure to make any adjustment would not, in the reasonable, good faith opinion of the Holder, fairly protect the rights and benefits of the Holder represented by this Warrant Certificate in accordance with the essential intent and principles of **Sections 4 and 9(a)**, then, in any such case, at the request of the Holder, the Company shall submit the matter and issues raised by the Holder to an Independent Advisor, which shall make a written determination, on a basis consistent with the essential intent and principles established in **Sections 4 and 9(a)**, as to whether and to what extent an adjustment, if any, is necessary to preserve, without dilution, the rights and benefits represented by this Warrant Certificate. Upon receipt of such written determination, which shall be binding on the parties hereto, the Company will promptly mail a copy thereof to the Holder and shall make the adjustments described therein, if any. Costs and expenses of the Independent Advisor shall be shared 50/50 by the Company and the Holder.

(c) **No Avoidance.** The Company shall not, by way of amendment of any of its Organic Documents or through any consolidation, merger, reorganization, transfer of assets, 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 or provisions of this Warrant Certificate, but will at all times in good faith assist in the carrying out of all such terms or provisions and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against dilution or other impairment as if the Holder was a shareholder of the Company entitled to the benefit of fiduciary duties afforded to shareholders under Delaware law.

Section 10. Compliance with the Securities Act; Representations and Warranties.

(a) Agreement to Comply with the Securities Act, etc.

(i) **Legend.** The Holder, by acceptance of this Warrant Certificate, agrees to comply in all respects with the provisions of this **Section 10** and the restrictive legend requirements set forth on the face of this Warrant Certificate and further agrees that it shall not offer, sell or otherwise dispose of this Warrant Certificate or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act. Subject to **clause (ii)** below, this Warrant Certificate and all Warrant Shares issued upon exercise of this Warrant Certificate (unless registered under the Securities Act) shall be stamped or imprinted with a legend in substantially the form as set forth on the face hereof.

(ii) **Removal of Restrictive Legends.** Neither this Warrant Certificate nor any certificates evidencing Warrant Shares issuable or deliverable under or in connection with this Warrant Certificate shall contain any legend restricting the transfer thereof (including the legend required above in **Section 10(a)(i)** above) in any of the following circumstances: (A) following any sale of this Warrant Certificate or any Warrant Shares issued or delivered to the Holder under or in connection herewith pursuant to Rule 144, (B) if this Warrant Certificate or Warrant Shares are eligible for sale under clause (b)(1) of Rule 144, or (C) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) (collectively, the “*Unrestricted Conditions*”). This Warrant Certificate or Warrant Shares, as the case may be, shall be issued free of all legends if the Unrestricted Conditions are met at the time of issuance.

(iii) **Replacement Warrant Certificate.** The Company agrees that at such time as the Unrestricted Conditions have been satisfied it shall promptly (but in any event within three (3) Business Days) following written request from the Holder issue a replacement Warrant Certificate or replacement Warrant Shares, as the case may be, free of all restrictive legends.

(iv) **Sale of Unlegended Shares.** The Holder agrees that the removal of the restrictive legend from this Warrant Certificate and any certificates representing securities as set forth in **Section 10(a)(ii)** above is predicated upon the Company's reliance that the Holder will sell this Warrant Certificate or any such securities pursuant to either an effective Registration Statement or otherwise pursuant to the requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

(b) **Representations and Warranties of the Holder.** In connection with the issuance of this Warrant Certificate, the Holder hereby represents and warrants to the Company, as of the Issue Date, as follows:

(i) The Holder is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act. The Holder is acquiring this Warrant Certificate and the Warrant Shares to be issued upon exercise hereof for investment for its own account and not with a current view towards, or for resale in connection with, the public sale or distribution of this Warrant Certificate or the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act.

(ii) The Holder understands and acknowledges that this Warrant Certificate and the Warrant Shares to be issued upon exercise hereof are "restricted securities" under the Securities Act inasmuch as they are being acquired from the Company in a transaction not involving a Public Offering and that, under such Laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In addition, the Holder represents that it is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(iii) The Holder acknowledges that it can bear the economic and financial risk of its investment for an indefinite period and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in this Warrant Certificate and the Warrant Shares. The Holder has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant Certificate and the business, properties, prospects and financial condition of the Company.

(c) **Representations and Warranties of the Company.** In connection with the issuance of this Warrant Certificate, the Company hereby represents and warrants to the Holder, as of the Issue Date, as follows:

(i) All Warrant Shares issuable upon the exercise of this Warrant Certificate (or any substitute or replacement Warrant Certificate) shall be, upon issuance, (x) validly issued, fully paid and non-assessable, (y) issued without violation of any pre-emptive or similar rights of any shareholder of the Company and (z) free and clear of all Liens and similar encumbrances.

(ii) The Company has taken all actions necessary to ensure that all Warrant Shares issuable upon exercise hereof will be issued without violation by the Company of (x) any applicable Law or any requirements of any U.S. or non-U.S. securities exchange or (y) any Organic Document of or applicable to the Company.

(iii) The Company is a corporation duly organized and validly existing under the Laws of the State of Delaware and has the capacity and corporate power and authority to enter into and perform this Warrant Certificate.

(iv) The Company has taken or caused to be taken all action required to be taken by it, its Board, any of its shareholders or any other Person to authorize the execution, delivery, issuance and performance of this Warrant Certificate and the issuance of the Warrant Shares.

(v) This Warrant Certificate has been duly executed and delivered by the Company.

(vi) The obligations of the Company under this Warrant Certificate are legal, valid and binding obligations, enforceable against the Company in accordance with the terms hereof.

(vii) The Company has complied with all obligations set forth in **Section 3(i)**, above.

Section 11. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 11**).

If to the Company: Neuronetics, Inc.
 3222 Phoenixville Pike
 Malvern, PA 19355
 Attention: Andrew Macan, EVP, General Counsel
 E-mail: [***]

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

Ballard Spahr LLP
1735 Market Street
Philadelphia, PA 19103
Attention: Brian Short
E-mail: [***]

If to the Holder: Perceptive Credit Holdings IV, LP
c/o Perceptive Advisors LLC
51 Astor Place, 10th Floor
New York, NY 10003
Attention: Sandeep Dixit
E-mail: [***]

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

Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019
Attention: Mark Wojciechowski, Esq.
E-mail: [***]

Section 12. Cumulative Remedies. The rights and remedies provided in this Warrant Certificate are cumulative and are not exclusive of, and are in addition to and not in substitution for, any other rights or remedies available at Law, in equity or otherwise.

Section 13. Entire Agreement. This Warrant Certificate constitutes the sole and entire agreement of the parties to this Warrant Certificate with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

Section 14. Successor and Assigns. This Warrant Certificate and the rights evidenced hereby shall be binding upon and shall inure to the benefit of the parties hereto and the successors of the Company and the successors and permitted assigns of the Holder. Such successor or permitted assign of the Holder shall be deemed to be the “Holder” for all purposes hereunder.

Section 15. No Third-Party Beneficiaries. This Warrant Certificate is for the sole benefit of the Company and the Holder and their respective successors and, in the case of the Holder, permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Warrant Certificate.

Section 16. Headings. The headings in this Warrant Certificate are for reference only and shall not affect the interpretation of this Warrant Certificate.

Section 17. Amendment and Modification; Waiver. Except as otherwise provided herein, this Warrant Certificate may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by the Company or the Holder of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant Certificate shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 18. Severability. If any term or provision of this Warrant Certificate is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Warrant Certificate or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 19. Governing Law. This Warrant Certificate shall be governed by and construed in accordance with the internal Laws of the State of New York without effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

Section 20. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or based on this Warrant Certificate or the transactions contemplated hereby may be instituted in the federal courts of the United States or the courts of the State of New York, in each case located in the city and county of New York. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by certified or registered mail to such party's address set forth in **Section 11** shall be effective service of process for any suit, action or other proceeding, and the parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding has been brought in an inconvenient forum.

Section 21. Counterparts. This Warrant Certificate may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant Certificate delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant Certificate.

Section 22. No Strict Construction. This Warrant Certificate shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has duly executed this Warrant Certificate on the Issue Date.

NEURONETICS, INC.

By _____
Name:
Title:

Accepted and agreed,

PERCEPTIVE CREDIT HOLDINGS IV, LP

By: PERCEPTIVE CREDIT OPPORTUNITIES GP,
LLC, its general partner

By _____

Name: Sandeep Dixit

Title: Chief Credit Officer

By _____

Name: Sam Chawla

Title: Portfolio Manager

FORM OF NOTE

[DATE]

U.S. \$[_____]

FOR VALUE RECEIVED, the undersigned, Neuronetics, Inc., a Delaware corporation (the “**Borrower**”), hereby promises to pay to [_____] (the “**Holder**”), in immediately available funds, the aggregate principal sum set forth above, or, if less, the aggregate unpaid principal amount of the Loan made by the Holder pursuant to **Section 2.01[(a)][(b)]** of the Credit Agreement and Guaranty, dated as of July 25, 2024 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among the Borrower, the Subsidiary Guarantors from time to time parties thereto, the Holder and each other lender that may from time to time become a party thereto (each, together with their permitted successors and assigns, a “**Lender**” and collectively, the “**Lenders**”), and Perceptive Credit Holdings IV, LP, a Delaware limited partnership, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the “**Administrative Agent**”). Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

This note is a Note issued pursuant to the terms of **Section 2.03** of the Credit Agreement, and this note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Credit Agreement reference is hereby made for a statement thereof. All defined terms used in this note, except terms otherwise defined herein, shall have the same meaning as in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; PROVIDED THAT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

The Borrower hereby waives, to the extent permitted by applicable law, demand, presentment, protest or notice of any kind hereunder, other than notices provided for in the Loan Documents. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in such particular or any subsequent instance.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT.

[Signature Page Follows]

By _____
Name:
Title:

Exhibit C-2

FORM OF SECURITY AGREEMENT

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this “*Agreement*”), dated as of July 25, 2024, is made by and among Neuronetics, Inc., a Delaware corporation (the “*Borrower*”), certain Subsidiaries of the Borrower that may be required to become acceded hereto pursuant to **Section 22** (each a “*Subsidiary Guarantor*” and, together with the Borrower, each a “*Grantor*” and, collectively, the “*Grantors*”), and Perceptive Credit Holdings IV, LP, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the “*Administrative Agent*”).

WHEREAS, the Borrower, certain Subsidiaries of the Borrower that may be required to provide Guaranties from time to time thereunder, the lenders from time to time party thereto (the “*Lenders*”) and the Administrative Agent are parties to the Credit Agreement and Guaranty, dated as of the date hereof (as amended or otherwise modified from time to time, the “*Credit Agreement*”), whereby, among other things, the Borrower will incur Indebtedness and other Obligations and the certain Subsidiaries of the Borrower that may be required to become Subsidiary Guarantors from time to time thereunder will guarantee such Indebtedness and other Obligations (the “*Guaranty*”); and

WHEREAS, it is a condition precedent to the Borrowings under the Credit Agreement that the Grantors enter into this Agreement and grant to the Administrative Agent, for itself and for the ratable benefit of the other Secured Parties, the security interests hereinafter provided to secure the obligations of the Borrower and the Subsidiary Guarantors described below.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Definitions; Interpretation.

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

(b) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“*Acceding Grantor*” has the meaning set forth in **Section 22**.

“*Accession Agreement*” has the meaning set forth in **Section 22**.

“*Agreement*” has the meaning assigned to such term in the preamble hereto.

“**Books**” means all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (i) ledgers; (ii) records indicating, summarizing, or evidencing any Grantor’s assets (including Inventory and Rights to Payment), business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals, spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any Contract between any Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of any Grantor’s books or records or with credit reporting, including with regard to any such Grantor’s Accounts.

“**Borrower**” has the meaning assigned to such term in the preamble hereto.

“**Collateral**” has the meaning provided in **Section 2(a)** hereof.

“**Control Agreement**” means any control agreement or other agreement with any securities intermediary, bank, depository or other Person establishing the Administrative Agent’s control with respect to any Deposit Accounts, Securities Accounts, lockboxes, disbursement accounts, investment accounts or similar accounts, Letter-of-Credit Rights or Investment Property, for purposes of Article 8 or Sections 9-104, 9-106 and 9-107 of the NY UCC.

“**Credit Agreement**” has the meaning assigned to such term in the first recital hereto.

“**Excluded Assets**” means:

(b) any property or asset the grant of a security interest therein (i) is prohibited by applicable Law or (ii) requires the consent, approval or waiver of any Governmental Authority (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable Law);

(c) any “intent to use” application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, to the extent that, and during the period in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law; and

(d) motor vehicles and other assets subject to certificates of title (other than to the extent a Lien thereon can be perfected by the filing of a financing statement under the UCC);

provided, that, “Excluded Assets” shall not include any Proceeds, products, substitutions or replacements of any Excluded Assets unless such Proceeds, products, substitutions or replacements themselves constitute “Excluded Assets” and to the extent any asset or item of property of any Grantor that, but for this defined term and its use herein, would otherwise constitute Collateral ceases to qualify as an Excluded Asset, it shall automatically cease to be an “Excluded Asset” for purposes hereof and shall be included as Collateral, unless otherwise provided hereof.

“**Grantors**” has the meaning set forth in the preamble hereto.

“**Guaranty**” has the meaning assigned to such term in the first recital hereto.

“**Intellectual Property Collateral**” means the following properties and assets owned or held by any Grantor or in which any Grantor otherwise has any interest, now existing or hereafter acquired or arising:

(i) all Patents, including domestic and foreign Patents, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such Patents and licenses described in **Schedule 2**), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all Copyrights, including domestic and foreign Copyrights, together with underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said Copyrights are statutory or arise under the common law, and all other rights and works of authorship, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the Copyrights and licenses described in **Schedule 2**), and all income and royalties with respect thereto, and all other rights, Claims and demands in any way relating to any such Copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of such Copyright;

(iii) all Trademarks, including state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such Trademarks, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including the Trademarks and licenses described in **Schedule 2**), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all Technical Information;

(v) the entire goodwill of or associated with the businesses now or hereafter conducted by such Grantor connected with and symbolized by any of the aforementioned properties and assets; and

(vi) all other Intellectual Property, all other proprietary rights, or other similar property and all other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above, including rights to sue for or collect damages for any past, present or future infringement of any of the foregoing.

“**Intellectual Property Security Agreement**” means each Copyright Security Agreement in substantially the form of **Exhibit B**, each Patent Security Agreement in substantially the form of **Exhibit C**, each Trademark Security Agreement in substantially the form of **Exhibit D** or any amendment thereto, in form and substance reasonably satisfactory to the Administrative Agent, supplementary to this Agreement and prepared for purposes of recordation with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable.

“**Lender**” has the meaning assigned to such term in the recital.

“**Partnership and LLC Collateral**” means any and all limited, limited liability and general partnership interests and limited liability company interests of any type or nature (including any such interests in the Borrower’s direct or indirect Subsidiaries now or hereafter owned by any Grantor), whether now existing or hereafter acquired or arising, including any such interests specified in Schedule 3.

“**Pledge Supplement**” has the meaning specified in **Section 3(h)**.

“**Pledged Collateral**” means any and all (i) Pledged Shares; (ii) additional capital stock or other Equity Interests of the direct or indirect Subsidiaries of the Borrower (or, with respect to any Foreign Subsidiary, sixty five percent (65%) of the Equity Interests in such Foreign Subsidiary to the extent that a pledge of more than 65% would result in a U.S. income tax consequence to the Borrower that would be both material and adverse), whether certificated or uncertificated, owned by any Grantor; (iii) other Investment Property of any Grantor; (iv) warrants, options or other rights entitling any Grantor to acquire any interest in Equity Interests or other securities of such Subsidiaries or any other Person; (v) Partnership and LLC Collateral; (vi) Instruments; (vii) securities, property, interest, dividends and other payments and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (viii) certificates and instruments now or hereafter representing or evidencing any of the foregoing; (ix) rights, interests and Claims with respect to the foregoing, including under any and all related agreements, instruments and other documents, and (x) cash and non-cash proceeds of any of the foregoing, in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor.

“**Pledged Collateral Agreements**” has the meaning specified in **Section 5(q)(i)**.

“**Pledged Shares**” means all of the issued and outstanding Equity Interests, whether certificated or uncertificated, of the Borrower’s direct or indirect Subsidiaries (or, with respect to any Foreign Subsidiary, sixty five percent (65%) of the Equity Interests in such Foreign Subsidiary to the extent that a pledge of more than 65% would result in a U.S. income tax consequence to the Borrower that would be both material and adverse) now or hereafter owned by any Grantor, including each Subsidiary identified on **Schedule 3** (as amended or supplemented from time to time).

“**Rights to Payment**” means any and all of any Grantor’s Accounts and any and all of any Grantor’s rights and Claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

“**Secured Obligations**” means all Obligations, whether in respect of Indebtedness or other obligations of the Grantors to any Secured Party under the Credit Agreement, the Notes, the Guaranty or any of the other Loan Documents or otherwise.

“**Supporting Obligations**” means all supporting obligations, as such term is defined in Section 9-102 of the UCC.

(c) Terms Defined in the NY UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the NY UCC; provided, however, that to the extent that the NY UCC is used to define any term herein and such term is defined differently in different Articles of the NY UCC, the definition of such term contained in Article 9 shall govern.

(d) Interpretation. The rules of interpretation set forth in Section 1.03 of the Credit Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

(e) Schedules. The Schedules to this Agreement may be updated by written delivery to the Administrative Agent if required in connection with an amendment or modification of any Loan Document to the extent such update, amendment or modification has been mutually agreed upon by the Borrower and the Administrative Agent.

SECTION 2. Security Interest.

(a) Grant of Security Interest. As security for the payment and performance of the Secured Obligations, each Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under all of such Grantor’s personal property, wherever located and whether now existing or owned or hereafter acquired or arising, including the following property (collectively, the “**Collateral**”): (i) all Accounts; (ii) all Chattel Paper; (iii) all Commercial Tort Claims; (iv) all Deposit Accounts; (v) all Books and Documents; (vi) all Equipment; (vii) all General Intangibles; (viii) all Instruments; (ix) all Inventory; (x) all Investment Property; (xi) all Letter-of-Credit Rights; (xii) all other Goods; (xiii) all Intellectual Property Collateral; (xiv) all money; (xv) all Pledged Collateral; (xvi) all products and Proceeds of any and all of the foregoing; and (xvii) all Supporting Obligations of any and all of the foregoing; provided that in no event shall the Collateral include the Excluded Assets.

(b) Grantors Remain Liable. Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable under any Contracts included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent of any of the rights granted to the Administrative Agent hereunder shall not release any Grantor from any of its duties or obligations under any such Contracts included in the Collateral, and (iii) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any such Contracts included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any such Contract included in the Collateral hereunder.

(c) Continuing Security Interest. Each Grantor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with **Section 23**.

SECTION 3. Perfection and Priority.

(a) Financing Statements, Etc. Each Grantor hereby authorizes the Administrative Agent (or its designee) to file at any time and from time to time any financing statements describing the Collateral, and each Grantor shall execute and deliver to the Administrative Agent, and each Grantor hereby authorizes the Administrative Agent (or its designee) to file (with or without such Grantor's signature), at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, Intellectual Property Security Agreements, assignments, fixture filings, affidavits, reports, notices and all other documents and instruments, in form reasonably satisfactory to the Administrative Agent, as the Administrative Agent may reasonably request, to perfect, continue the perfection of, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, each Grantor shall from time to time take the actions specified in **subsections (b)** through **(i)** below.

(b) Delivery of Pledged Collateral. Each Grantor shall, on the date hereof or promptly after becoming entitled to receive or receiving in accordance with Section 8.11 of the Credit Agreement, deliver to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, the certificates, instruments and other writings representing any Pledged Collateral, which shall be in suitable form for transfer by delivery and accompanied by duly executed instruments of transfer or assignment in blank, in form reasonably satisfactory to the Administrative Agent. If any Grantor becomes entitled to receive or receives any Pledged Collateral after the date hereof, such Grantor shall hold it in trust for the Administrative Agent, segregate it from other property or funds of such Grantor and promptly deliver the same and all certificates, instruments and other writings representing such Pledged Collateral to or for the account of the Administrative Agent, at the address and to the Person to be designated by the Administrative Agent, which shall be in suitable form for transfer by delivery and accompanied by duly executed instruments of transfer or assignment in blank, in form reasonably satisfactory to the Administrative Agent.

(c) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in **Section 3(b)**, each applicable Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to effect a transfer of a perfected first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent for the ratable benefit of the Secured Parties pursuant to the NY UCC. Each such Grantor shall deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in **Section 3(b)** as soon as such Grantor becomes able to do so.

(d) Intellectual Property Collateral. (i) Each Grantor shall execute and deliver to the Administrative Agent, concurrently with the execution of this Agreement, Intellectual Property Security Agreements, and record or cause to be recorded (including by giving authorization to the Administrative Agent to so record) such Intellectual Property Security Agreements with the U.S. Patent and Trademark Office or the U.S. Copyright Office, as applicable, and take any such further or other action as may be necessary or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property Collateral with the U.S. Patent and Trademark Office or the U.S. Copyright Office or pursuant to the NY UCC, (ii) pursuant to Section 8.02(i) of the Credit Agreement, for any Intellectual Property Collateral created, developed or acquired by any Grantor after the date hereof which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority, the Borrower shall list all such Intellectual Property in an annex to the applicable Compliance Certificate delivered to the Administrative Agent, which annex shall supplement **Schedule 2** and such Grantor shall record such Intellectual Property Security Agreement with the U.S. Patent and Trademark Office or the U.S. Copyright Office, as applicable, and take (or cause to be taken) such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property Collateral.

(e) Documents, Etc. Each Grantor shall deliver to the Administrative Agent, or an agent designated by the Administrative Agent, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Documents and Chattel Paper, and all other Rights to Payment at any time evidenced by promissory notes, trade acceptances or other instruments, in each case with a face value in excess of \$100,000 individually or \$250,000 in the aggregate for all such Documents, Chattel Paper and other Rights to Payment, not already delivered hereunder pursuant to this **Section 3**. Upon the reasonable request of the Administrative Agent, the Grantors shall mark all Documents and Chattel Paper with such legends as the Administrative Agent shall reasonably specify.

(f) Bailees. Any Person (other than the Administrative Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Administrative Agent. At any time and from time to time, the Administrative Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person's written acknowledgment thereof, in form and substance reasonably satisfactory to the Administrative Agent. Without limiting the generality of the foregoing, each Grantor will, upon the Administrative Agent's request, join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent's security interest therein and obtaining an acknowledgment from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

(g) Control. Each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the NY UCC) of or otherwise obtaining a perfected Lien in Collateral consisting of any Deposit Accounts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights, including delivery of Control Agreements in form and substance reasonably satisfactory to the Administrative Agent, as the Administrative Agent may reasonably request, to perfect, continue the perfection of, maintain the priority of or provide notice of the Administrative Agent's security interest in such Collateral.

(h) After-Acquired Equity Interests. In the event that any Grantor acquires any Pledged Collateral after the date hereof, such Grantor shall deliver to the Administrative Agent a pledge supplement, duly executed by such Grantor and substantially in the form of **Exhibit G** (the "**Pledge Supplement**"), together with all schedules thereto, reflecting such additional Pledged Collateral, and the certificates and other documents required to be delivered pursuant to **Section 3(b)** hereof in respect of such additional Pledged Collateral. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to such Pledged Collateral immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement.

(i) Further Assurances. Each Grantor agrees that, at its own expense, it will promptly execute and deliver all further instruments and documents and take all other actions in order to perfect, preserve and protect any security interest granted or purported to be granted hereby or necessary to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

SECTION 4. Representations and Warranties. In addition to the representations and warranties of each Grantor set forth in the Credit Agreement, each Grantor represents and warrants to each Secured Party that:

(a) Location of Chief Executive Office and Collateral. Such Grantor's chief executive office and principal place of business is located at the address set forth in **Schedule 1**, and all other locations where such Grantor conducts business or Collateral is kept are set forth in **Schedule 1**.

(b) Locations of Books. All locations where Books pertaining to the Rights to Payment of such Grantor are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for such Grantor, are set forth in **Schedule 1**.

(c) Jurisdiction of Organization and Names. Such Grantor's jurisdiction of organization is set forth in **Schedule 1**; and such Grantor's exact legal name is as set forth in the signature pages of this Agreement. All trade names and trade styles under which such Grantor presently conducts its business operations are set forth in **Schedule 1**, and, except as set forth in **Schedule 1**, such Grantor has not, at any time in the five years prior to the date of this Agreement: (i) been known as or used any other corporate, trade or fictitious name; (ii) changed its name; (iii) been the surviving or resulting corporation in a merger or consolidation; or (iv) acquired through asset purchase or otherwise any business of any Person.

(d) Collateral. Such Grantor has rights in or the power to transfer the Collateral, and such Grantor is the sole and complete owner of the Collateral (or, in the case of after-acquired Collateral, at the time such Grantor acquires rights in such Collateral, will be the sole and complete owner thereof), free from any Lien other than Permitted Liens.

(e) Enforceability; Priority of Security Interest. (i) This Agreement creates a legal, valid and enforceable security interest which is enforceable against the Collateral in which such Grantor now has rights and will create a security interest which is enforceable against the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights; and (ii) the Administrative Agent has a perfected and first priority security interest in the Collateral in which such Grantor now has rights and will have a perfected and first priority security interest in the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights, in each case, for the Administrative Agent's own benefit and for the ratable benefit of the other Secured Parties, subject to Permitted Liens and securing the payment and performance of the Secured Obligations.

(f) Other Financing Statements. Other than (i) financing statements filed in connection with any Permitted Lien; (ii) financing statements in favor of the Administrative Agent for itself and on behalf of the other Secured Parties and (iii) precautionary financing statements filed in respect of leased, consigned or other third-party property, no effective financing statement naming such Grantor as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction.

(g) Rights to Payment.

(i) The Rights to Payment of such Grantor represent valid, binding and enforceable obligations of the account debtors or other Persons obligated thereon, representing undisputed, bona fide transactions completed in accordance with the terms and provisions contained in any documents related thereto, and are and will be genuine and what they purport to be;

(ii) such Grantor has not assigned any of its rights under any of its Rights to Payment except as provided in this Agreement or as set forth in the other Loan Documents; and

(iii) all Rights to Payment of such Grantor comply in all material respects with all applicable Laws concerning form, content and manner of preparation and execution.

(h) Inventory. No Inventory of such Grantor is stored with any bailee, warehouseman or similar Person or on any premises leased to such Grantor, no such Inventory has been consigned to such Grantor or consigned by such Grantor to any Person, nor is any such Inventory held by such Grantor for any Person under any "bill and hold" or other arrangement, except as set forth in **Schedule 1** or, after the date hereof, with any bailee at any other location that is duly disclosed to the Administrative Agent pursuant to **Section 5(n)**.

(i) Intellectual Property. Except as set forth in **Schedule 2**, such Grantor does not (directly or through any Subsidiary) own, co-own or use under any license agreement (other than any off-the-shelf software that is commercially available in retail outlets) any Material Intellectual Property, nor is there currently pending before any Governmental Authority any application for registration of any Material Intellectual Property.

(j) Equipment. None of the Equipment that constitutes Collateral is leased from or to any Person, except as set forth in **Schedule 1** or as otherwise disclosed to the Administrative Agent and the Lenders.

(k) Deposit Accounts. The names and addresses of all financial institutions at which such Grantor maintains its Deposit Accounts, the name in which each such Deposit Account is held, the type of account and the complete account number therefor, are set forth in **Schedule 1**.

(l) Instrument Collateral. (i) Such Grantor has not previously assigned any interest in any Instruments held by such Grantor (other than such interests as will be released on or before the date hereof), (ii) no Person other than such Grantor owns an interest in such Instruments (whether as joint holders, participants or otherwise), and (iii) no material default exists under or in respect of such Instruments.

(m) Pledged Shares, Partnership and LLC Collateral and other Pledged Collateral. (i) All of the Pledged Shares and Partnership and LLC Collateral of such Grantor have been, and, upon issuance any additional Pledged Collateral consisting of Pledged Shares, Partnership and LLC Collateral or any other securities of such Grantor, will be, duly and validly issued, and are and will be fully paid and non-assessable, subject in the case of Partnership and LLC Collateral to future assessments required under applicable Law and any applicable partnership or operating agreement, (ii) such Grantor is or, in the case of any such additional Pledged Collateral, will be the legal record and beneficial owner thereof, (iii) there are no restrictions on the transferability of such Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except as provided under applicable securities or "Blue Sky" laws, (iv) the Pledged Shares and Partnership and LLC Collateral of such Grantor constitute 100% of the issued and outstanding Equity Interests of all directly and indirectly owned Subsidiaries (or, with respect to any Foreign Subsidiary, sixty five percent (65%) of the Equity Interests in such Foreign Subsidiary to the extent that a pledge of more than 65%, would result in a U.S. income tax consequence to the Borrower that would be both material and adverse) of such Grantor and no securities are convertible into or exchangeable for any Equity Interest of any such Subsidiary, or any options, warrants or other commitments entitling any Person to purchase or otherwise acquire any Equity Interest of any such Subsidiary, are issued and outstanding, (v) any and all Pledged Collateral Agreements which affect or relate to the voting or giving of written consents with respect to any of the Pledged Shares pledged by such Grantor, and any and all other Pledged Collateral Agreements relating to the Partnership and LLC Collateral of such Grantor, have been disclosed in writing to the Administrative Agent and the Lenders, and (vi) as to each such Pledged Collateral Agreement relating to the Partnership and LLC Collateral of such Grantor, (A) such agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof, has not been amended or modified, and is in full force and effect in accordance with its terms, (B) there exists no material violation or material default under any such agreement by such Grantor or, to the best knowledge of such Grantor party thereto, by the other parties thereto, and (C) such Grantor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of any such agreement.

(n) Other Investment Property, Instruments, and Chattel Paper. All Securities Accounts of such Grantor and other Investment Property of such Grantor are set forth in **Schedule 1**, and all Instruments and Chattel Paper held by such Grantor are also set forth in **Schedule 1**.

(o) Control Agreements. No Control Agreements exist with respect to any Collateral held by such Grantor other than any Control Agreements in favor of the Administrative Agent.

(p) Letter-of-Credit Rights. Such Grantor does not have any Letter-of-Credit Rights with a value in excess of \$100,000 individually or \$250,000 in the aggregate, except as set forth in **Schedule 1**.

(q) Commercial Tort Claims. Such Grantor does not have any Commercial Tort Claims with a value in excess of \$100,000 individually or \$250,000 in the aggregate, except as set forth in **Schedule 1**.

(r) Leases. Such Grantor is not and will not become a lessee under any real property lease or other agreement governing the location of Collateral at the premises of another Person pursuant to which the lessor or such other Person may obtain any rights in any of the Collateral, and no such lease or other such agreement now prohibits, restrains, impairs or will prohibit, restrain or impair such Grantor's right to remove any Collateral from the premises at which such Collateral is situated, except for the usual and customary restrictions contained in such leases of real property.

SECTION 5. Covenants. Until the Commitments have expired or been terminated and all Secured Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been indefeasibly paid in full in cash, each Grantor agrees that:

(a) Defense of Collateral. Such Grantor will appear in and defend any action, suit or proceeding which may adversely affect to a material extent its title to, or right or interest in, or the Administrative Agent's right or interest in, the Collateral.

(b) Preservation of Collateral. Except as permitted under the Credit Agreement, such Grantor will do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral.

(c) Compliance with Laws, Etc. Such Grantor will comply in all material respects with all Laws and all policies of insurance, relating in a material way to the possession, operation, maintenance and control of the Collateral.

(d) Location of Books and Chief Executive Office. Such Grantor will: (i) keep all Books pertaining to the Rights to Payment of such Grantor at the locations set forth in **Schedule 1** (or, so long as no Event of Default has occurred and is continuing, at such other locations as may be disclosed in writing to the Administrative Agent pursuant to the following **clause (ii)**); and (ii) give at least 10 days' prior written notice to the Administrative Agent of (A) any changes in any location where Books pertaining to the Rights to Payment of such Grantor are kept, including any change of name or address of any service bureau, computer or data processing company or other Person preparing or maintaining any such Books or collecting Rights to Payment for such Grantor or (B) any changes in the location of such Grantor's chief executive office or principal place of business.

(e) Location of Collateral. Such Grantor will: (i) keep the Collateral held by such Grantor at the locations set forth in **Schedule 1** (or, so long as no Event of Default has occurred and is continuing, at such other locations as may be disclosed in writing to the Administrative Agent pursuant to the following **clause (ii)**) and will not remove any such Collateral from such locations (other than in connection with sales of Inventory in the ordinary course of such Grantor's business, other dispositions permitted hereby or by the Credit Agreement and movements of Collateral from one disclosed location to another disclosed location within the United States), except upon at least 10 days' prior written notice of any removal to the Administrative Agent; and (ii) give the Administrative Agent at least 10 days' prior written notice of any change in the locations set forth in **Schedule 1**.

(f) Change in Name, Identity or Structure. Such Grantor will give at least 10 days' prior written notice to the Administrative Agent of (i) any change in name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new registration); and (iv) any changes in its identity or structure in any manner which might make any financing statement filed hereunder incorrect or misleading; provided that such Grantor shall not change its jurisdiction of organization to a jurisdiction outside of the United States.

(g) Maintenance of Records. Such Grantor will keep separate, accurate and complete Books with respect to the Collateral held by or owned by such Grantor, disclosing the Administrative Agent's security interest hereunder.

(h) Disposition of Collateral. Such Grantor will not surrender or lose possession of, sell, lease, rent, or otherwise dispose of or transfer any of the Collateral held or owned by such Grantor or any right or interest therein, except to the Administrative Agent or to the extent otherwise permitted by the Loan Documents; provided that no such disposition or transfer of Investment Property or Instruments shall be permitted if an Event of Default has occurred and is continuing.

(i) Liens. Such Grantor will keep the Collateral held by such Grantor free of all Liens except Permitted Liens.

(j) Leased Premises; Collateral Held by Warehouseman, Bailee, Etc. At the Administrative Agent's request, such Grantor will use commercially reasonable efforts to obtain from each Person from whom such Grantor leases any premises, and from each other Person at whose premises such Collateral is maintained with a fair market value in excess of \$100,000 individually or \$250,000 in the aggregate for all such premises (including any bailee, warehouseman or similar Person), any such collateral access, subordination, landlord waiver, bailment, consent and estoppel agreements as the Administrative Agent may reasonably require, in form and substance reasonably satisfactory to the Administrative Agent.

(k) Rights to Payment. Such Grantor will:

(i) with such frequency as the Administrative Agent may reasonably require or as may be required under the Credit Agreement, furnish to the Administrative Agent full and complete reports, in form and substance reasonably satisfactory to the Administrative Agent, with respect to the Accounts.

(ii) if any Accounts of such Grantor arise from Contracts with the United States or any department, agency or instrumentality thereof, promptly notify the Administrative Agent thereof and execute any documents and instruments and take any other steps reasonably requested by the Administrative Agent in order that all monies due and to become due thereunder shall be assigned to the Administrative Agent and notice thereof given to the Federal authorities under the Federal Assignment of Claims Act;

(iii) upon the request of the Administrative Agent (A) at any time, notify all or any designated portion of the account debtors and other obligors on the Rights to Payment of such Grantor of the security interest hereunder, and (B) upon the occurrence and during the continuance of an Event of Default, notify the account debtors and other obligors on the Rights to Payment or any designated portion thereof that payment shall be made directly to the Administrative Agent or to such other Person or location as the Administrative Agent shall specify; and

(iv) upon the occurrence and during the continuance of any Event of Default, establish such lockbox or similar arrangements for the payment of such Grantor's Accounts and other Rights to Payment as the Administrative Agent shall require.

(l) Instruments, Investment Property, Etc. Upon the request of the Administrative Agent, such Grantor will (i) promptly deliver to the Administrative Agent, or an agent designated by the Administrative Agent, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents and Chattel Paper held by such Grantor, all letters of credit of such Grantor, and all other Rights to Payment held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, (ii) cause any securities intermediaries to show on their books that the Administrative Agent is the entitlement holder with respect to any Investment Property held by such securities intermediary on behalf of such Grantor, and/or obtain Control Agreements in favor of the Administrative Agent from such securities intermediaries, in form and substance reasonably satisfactory to the Administrative Agent, with respect to any such Investment Property, as reasonably requested by the Administrative Agent, and (iii) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights held by such Grantor, as the Administrative Agent shall reasonably specify.

(m) Deposit Accounts and Securities Accounts. Such Grantor will give the Administrative Agent notice of the establishment of any new Deposit Account and of any new Securities Account established by such Grantor with respect to any Investment Property held by such Grantor.

(n) Inventory. Except as provided for herein or with the Administrative Agent's prior written consent, such Grantor will not store any Inventory with a bailee, warehouseman or similar Person or on premises leased to such Grantor other than those locations identified in **Schedule 1**, and will not dispose of any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, and will not acquire any Inventory from any Person on any such basis.

(o) Intellectual Property Collateral. Such Grantor:

(i) except as permitted under the Credit Agreement or with the Administrative Agent's prior written consent, will not allow or suffer any Intellectual Property Collateral held by such Grantor to become abandoned, nor any registration thereof to be terminated, forfeited, expired or dedicated to the public, except as shall be reasonable and appropriate in accordance with prudent business practice; and

(ii) will diligently prosecute all applications for Patents and Trademarks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral held by such Grantor.

(p) Notices, Reports and Information. Such Grantor will (i) promptly notify the Administrative Agent of any other modifications of or additions to the information contained in **Schedule 1** (including any acquisition or holding of an interest in any Chattel Paper, Commercial Tort Claims and Letter-of-Credit Rights in each case with a face value in excess of \$100,000 individually or \$250,000 in the aggregate); (ii) promptly notify the Administrative Agent of any material Claim made or asserted against the Collateral by any Person and of any change in the composition of the Collateral or other event which could materially adversely affect the value of the Collateral or the Administrative Agent's Lien thereon; (iii) promptly furnish to the Administrative Agent such listings, descriptions and schedules with respect to such Grantor's Equipment and Inventory, and such other reports and other information in connection with the Collateral, as the Administrative Agent may reasonably request, all in reasonable detail; and (iv) upon the reasonable request of the Administrative Agent make such demands and requests for information and reports as such Grantor is entitled to make in respect of the Collateral.

(q) Shareholder Agreements and Other Agreements. Such Grantor will:

(i) comply in all material respects with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other agreement or understanding (collectively, the "**Pledged Collateral Agreements**") to which it is a party and shall enforce all of its rights thereunder;

(ii) take all actions necessary to cause each such Pledged Collateral Agreement relating to Partnership and LLC Collateral to provide specifically at all times that: (A) no such Partnership and LLC Collateral shall be a security governed by Article 8 of the applicable UCC; and (B) no consent of any member, manager, partner or other Person shall be a condition to the admission as a member or partner of any transferee (including the Administrative Agent) that acquires ownership of such Partnership and LLC Collateral as a result of the exercise by the Administrative Agent of any remedy hereunder or under applicable Law;

(iii) not take vote or enable to take any other action to certificate any Pledged Shares or Partnership and LLC Collateral of any Grantor to the extent such Pledged Shares or Partnership and LLC Collateral is not certificated as of the Closing Date, unless such Grantor delivers a certificate evidencing such Equity Interest to the Administrative Agent in accordance with this Agreement; and

(iv) not vote to enable or take any other action to: (A) amend or terminate, or waive compliance with any of the terms of, any such Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any such Pledged Collateral in a manner adverse to the Administrative Agent or the other Secured Parties or that adversely affects the validity, perfection or priority of the Administrative Agent's security interest therein.

(v) Additionally, such Grantor agrees that no such Partnership and LLC Collateral (A) shall be dealt in or traded on any securities exchange or in any securities market, (B) shall constitute an investment company security, or (C) shall be held by such Grantor in a Securities Account.

(r) Insurance.

(i) Such Grantor shall carry and maintain in full force and effect, at the expense of such Grantor and with financially sound and reputable insurance companies, insurance with respect to the Collateral held by such Grantor in such amounts, with such deductibles and covering such risks in accordance with Section 8.05 of the Credit Agreement.

(ii) If Collateral having a value exceeding \$100,000 held by such Grantor is materially damaged or destroyed, in whole or in part, by fire or other casualty, such Grantor shall give immediate notice thereof to the Administrative Agent. After the occurrence and during the continuance of an Event of Default, or as otherwise required under the Loan Documents, all sums payable to any Grantor by any insurer with respect to a casualty relating to all or any part of the Collateral shall be paid to the Administrative Agent. If any Grantor receives any insurance proceeds which are to be paid to the Administrative Agent pursuant to the previous sentence, such Grantor shall hold such proceeds in trust for the Administrative Agent, segregate such proceeds from other funds of such Grantor, and promptly forward such proceeds in the form received to the Administrative Agent (appropriately endorsed by such Grantor to the order of the Administrative Agent or in such other manner as reasonably satisfactory to the Administrative Agent). All such insurance proceeds may be retained by the Administrative Agent as part of Collateral hereunder and held in in a deposit account, applied by the Administrative Agent toward payment of all or part of the Secured Obligations in such order as is provided herein, or released to such Grantor upon its request with the consent of the Administrative Agent.

SECTION 6. Rights to Payment and Pledged Collateral.

(a) Collection of Rights to Payment. Until the Administrative Agent exercises its rights hereunder to collect any Rights to Payment of any Grantor, each such Grantor shall endeavor in the first instance diligently to collect all amounts due or to become due on or with respect to the Rights to Payment held by such Grantor. At the request of the Administrative Agent,

upon the occurrence and during the continuance of any Event of Default, all remittances received by such Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer).

(b) Pledged Collateral. Unless and until an Event of Default shall have occurred and be continuing, each Grantor shall be entitled to receive and retain for its own account any cash dividend on or other cash distribution or payment, if any, in respect of the Pledged Collateral, to the extent consistent with the Credit Agreement or the Guaranty, as applicable; provided, however, that, except in connection with transactions permitted under the Credit Agreement, such Grantor shall not be entitled to receive (i) cash paid, payable or otherwise distributed in redemption of, or in exchange for or in substitution of, any Pledged Collateral held by such Grantor, or (ii) dividends and other distributions paid or payable in cash in respect of any such Pledged Collateral in connection with a partial or total liquidation or dissolution of any Person whose ownership interests constitute Pledged Collateral or in connection with a reduction of capital, capital surplus or paid-in-surplus or any other type of recapitalization involving any such Person. At the request of the Administrative Agent, upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall be entitled to receive all distributions and payments of any nature with respect to any Pledged Collateral, and all such distributions or payments received by such Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). Following the occurrence and during the continuance of an Event of Default any such distributions and payments with respect to any such Pledged Collateral held in any Securities Account shall be held and retained in such Securities Account, in each case as part of the Collateral hereunder. Additionally, the Administrative Agent shall have the right, upon the occurrence and during the continuance of an Event of Default, following prior written notice to any applicable Grantor, to vote and to give consents, ratifications and waivers with respect to any Pledged Collateral held by such Grantor, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Administrative Agent were the absolute owner thereof; provided that the Administrative Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to such Grantor or any other Person for any failure to do so or delay in doing so.

(c) Voting Prior to an Event of Default. Unless and until an Event of Default shall have occurred and is continuing, each Grantor shall have the right to vote the Pledged Collateral held by such Grantor and to give consents, ratifications and waivers in respect thereof, and shall retain the power to control the direction, management and policies of any Person comprising such Pledged Collateral to the same extent as such Grantor would if such Pledged Collateral were not pledged to the Administrative Agent pursuant to this Agreement; provided, however, that no vote shall be cast or consent, waiver or ratification given or action taken which would have the effect of materially impairing the position or interest of the Administrative Agent and the other Secured Parties in respect of such Pledged Collateral or which would alter the voting rights with respect to the stock or other ownership interest in or of any such Person or be inconsistent with or violate any provision of this Agreement, the Credit Agreement, or any other

Loan Documents. If applicable, such Grantor shall be deemed the beneficial owner of all such Pledged Collateral for purposes of Sections 13 and 16 of the Exchange Act and agrees to file all reports required to be filed by beneficial owners of securities thereunder. The Administrative Agent shall execute and deliver (or cause to be executed and delivered) to each Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to this **subsection (c)** and to receive the distributions which it is authorized to receive and retain pursuant to this **subsection (c)**.

(d) Certain Other Administrative Matters. The Administrative Agent may cause any of the Pledged Collateral to be transferred into its name or into the name of its nominee or nominees (subject to the revocable rights specified in this **Section 6**). The Administrative Agent shall at all times have the right to exchange uncertificated Pledged Collateral for certificated Pledged Collateral, and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement.

SECTION 7. Authorization; Agent Appointed Attorney-in-Fact. In addition to (and not in limitation of) any other right or remedy provided to the Administrative Agent hereunder, the Administrative Agent shall have the right to, in the name of any Grantor, or in the name of the Administrative Agent or otherwise, without notice to or assent by any such Grantor, and each Grantor hereby constitutes and appoints the Administrative Agent (and any of the Administrative Agent's officers or employees or agents designated by the Administrative Agent) as such Grantor's true and lawful attorney-in-fact, with full power and authority to:

(a) file any of the financing statements which must be filed to perfect or continue to perfect, maintain the priority of or provide notice of the Administrative Agent's Lien in the Collateral;

(b) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security and collect any Proceeds of any Collateral;

(c) sign and endorse any invoice or bill of lading relating to any of the Collateral, warehouse or storage receipts, drafts against customers or other obligors, assignments, notices of assignment, verifications and notices to customers or other obligors;

(d) notify the U.S. Postal Service and other postal authorities to change the address for delivery of mail addressed to such Grantor to such address as the Administrative Agent may designate; and, without limiting the generality of the foregoing, establish with any Person lockbox or similar arrangements for the payment of the Rights to Payment of such Grantor;

(e) receive, open and dispose of all mail addressed to such Grantor;

(f) send requests for verification of Rights to Payment to the customers or other obligors of such Grantor;

(g) contact, or direct such Grantor to contact, all account debtors and other obligors on the Rights to Payment of such Grantor and instruct such account debtors and other obligors to make all payments directly to the Administrative Agent;

(h) assert, adjust, sue for, compromise or release any Claims under any policies of insurance;

(i) exercise dominion and control over, and refuse to permit further withdrawals from, any Deposit Accounts of such Grantor maintained with the Administrative Agent, any Lender or any other bank, financial institution or other Person;

(j) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment of such Grantor to remit all amounts representing collections on such Rights to Payment directly to the Administrative Agent;

(k) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment of such Grantor, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing such Rights to Payment and other Collateral, and otherwise file any Claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Administrative Agent may deem necessary to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Administrative Agent with respect to the Collateral;

(l) execute any and all applications, documents, papers and instruments necessary for the Administrative Agent to use the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license or sublicense with respect to any Intellectual Property Collateral;

(m) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;

(n) execute and deliver to any securities intermediary or other Person any entitlement order or other notice, document or instrument which the Administrative Agent may deem necessary or advisable to maintain, protect, realize upon and preserve the Deposit Accounts and Investment Property of such Grantor and the Administrative Agent's security interest therein; and

(o) execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of such Grantor, which the Administrative Agent may deem necessary or advisable to maintain, protect, realize upon and preserve the Collateral and the Administrative Agent's security interest therein and to accomplish the purposes of this Agreement.

The Administrative Agent agrees that, except upon the occurrence and during the continuation of an Event of Default, it shall not exercise the power of attorney, or any rights granted to the Administrative Agent, pursuant to **clauses (b) through (o)**. The foregoing power of attorney is coupled with an interest and irrevocable so long as the Lenders have any Commitments or the Secured Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have not been indefeasibly paid in full in cash. Each Grantor hereby ratifies, to the extent permitted by applicable Law, all that the Administrative Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this **Section 7**.

SECTION 8. Agent Performance of Grantor Obligations. The Administrative Agent may perform or pay any obligation which any Grantor has agreed to perform or pay under or in connection with this Agreement, and such Grantor shall reimburse the Administrative Agent on demand for any amounts paid, or costs incurred, by the Administrative Agent pursuant to this **Section 8**.

SECTION 9. Agent's Duties. Notwithstanding any provision contained in this Agreement, the Administrative Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so. Beyond the exercise of reasonable care to assure the safe custody of Collateral in the Administrative Agent's possession and the accounting for moneys actually received by the Administrative Agent hereunder, the Administrative Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

SECTION 10. Remedies.

(a) Remedies. Upon the occurrence and during the continuation of any Event of Default, the Administrative Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Credit Agreement, the Guaranty or any other Loan Document, all rights and remedies of a secured party under the NY UCC and other applicable Laws. Without limiting the generality of the foregoing, each Grantor agrees that:

(i) The Administrative Agent may peaceably and without notice enter any premises of such Grantor, take possession of any Collateral, remove or dispose of all or part of the Collateral on any premises of such Grantor or elsewhere, or, in the case of Equipment, render it nonfunctional, and otherwise collect, receive, appropriate and realize upon all or any part of the Collateral, and demand, give receipt for, settle, renew, extend, exchange, compromise, adjust, or sue for all or any part of the Collateral, as the Administrative Agent may determine.

(ii) The Administrative Agent may require such Grantor to assemble all or any part of the Collateral and make it available to the Administrative Agent, at any place and time designated by the Administrative Agent.

(iii) The Administrative Agent may use or transfer any of such Grantor's rights and interests in any Intellectual Property Collateral, by license, by sublicense (to the extent permitted by an applicable license) or otherwise, on such conditions and in such manner as the Administrative Agent may determine.

(iv) The Administrative Agent may secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable Law).

(v) The Administrative Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts, Securities Accounts or Commodity Accounts.

(vi) The Administrative Agent may sell, resell, lease, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable preparation or processing (utilizing in connection therewith any of such Grantor's assets, without charge or liability to the Administrative Agent therefor) at public or private sale, by one or more Contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Administrative Agent deems advisable; provided, however, that such Grantor shall be credited with the net proceeds of sale only when such proceeds are finally collected by the Administrative Agent. The Administrative Agent and each of the other Secured Parties shall have the right upon any such public sale, and, to the extent permitted by applicable Law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption such Grantor hereby releases, to the extent permitted by applicable Law. The Administrative Agent shall give such Grantor such notice of any public or private sale as may be required by the NY UCC or other applicable Law. Such Grantor recognizes that the Administrative Agent may be unable to make a public sale of any or all of the Pledged Collateral, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale.

(vii) Neither the Administrative Agent nor any other Secured Party shall have any obligation to clean up or otherwise prepare the Collateral for sale. The Administrative Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and the Administrative Agent and the other Secured Parties may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting the Administrative Agent's or any other Secured Party's rights against such Grantor. Such Grantor waives any right it may have to require the Administrative Agent or any other Secured Party to pursue any third Person for any of the Secured Obligations. The Administrative Agent and the other Secured Parties may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If the Administrative Agent sells any of the Collateral upon credit, such Grantor will be credited only with payments actually made by the purchaser, received by the Administrative Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Administrative Agent may resell the Collateral and the Grantors shall be credited with the proceeds of the sale.

(b) License. For the purpose of enabling the Administrative Agent to exercise its rights and remedies under this **Section 10** or otherwise in connection with this Agreement, each Grantor hereby grants to the Administrative Agent an irrevocable, non-exclusive and assignable license (exercisable without payment or royalty or other compensation to such Grantor but only for so long as an Event of Default has occurred and is continuing) to use, license or sublicense any Intellectual Property Collateral in the reasonable determination of the Administrative Agent.

(c) Application of Proceeds. The cash proceeds actually received from the sale or other disposition or collection of any Grantor's Collateral, and any other amounts received in respect of such Collateral the application of which is not otherwise provided for herein, shall be applied in accordance with the Credit Agreement. Any surplus thereof which exists after payment and performance in full of the Secured Obligations shall be promptly paid over to such Grantor or otherwise disposed of in accordance with the NY UCC or other applicable Law. Each Grantor shall remain liable to the Administrative Agent and the other Secured Parties for any deficiency which exists after any sale or other disposition or collection of Collateral.

SECTION 11. Certain Waivers. Each Grantor waives, to the fullest extent permitted by applicable Law, (a) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (b) any right to require the Administrative Agent or the other Secured Parties (i) to proceed against any Person, (ii) to exhaust any other collateral or security for any of the Secured Obligations, (iii) to pursue any remedy in the Administrative Agent's or any of the other Secured Parties' power, or (iv) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral; and (c) all Claims, damages, and demands against the Administrative Agent or the other Secured Parties arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral.

SECTION 12. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses specified in Section 14.02 of the Credit Agreement.

SECTION 13. No Waiver; Cumulative Remedies. No failure on the part of the Administrative Agent or any other Secured Party to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Administrative Agent or any other Secured Party.

SECTION 14. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by each Grantor, the Administrative Agent, each Secured Party and their respective successors and permitted assigns and shall bind any Person who becomes bound as a debtor, agent or secured party to this Agreement.

SECTION 15. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; provided that Section 5-1401 of the New York General Obligations Law shall apply.

SECTION 16. Submission to Jurisdiction. (a) Each Grantor agrees that any suit, action or proceeding with respect to this Agreement or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in New York, New York or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive

jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 16** is for the benefit of the Secured Parties only and, as a result, no Secured Party shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by any Law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

(b) Waiver of Venue. Each Grantor irrevocably waives to the fullest extent permitted by applicable Law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement and hereby further irrevocably waives to the fullest extent permitted by applicable Law any Claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

(c) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in **Section 12**. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

SECTION 17. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 18. Entire Agreement; Amendment. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. Each Grantor acknowledges, represents and warrants that in deciding to enter into this Agreement and the other Loan Documents and in taking or not taking any action hereunder or thereunder, it has not relied, and will not rely, on any statement, representation, warranty, covenant, agreement or understanding, whether written or oral, of or with the Lenders other than those expressly set forth in this Agreement and the other Loan Documents. This Agreement shall not be amended except by the written agreement of the parties as provided in the Credit Agreement.

SECTION 19. Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

SECTION 20. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof.

SECTION 21. No Inconsistent Requirements. Each Grantor acknowledges that this Agreement and the other Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

SECTION 22. Accession. At such time following the date hereof as any Person (an "**Acceding Grantor**") is required to accede hereto pursuant to the terms of Section 8.11 of the Credit Agreement, such Acceding Grantor shall execute and deliver to the Administrative Agent an accession agreement substantially in the form of **Exhibit A** (an "**Accession Agreement**"), signifying its agreement to be bound by the provisions of this Agreement as a Grantor to the same extent as if such Acceding Grantor had originally executed this Agreement as of the date hereof.

SECTION 23. Termination. Upon the termination of the Commitments of the Lenders and payment and performance in full in cash of all Secured Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no Claim has been made), the security interests created by this Agreement shall terminate and the Administrative Agent shall promptly execute and deliver to each Grantor such documents and instruments reasonably requested by such Grantor as shall be necessary to evidence the termination of all security interests given by such Grantor to the Administrative Agent hereunder.

[Remainder of page intentionally left blank; signature pages follow]

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

GRANTOR:

NEURONETICS, INC.

By: _____
Name: Stephen Furlong
Title: Executive Vice President, Chief Financial
Officer, and Treasurer

[Signature Page to Security Agreement]

AGENT:

PERCEPTIVE CREDIT HOLDINGS IV, LP, as
the Administrative Agent

By Perceptive Credit Opportunities GP, LLC, its general
partner

By: _____

Name: Sandeep Dixit

Title: Chief Credit Officer

By: _____

Name: Sam Chawla

Title: Portfolio Manager

[Signature Page to Security Agreement]

CREDIT AGREEMENT AND GUARANTY

dated as of

July 25, 2024

by and among

**NEURONETICS, INC.
as the Borrower,**

THE SUBSIDIARY GUARANTORS FROM TIME TO TIME PARTY HERETO,

as the Subsidiary Guarantors,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

as the Lenders,

and

**PERCEPTIVE CREDIT HOLDINGS IV, LP,
as the Initial Lender and Administrative Agent**

U.S. \$90,000,000

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CREDIT AGREEMENT AND GUARANTY

Credit Agreement and Guaranty, dated as of July 25, 2024 (this “*Agreement*”), by and among Neuronetics, Inc., a Delaware corporation (the “*Borrower*”), the Subsidiary Guarantors from time to time parties hereto, Perceptive Credit Holdings IV, LP, a Delaware limited partnership (the “*Initial Lender*”), and each other lender that may from time to time become a party hereto (each, including the Initial Lender, together with their permitted successors and assigns, a “*Lender*” and collectively, the “*Lenders*”), and Perceptive Credit Holdings IV, LP, a Delaware limited partnership, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the “*Administrative Agent*”).

WITNESSETH:

WHEREAS, the Borrower has requested that the Initial Lender provide a senior, secured, delayed-draw term loan facility to the Borrower in an aggregate principal amount of \$90,000,000 with (i) \$50,000,000 in aggregate principal amount of Loans to be available on the Closing Date (the “*Tranche 1 Loan*”), (ii) up to an additional \$15,000,000 in aggregate principal amount of Loans (the “*Tranche 2 Loan*”) to be available after the Closing Date and on or prior to December 31, 2025 and (iii) up to an additional \$25,000,000 in aggregate principal amount of Loans (the “*Tranche 3 Loan*”) to be available after the Closing Date and on or prior to June 30, 2026, in each case, subject to the terms and conditions set forth herein, including the applicable conditions precedent set forth in **Section 6** and, with respect to the Tranche 3 Loan, at the sole discretion of the Majority Lenders; and

WHEREAS, the Initial Lender is willing, on the terms and subject to the conditions set forth herein, to make the Loans to the Borrower.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

“*Account Control Agreement*” means a control agreement or other similar agreement with respect to one or more Controlled Accounts, entered into by the applicable depository bank, one of more Obligor and the Administrative Agent, in form and substance satisfactory to the Administrative Agent, in order to give the Administrative Agent “control” (within the meaning set forth in Section 9-104 of the UCC) of such Controlled Accounts.

“*Acquisition*” means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of a take-over bid, tender offer, amalgamation, consolidation, merger, purchase of Equity Interests or other assets, or similar transaction having the same effect as any of the foregoing, (i) acquires any business or all or substantially all of the assets of any Person, (ii) acquires all or substantially all of a business line or unit or division of any other Person, (iii) with respect to any other Person that is managed or governed by a Board, acquires control of Equity Interests of such other Person representing more than fifty percent

(50%) of the ordinary voting power (determined on a fully-diluted, as if converted or exercised basis) for the election of directors of such Person's Board, if the business affairs of such Person are managed by a Board, or (iv) acquires control of more than fifty percent (50%) of the Equity Interests in any Person (determined on a fully-diluted, as if converted or exercised basis) engaged in any business that is not managed by a Board.

"*Administrative Agent*" has the meaning set forth in the preamble hereto.

"*Adverse Regulatory Event*" means the occurrence of any of the following events or circumstances:

(a) (i) the failure of the Borrower or any of its Subsidiaries to hold, directly or through licensees or agents, in full force and effect, all Regulatory Approvals necessary or required for the Borrower or any Subsidiary to conduct its Product Development and Commercialization Activities; or (ii) the failure of any such Regulatory Approval to be valid or otherwise effective and in full force and effect;

(b) (i) the failure of the Borrower or any of its Subsidiaries to make or file with the FDA or any other applicable Regulatory Authority, any required notice, report, registration, listing, application or similar document, instrument, or report, including any such requirement pursuant to 21 U.S.C. 360i or 21 C.F.R. Parts 803 and 806, and any field alert or other report of any adverse experience (each a "*Regulatory Filing*") with respect to any Product or Product Development and Commercialization Activity or (ii) if filed, the failure of any such Regulatory Filing (at the time of such filing) to be complete, correct and in compliance with the applicable Law requiring such Regulatory Filing to be made;

(c) in connection with any clinical, pre-clinical, safety or other studies or tests being conducted by (or on behalf of) the Borrower or any of its Subsidiaries for purposes of obtaining any Regulatory Approval for any Product or any Product Development and Commercialization Activities, (i) the failure of any clinical, pre-clinical, safety or other required trial, study or test to be conducted in compliance with any applicable Law, Regulatory Approval or Product Standard; (ii) the failure of any related manufacturing, test or clinical trial site to be monitored by the Borrower or any of its Subsidiaries in compliance with any applicable Law, Regulatory Approval or Product Standard; or (iii) the receipt by the Borrower or any of its Subsidiaries of written notice from the FDA or any other Regulatory Authority or IRB having regulatory oversight of the Borrower or any of its Subsidiaries, which notice requires the termination or suspension of any such clinical, preclinical, safety or other study or test;

(d) the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any agent, supplier, licensor or licensee of the Borrower or any of its Subsidiaries, receives from the FDA or any other Regulatory Authority any inspection report, warning letter or notice or similar document with respect to any Product or any Product Development and Commercialization Activities that asserts (i) that such Person lacks a required Regulatory Approval or Regulatory Filing with respect to such Product or Product Development and Commercialization Activity; or (ii) a lack of compliance with any applicable Laws, Product Standards or Regulatory Approvals (or any similar order, injunction or decree) or (iii) that the FDA or such other Regulatory Authority has commenced any regulatory action, investigation or inquiry (other than routine or periodic inspections or reviews) with respect to any Product or any Product Development and Commercialization Activities

(e) with respect to any Product or Product Development and Commercialization Activities, (i) any product recall, safety alert, correction, withdrawal, marketing suspension or removal, or any closure or suspension of any related manufacturing facility or operation, in each case whether voluntary or involuntary, is mandated, conducted, undertaken or issued, as the case may be, at the request, demand or order of the FDA or any other any Regulatory Authority , or through the voluntary action of the Borrower or any of its Subsidiaries , (ii) the FDA or any other Regulatory Authority commences any criminal, injunctive, seizure, detention or civil penalty action or (iii) the Borrower or any of its Subsidiaries enters into any consent decree, plea agreement or other settlement with the FDA or any other Regulatory Authority with respect to any of the foregoing.

“**Affected Financial Institution**” means (i) any EEA Financial Institution or (ii) any UK Financial Institution.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with such specified Person; provided that, with respect to any Lender, an “Affiliate” of such Lender shall include any Related Fund of such Lender.

“**Agreement**” has the meaning set forth in the preamble hereto.

“**Applicable Margin**” means 7.00%, as potentially increased pursuant to **Section 3.02(b)**.

“**Asset Sale**” has the meaning set forth in **Section 9.09**.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an assignee of such Lender substantially in the form of **Exhibit F**.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing Law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (ii) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their Affiliates (other than through liquidation, administration or other Insolvency Proceedings).

“**Bailee Letter**” means a bailee letter substantially in the form of Exhibit F to the Security Agreement.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy.”

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the Laws of the United States or otherwise) to which any Obligor or Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

“**Board**” means, with respect to any Person, the board of directors (or equivalent management or oversight body) of such Person or any committee thereof duly authorized to act on behalf of such board (or equivalent body).

“**Borrower**” has the meaning set forth in the introduction hereto.

“**Borrowing**” means, as the context may require, the borrowing of the Tranche 1 Loan on the Closing Date, the borrowing of the Tranche 2 Loan on the Tranche 2 Borrowing Date or the borrowing of the Tranche 3 Loan on the Tranche 3 Borrowing Date.

“**Borrowing Date**” means, with respect to the Tranche 1 Loan, the Closing Date, with respect to the Tranche 2 Loan, the Tranche 2 Borrowing Date, and with respect to the Tranche 3 Loan, the Tranche 3 Borrowing Date.

“**Borrowing Notice**” means a written notice substantially in the form of **Exhibit B**.

“**Business Day**” means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

“**Calculation Date**” has the meaning set forth in **Section 10.02**.

“**Capital Lease Obligation**” means, as to any Person, any obligation of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real or personal property, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of any such obligation shall be the capitalized amount thereof, determined in accordance with GAAP.

“**Casualty Event**” means the damage, destruction or condemnation, as the case may be, of property of any Person or any of its Subsidiaries.

“**Change of Control**” means an event or series of events (including any Acquisition) that occurs after the Closing Date and causes or results in any of the following:

(i) any Person or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any Benefit Plan of such Person, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such Benefit Plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a Person or group shall be deemed to have “beneficial ownership” of all securities that such Person or group has the right to acquire, whether such right

is exercisable immediately or only after the passage of time (such right, an “*option right*”), directly or indirectly, of more than thirty-five percent (35%) of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right);

(ii) during any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (a) who were members of such Board on the first day of such period, (b) whose election or nomination to such Board was approved by individuals referred to in **clause (a)** above constituting at the time of such election or nomination at least a majority of such Board or (c) whose election or nomination to such Board was approved by individuals referred to in **clauses (a) and (b)** above constituting at the time of such election or nomination at least a majority of such Board;

(iii) any Obligor shall cease to own, directly, beneficially and of record or legally, one hundred percent (100%) of the issued and outstanding Equity Interests of its Subsidiaries, free and clear of all Liens (other than Permitted Liens); or

(iv) the sale of all or substantially all of the properties or businesses of the Borrower and its Subsidiaries, taken as a whole.

“*Claim*” means any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgment or other similar process, assessment or reassessment, whether made, converted or assessed in connection with a debt, liability, dispute, breach, failure or otherwise.

“*Closing Date*” means July 25, 2024.

“*Closing Date Certificate*” has the meaning set forth in **Section 6.01(b)**.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“*Collaboration Partner*” means any of the Borrower’s or its Subsidiaries’ licensees or licensors or any third party with which the Borrower or any of its Subsidiaries has entered into a Contract that relates to the research, development, supply, manufacturing or testing of any Product.

“*Collateral*” means any asset or property in which a Lien is purported to be granted to any Secured Party under any Loan Document, including future acquired or created assets or properties (or all such assets or properties, as the context may require).

“*Commitment*” means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on the applicable Borrowing Date in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender’s name on **Schedule 1** under the caption “Commitment”, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise; provided that with respect to the Loans, the aggregate Commitments of all Lenders on the Closing Date equal \$65,000,000.

“**Commodity Account**” means any commodity account, as such term is defined in Section 9-102 of the NY UCC.

“**Compliance Certificate**” has the meaning set forth in **Section 8.01(c)**.

“**Conforming Changes**” means, with respect to either the use or administration of One-Month Term SOFR, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of **Section 3.02(e)** and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Contracts**” means contracts, licenses, leases, agreements, instruments, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements pursuant to which a Person has, or will have, any actual or contingent obligations or liabilities (in each case, whether written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise, in each case, other than the Loan Documents). “**Contractual**” has a meaning correlative thereto.

“**Control**” means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by Contract or otherwise. “**Controlling**” and “**Controlled**” (and similar derivative terms) have meanings correlative thereto.

“**Controlled Account**” has the meaning set forth in **Section 8.16(a)**.

“**Copyright**” means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof, and all other rights whatsoever accruing thereunder or pertaining thereto throughout the world.

“**Default**” means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

“**Default Rate**” has the meaning set forth in **Section 3.02(b)**.

“*Deposit Account*” means any deposit account, as such term is defined in Section 9-102 of the NY UCC.

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory is the subject of any Sanction.

“*Device*” has the meaning set forth in Section 201(h) of the FD&C Act.

“*Disqualified Equity Interests*” means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security, Contract or other Equity Interest into which it is convertible or for which it is exchangeable upon exercise or otherwise), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is one hundred and eighty (180) days after the Maturity Date.

“*Dollars*” and “*\$*” means lawful money of the United States of America.

“*Domestic Subsidiary*” means any direct or indirect Subsidiary of the Borrower that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the Laws of the United States, any State of the United States or the District of Columbia.

“*Early Prepayment Fee*” means, with respect to any prepayment (or other payment) made prior to the scheduled Maturity Date of all or any portion of the outstanding principal amount of the Loans on any Prepayment Date, whether mandatory or voluntary, pursuant to **Section 3.01(a)**, **Section 3.03(a)** or **Section 3.03(b)** or otherwise (including as a result of acceleration, an Insolvency Proceeding or other Event of Default):

(i) on or prior to the first anniversary of the Closing Date, an amount equal to six percent (6.00%) of the aggregate outstanding principal amount of the Loans being prepaid on such Prepayment Date;

(ii) after the first anniversary of the Closing Date and on or prior to the second anniversary of the Closing Date, an amount equal to five percent (5.00%) of the aggregate outstanding principal amount of the Loans being prepaid on such Prepayment Date;

(iii) after the second anniversary of the Closing Date and on or prior to the third anniversary of the Closing Date, an amount equal to four percent (4.00%) of the aggregate outstanding principal amount of the Loans being prepaid on such Prepayment Date; and

(iv) after the third anniversary of the Closing Date and on or prior to the fourth anniversary of the Closing Date, an amount equal to three percent (3.00%) of the aggregate outstanding principal amount of the Loans being prepaid on such Prepayment Date.

“EEA Financial Institution” means (i) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (ii) any entity established in an EEA Member Country which is a parent of an institution described in clause (i) of this definition, or (iii) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (i) or (ii) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Transferee” means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Related Fund or other investment Fund that invests in loans or other obligations for borrowed money, (vi) with respect to any Lender, any of its Affiliates, and (vii) any other “accredited investor” (as defined in Regulation D of the Securities Act) that is principally engaged in the business of managing investments or holding assets for investment purposes.

“Environmental Law” means any Law or Governmental Approval relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of Hazardous Materials, and all local laws and regulations, whether U.S. or non-U.S., related to environmental matters and any specific agreements entered into with any Governmental Authority which include commitments related to environmental matters.

“Equity Interests” means, with respect to any Person (for purposes of this defined term, an “*issuer*”), all shares of, interests or participations in, or other equivalents in respect of such issuer’s capital stock, including all membership interests, partnership interests or equivalent, and all debt or other securities (including warrants, options and similar rights) directly or indirectly exchangeable, exercisable or otherwise convertible into, such issuer’s capital stock, whether now outstanding or issued after the Closing Date, and in each case, however classified or designated and whether voting or non-voting.

“Equivalent Amount” means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which could give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, Taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such Plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; or (xvii) the imposition of any Lien (or the fulfillment of the conditions for the imposition of any Lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code.

“**ERISA Funding Rules**” means the rules regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“**Event of Default**” has the meaning set forth in **Section 11.01**.

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

“**Exchange Rate**” means, as of any date of determination, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Bloomberg screen at or about 11:00 a.m. (New York City time) on such date. In the event that such rate does not appear on the Bloomberg screen, the “**Exchange Rate**” shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably designated by the Administrative Agent.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 5.03(h)**) or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 5.03**, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient’s failure to comply with **Section 5.03(g)**, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

“**Exclusive License**” (and its derivatives) means and refers to any outbound license (or equivalent) of Intellectual Property that is exclusive (whether as to use, field, geography or otherwise) and (i) has a term that is longer than twelve (12) months from the date of the original effective date of such license or (ii) is subject to an automatic renewal or similar right that would result in the term thereof being longer than twelve (12) months from such original effective date of such license (or equivalent).

“**Exculpated Party**” has the meaning set forth in **Section 14.03(b)**.

“**Expense Deposit**” means the “Expense Deposit” as such term is defined in the Summary of Terms.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“**FD&C Act**” means the U.S. Food, Drug and Cosmetic Act of 1938 (or any successor thereto), as amended from time to time, and the rules and regulations promulgated thereunder.

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

“**FDA Form 483**” means a form issued to firm management at the conclusion of an inspection when an investigator(s) has observed any conditions that in their judgment may constitute violations of the FD&C Act.

“**Federal Funds Effective Rate**” means, for any day, the greater of (i) the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York sets forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate and (ii) zero percent (0%).

“**Federal Health Care Program**” means any “*federal health care program*” as defined in 42 U.S.C. § 1320a-7b(f), including Medicare, state Medicaid programs, state CHIP programs, TRICARE and similar or successor programs with or for the benefit of any Governmental Authority.

“**Foreign Pension Plan**” means any benefit plan that under applicable Law, other than the Laws of the United States or any political subdivision thereof, is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

“**Foreign Subsidiary**” means any direct or indirect Subsidiary of the Borrower that is not a Domestic Subsidiary.

“**Fund**” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination.

“Good Manufacturing Practice and Quality System Regulation Requirements” means the current good manufacturing practice and standards, as provided for (and amended from time to time) in the FD&C Act related to good manufacturing practice for medical devices, including but not limited to, the regulations of the U.S. Code of Federal Regulations Title 21 (21 CFR Part 820), or other applicable laws, regulations or respective guidance documents now or subsequently established by a FDA or comparable Government Authority, and any arrangements, additions, or clarifications agreed from time to time between Parties.

“Governmental Approval” means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance, exemption, listing, filing or notice that is issued or granted by or from (or pursuant to any act of) any Governmental Authority, in connection with any Law or otherwise, including any application or submission related to any of the foregoing.

“Governmental Authority” means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political agency, department or subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other Law-, rule- or regulation-making organizations or entities of any State, territory, county, city or other political subdivision of any country, in each case, whether U.S. or non-U.S., including the FDA, Department of Health and Human Services (HHS), HHS Office of the Inspector General (HHS OIG), U.S. Department of Justice (DOJ), and any other agency, branch or other governmental body that has regulatory, enforcement, supervisory or administrative authority or oversight over, or is charged with the responsibility or vested with the authority to administer or enforce, any Healthcare Laws or issue or approve any Governmental Approval under or in connection with any such Healthcare Laws.

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person (the **“guarantor”**) guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against Loss in respect thereof (in whole or in part), or (b) any Lien on any assets of the guarantor securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor (or any right, contingent or otherwise, of the obligee of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guarantor in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guarantee Assumption Agreement**” means a Guarantee Assumption Agreement substantially in the form of **Exhibit A** by an entity that, pursuant to **Section 8.11(a)**, is required to become a “Subsidiary Guarantor.”

“**Guaranteed Obligations**” has the meaning set forth in **Section 13.01**.

“**Hazardous Material**” means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (i) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (ii) any material classified or regulated as “hazardous” or “toxic” or words of like import pursuant to an Environmental Law.

“**Healthcare Laws**” means, collectively, all Laws applicable to the business of the Borrower or any other Obligor, regulating the manufacturing, labeling, promotion and provision of and payment for Devices, including but not limited to HIPAA, Section 1128B(b) of the Social Security Act, as amended; 42 U.S.C. § 1320a-7b (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute”; Section 1877 of the Social Security Act, as amended; 42 U.S.C. § 1395nn (Limitation on Certain Physician Referrals), commonly referred to as “Stark Statute,” if applicable; U.S. Federal Food, Drug, and Cosmetic Act, as amended from time to time (21 U.S.C. § 301 et seq.); all rules, regulations and guidance with respect to the provision of Medicare and Medicaid programs or services (42 C.F.R. Chapter IV et seq.), if applicable; the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h); and all rules, regulations and guidance promulgated under or pursuant to any of the foregoing.

“**Hedging Agreement**” means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“**IDE**” means an application, including an application filed with any Regulatory Authority, for authorization to commence human clinical studies with respect to any Device, including (i) an Investigational Device Exemption as defined in the FD&C Act or any successor application or procedure filed with the FDA, (ii) an abbreviated Investigational Device Exemption as specified in FDA regulations in 21 C.F.R. § 812.2(b), (iii) any equivalent of a United States Investigational Device Exemption in countries, jurisdictions or Governmental Authorities outside of the United States, (iv) all amendments, variations, extensions and renewals thereof that may be filed with respect to the foregoing and (v) all related documents and correspondence thereto, including documents and correspondence with Institutional Review Boards (an “**IRB**”).

“**Indebtedness**” means, with respect to any Person, any of the following (excluding any of the following to the extent comprised of an obligation in respect of a trade payable, a commercial letter of credit supporting one or more trade payables or similar obligations to a trade creditor, in each case incurred in the ordinary course of business): (i) all obligations of such Person for borrowed money or obligations of such Person with respect to deposits or advances of any kind by third parties, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan

agreements or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business not overdue by more than ninety (90) days), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (xii) all obligations of such Person under license or other agreements containing a guaranteed minimum payment or purchase by such Person, (xiii) all other obligations required to be classified as indebtedness of such Person under GAAP and (xiv) any Disqualified Equity Interests of or issued by such Person. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Party" has the meaning set forth in **Section 14.03(b)**.

"Indemnified Taxes" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (ii) to the extent not otherwise described in **clause (i)**, Other Taxes.

"Information and Collateral Certificate" means an Information and Collateral Certificate, substantially in the form of **Exhibit G**.

"Initial Lender" has the meaning set forth in the preamble hereto.

"Insolvency Proceeding" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. Federal, state or foreign Law, including the Bankruptcy Code.

"Intellectual Property" means all Patents, Trademarks, Copyrights, and Technical Information, whether registered or not, U.S. or non-U.S., including, without limitation, all of the following:

- (a) applications, registrations amendments and extensions relating to such Intellectual Property;
- (b) rights and privileges arising under any Law with respect to such Intellectual Property;

- (c) rights to sue for or collect any damages for any past, present or future infringements of such Intellectual Property; and
- (d) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

“**Intercompany Subordination Agreement**” means a subordination agreement to be executed and delivered by the Borrower and each of its Subsidiaries, pursuant to which all obligations in respect of any Indebtedness owing to any such Person by the Borrower or any of its Subsidiaries shall be subordinated to the prior payment in full in cash of all Obligations, such agreement to be substantially in the form attached hereto as **Exhibit L**.

“**Interest Period**” means, with respect to any Borrowing, (i) initially, the period commencing on (and including) the Borrowing Date thereof and ending on (and including) the last day of the calendar month in which such Borrowing was made, and (ii) thereafter, the period beginning on (and including) the first day of each succeeding calendar month and ending on the earlier of (and including) (x) the last day of such calendar month and (y) the Maturity Date.

“**Interest Rate**” means, for any Interest Period, the sum of (i) the Applicable Margin plus (ii) the greater of (x) the Reference Rate and (y) four and one-half percent (4.50%).

“**Invention**” means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

“**Investment**” means, for any Person: (i) the purchase or other acquisition (whether for cash, property, services or securities or otherwise) of Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or entry into any agreement to make any such acquisition (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person; (iii) the making of any deposit with, or advance, loan, capital contribution or other extension of credit to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person); (iv) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (v) the entering into of any Hedging Agreement. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any returns or distributions of capital or repayment of principal actually received in case by such Person with respect thereto.

“**IRB**” is defined within the definition of “**IDE**”.

“**IRS**” means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

“**Landlord Consent**” means a landlord consent substantially in the form of Exhibit E to the Security Agreement.

“**Law**” means any U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including any interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**Lender**” has the meaning set forth in the preamble hereto.

“**Lien**” means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Security Documents, any Guarantee Assumption Agreement, any Information and Collateral Certificate, the Warrant Certificate, any Intercompany Subordination Agreement, and any other guaranty, security agreement, subordination agreement, intercreditor agreement or other present or future document, instrument, agreement, certificate or other amendment, waiver or modification of the foregoing delivered to the Administrative Agent or any Lender in connection with this Agreement or any of the other Loan Documents (including, without limitation, in connection with **Section 8.11**), in each case, as amended or otherwise modified from time to time.

“**Loans**” means, collectively, the Tranche 1 Loan, the Tranche 2 Loan and the Tranche 3 Loan, and “**Loan**” means any of the foregoing.

“**Loss**” means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value or revenue, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

“**Majority Lenders**” means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

“**Margin Stock**” means “margin stock” within the meaning of Regulations U and X.

“**Material Adverse Change**” and “**Material Adverse Effect**” mean any event, occurrence, fact, development or circumstance that has had, or could reasonably be expected to have, a material adverse change in or material adverse effect upon (i) the business, condition (financial or otherwise), operations, performance, or property of the Borrower or the Borrower and its Subsidiaries taken as a whole, (ii) the ability of any Obligor to perform its obligations under any Loan Document to which it is a party or (iii) the legality, validity, binding effect or enforceability against any Obligor of any of the Loan Documents to which it is a party or the rights and remedies available to or conferred upon any Secured Party under any Loan Document.

“**Material Agreement**” means (i) each Contract listed in **Schedule 7.14**, (ii) any other Contract to which the Borrower or any of its Subsidiaries is a party or a beneficiary from time to time and as to which the absence or termination thereof could reasonably be expected to result in a Material Adverse Effect, and (iii) any other Contract to which the Borrower or any of its Subsidiaries is a party or a guarantor (or equivalent) that, during any period of twelve (12) consecutive months is reasonably expected to (x) result in payments or receipts (including royalty, licensing or similar payments) made to the Borrower or any of its Subsidiaries in an aggregate amount in excess of \$1,000,000, or (y) require payments or expenditures (including royalty, licensing or similar payments) to be made by the Borrower or any of its Subsidiaries in an aggregate amount in excess of \$1,000,000.

“**Material Inbound License**” means any inbound license, lease, royalty or similar agreement in respect of Intellectual Property or similar intangible property requiring the Borrower or any of its Subsidiaries, as the case may be, during any twelve (12) month period during the term of such license agreement, to make aggregate payments in excess of \$1,000,000; provided that inbound license agreements in the nature of over the counter software commercially available to the public and entered into in the ordinary course of business shall not qualify as Material Inbound Licenses.

“**Material Indebtedness**” means, at any time, any Indebtedness of the Borrower or any of its Subsidiaries, the outstanding principal amount of which, individually or in the aggregate, exceeds \$1,000,000 (or the Equivalent Amount).

“**Material Intellectual Property**” means, any Intellectual Property of the Borrower or any of its Subsidiaries, whether currently owned, licensed, acquired or developed or otherwise owned, licensed, acquired or developed after the date hereof, (i) that is necessary or required in connection with such Person’s Product Development and Commercialization Activities, (ii) the loss of which could reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event, or (iii) has a fair market value in excess of \$1,000,000.

“**Material Regulatory Event**” means an Adverse Regulatory Event that (i) individually has resulted in, or could reasonably be expected to result in, a fine, penalty or Loss (including a loss of revenue) in excess of \$1,000,000 per occurrence, (ii) when taken together with each other Adverse Regulatory Event that has occurred since the Closing Date, has resulted in, or could reasonably be expected to result in, a fine, penalty or Loss (including a loss of revenue) in excess of \$2,000,000 in the aggregate or (iii) has, directly or indirectly, resulted in a mandatory or voluntary recall of any Product for a period in excess of thirty (30) consecutive days.

“**Maturity Date**” means the earliest to occur of (i) July 25, 2029 and (ii) the acceleration of the Obligations pursuant to **Section 11.02**; provided that, when used herein, the term “**scheduled Maturity Date**” means the date set forth in **clause (i)** above.

“**Maximum Rate**” has the meaning set forth in **Section 14.17**.

“**Medicaid**” means that government-sponsored entitlement program under Title XIX, P.L. 89-97 of the Social Security Act, which provides federal grants to states for medical assistance based on specific eligibility criteria, as set forth on Section 1396, et seq. of Title 42 of the United States Code.

“**Medicare**” means that government-sponsored insurance program under Title XVIII, P.L. 89-97, of the Social Security Act, which provides for a health insurance system for eligible elderly and disabled individuals, as set forth at Section 1395, et seq. of Title 42 of the United States Code.

“**Multiemployer Plan**” means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“**Net Cash Proceeds**” means, (i) with respect to any Casualty Event experienced or suffered by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) including, without limitation, in the form of insurance proceeds or condemnation awards in respect of such Casualty Event, from time to time by or on behalf of such Person after deducting therefrom only (x) reasonable costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; and (ii) with respect to any Asset Sale by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (x) reasonable costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; provided that, in each case of **clauses (i) and (ii)**, costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries and (y) properly attributable to such Casualty Event or Asset Sale, as the case may be.

“**Net Revenue**” means, for any applicable fiscal period, consolidated total gross revenues of the Borrower and its Subsidiaries for such fiscal period, determined on a consolidated basis in accordance with GAAP applied in a manner consistent with the audited financial statements of the Borrower for the fiscal year ended December 31, 2023, *less* the sum of (i) all discounts and allowances given on such revenues pursuant to customary practices of the Borrower or its Subsidiaries, (ii) amounts repaid or credited by reason of rejection, returns or recalls, rebates or bona fide price reductions (including “free” or similar highly discounted samples), during such period, (iii) excise Taxes, customs duties, customs levies and import fees imposed on the sale, importation, use or distribution of any Products paid during such period, and (iv) all one-time, extraordinary or non-recurring payments of any type or nature, in each case if any and only to the extent included in the computation of consolidated total gross revenues of the Borrower and its Subsidiaries for such fiscal period.

“**Note**” means a promissory note, in substantially the form attached hereto as **Exhibit C**, executed and delivered by the Borrower to any Lender in accordance with **Section 2.03**.

“**NY UCC**” means the UCC as in effect from time to time in the State of New York.

“**Obligations**” means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Secured Party (including all Guaranteed Obligations and Warrant Obligations), any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is the Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

“**Obligors**” means, collectively, the Borrower, the Subsidiary Guarantors and any Subsidiary of the Borrower required to become a Subsidiary Guarantor or execute and deliver or become a party to any Security Document pursuant to **Section 8.11**, and their respective successors and permitted assigns.

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

“**One-Month Term SOFR**” means, the Term SOFR Reference Rate (expressed, as a decimal, rounded upwards, if necessary, to the nearest 1/100th of 1%) for a one month tenor on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of the applicable Interest Period, as such rate is published by the Term SOFR Administrator; provided that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then One-Month Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“**Organic Document**” means, for any Person, such Person’s formation documents, including, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability company agreement, operating agreement and all shareholder agreements, voting trusts and similar agreements and arrangements applicable to such Person’s Equity Interests, or any equivalent document of any of the foregoing.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(h)**).

“**Participant**” has the meaning set forth in **Section 14.05(e)**.

“**Participant Register**” has the meaning set forth in **Section 14.05(g)**.

“**Patents**” means all patents and patent applications, including (i) the Inventions and improvements described and claimed therein, (ii) patents and patent applications in any form in any worldwide jurisdiction, including but not limited to reissues, oppositions, divisions, continuations, renewals, extensions, expired, abandoned, rulings from any Governmental Authority regarding including ones arising from any proceeding such as *Inter Partes* review, and continuations in part thereof, and (iii) all income, royalties, damages and payment now, previously or hereafter due and payable with respect thereto, (iv) all damages and payment for past or future infringements thereof, and rights to sue thereof, and (v) all rights whatsoever pertaining to patents and patent applications accruing thereunder or pertaining thereto throughout the world.

“**Patriot Act**” has the meaning set forth in **Section 14.20**.

“**Payment Date**” means (i) the last day of each Interest Period (provided that if such last day of any Interest Period is not a Business Day, then the Payment Date shall be the next succeeding Business Day) and (ii) the Maturity Date (provided that if such Maturity Date is not a Business Day, then the Payment Date shall be the next succeeding Business Day).

“**PBGC**” means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Permitted Acquisition**” means any Acquisition by the Borrower or any of its Subsidiaries; provided that:

(a) immediately prior to, and after giving effect to such Acquisition, (i) all representations and warranties contained in this Agreement and the other Loan Documents that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all respects, (ii) all representations and warranties contained in this Agreement and the other Loan Documents that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects, and (iii) no Default shall have occurred and be continuing or could reasonably be expected to result therefrom;

(b) all transactions in connection therewith shall be consummated in accordance with all applicable Laws;

(c) in the case of an Acquisition of Equity Interests of any Person, all of such Equity Interests (except for any such securities in the nature of directors' qualifying shares required pursuant to any applicable Law) shall be owned by the Borrower or a wholly-owned, direct or indirect Subsidiary of the Borrower and pledged by the Borrower or an applicable Subsidiary to the Secured Parties pursuant to **Section 8.11(a)(iii)**, and, in the event of an Acquisition that results in the creation or acquisition of a new Subsidiary of the Borrower, the Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of the Borrower, each of the actions set forth in **Section 8.11(a)**, if applicable;

(d) such Person (in the case of an Acquisition of Equity Interests of such Person) or assets (in the case of an Acquisition of assets or a division of such Person) shall be engaged or used, as the case may be, in businesses or lines of business that would be permitted pursuant to **Section 9.04**;

(e) on a *pro forma* basis after giving effect to such Acquisition, the Borrower and its Subsidiaries shall be in compliance with the financial covenant set forth in **Section 10**;

(f) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof, (i) with respect to any individual Acquisition, does not exceed \$500,000 (or the Equivalent Amount), and (ii) when taken together with the purchase price paid in cash for all other Acquisitions consummated or effected since the Closing Date, does not exceed \$1,000,000 in the aggregate (or the Equivalent Amount);

(g) the fair market value of the consideration paid in such Acquisition (including any cash proceeds received in respect the issuance of any Equity Interests by the Borrower or any of its Subsidiaries), when taken together with the fair market value of consideration paid in connection with all other Permitted Acquisitions consummated since the Closing Date (in each case for purposes hereof to be determined by including all Indebtedness assumed in connection therewith, all payments made in connection therewith, whether in the form of Equity Interests, cash or other property or assets, and all deferred purchase price payments, whether in respect of earn-out payments, post-closing adjustments, payments on "seller notes" or otherwise related thereto, in each case to the extent actually paid or reasonably expected to be paid), does not exceed \$2,000,000 (or the Equivalent Amount) in the aggregate;

(h) to the extent that all or any portion of the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests of the Borrower;

(i) the Borrower shall have provided the Administrative Agent with at least fifteen (15) calendar days' prior written notice of such Acquisition, together with (i) a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents requested by the Administrative Agent), (ii) any available quarterly and annual financial statements of the Person whose Equity Interests or assets are being acquired for the twelve (12) month period ending thirty (30) days immediately prior to the projected closing date for such Acquisition, including any audited financial statements that are available, (iii) a summary of due diligence conducted by or on behalf of the Borrower or any of its Subsidiaries, as applicable, prior to such Acquisition, (iv) summary information regarding any contingent liabilities or prospective research and development costs associated with the Person, business or assets being acquired and (v) any other information reasonably requested by the Administrative Agent;

(j) neither the Borrower nor any of its Subsidiaries shall, in connection with (and upon giving effect to) any such Acquisition, assume or remain liable with respect to, or be subject to, (x) any Indebtedness of the related seller or the business, Person or properties acquired, except to the extent permitted pursuant to **Section 9.01**, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02** or (z) any other liability (including Tax, ERISA or environmental liabilities) in excess of \$250,000, in the aggregate since the Closing Date; and

(k) at least three (3) Business Days subsequent to the proposed date of any Acquisition, the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower (prepared in reasonable detail), certifying that the Acquisition complies with the requirements of this definition, which certificate shall include a summary (prepared in reasonable detail), certifying as to any contingent liabilities and prospective research and development costs associated with the Person, business or assets being acquired;

"Permitted Cash Equivalent Investments" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any state thereof having maturities of not more than one year from the date of acquisition, (ii) commercial paper maturing no more than two hundred and seventy (270) days after the date of its creation and rated at least "A-1" or "P-1" by Standard & Poor's Ratings Group or Moody's Investors Service, Inc., (iii) any Dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers' acceptance issued or accepted by any commercial bank that is (A) organized under the Laws of the United States, any state thereof or the District of Columbia, (B) "adequately capitalized" (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of \$500,000,000, and (iv) registered money market funds at least ninety-five percent (95.0%) of the assets of which constitute Permitted Cash Equivalent Investments of the kinds described in **clauses (i), (ii) and (iii)** above.

"Permitted Indebtedness" means any Indebtedness permitted under **Section 9.01**.

"Permitted Liens" means any Liens permitted under **Section 9.02**.

“Permitted Refinancing” means, with respect to any Indebtedness permitted to be refinanced, extended, renewed or replaced hereunder, any refinancing, extension, renewal or replacement of such Indebtedness; provided that such refinancing, extension, renewal or replacement shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that, taken as a whole, are less favorable in any material respect to the Borrower and its Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing the Indebtedness being refinanced (provided that the final maturity date of such Indebtedness shall be on or after the final maturity of the Indebtedness being refinanced and the Weighted Average Life to Maturity of such Indebtedness shall be greater than the Weighted Average Life to Maturity of the Indebtedness being refinanced), (iii) have an applicable interest rate or equivalent yield that exceeds the interest rate or equivalent yield of the Indebtedness being refinanced, (iv) contain any new requirement to grant any Lien or to give any Guarantee that was not an existing requirement of the Indebtedness being refinanced and (v) after giving effect to such refinancing, extension, renewal or replacement, no Default shall have occurred (or could reasonably be expected to occur) as a result thereof.

“Person” means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Prepayment Date” means any Business Day on which the Borrower (i) elects to optionally prepay or (ii) is required to repay or prepay, in each case, all or any portion of the outstanding principal amount of the Loans pursuant to **Section 3.01(a)**, **Section 3.03(a)** or **Section 3.03(b)**, respectively.

“Product” means (i) those Devices set forth (and described in reasonable detail) on **Schedule 2** attached hereto, and (ii) any current or future Device developed, distributed, manufactured, promoted licensed, marketed, sold or otherwise commercialized by the Borrower or any of its Subsidiaries, including any such Device currently in development.

“Product Agreement” means, with respect to any Product, any Contract under which one or more Persons grants or receives (i) any right, title or interest with respect to the Product Development and Commercialization Activities, or (ii) any right to exclude any other Person from engaging in, or otherwise restricting any right, title or interest as to, any Product Development and Commercialization Activities, including any Contract with suppliers, manufacturers, distributors, clinical research organizations, hospitals, group purchasing organizations, wholesalers, pharmacies or any other Person related to such entity.

“Product Authorizations” means any and all Regulatory Approvals and clearances (including all applicable IDEs, PMAs, De Novos, 510(k)s, Product Standards, supplements, amendments, pre- and post- approvals, governmental price and reimbursement approvals and approvals of applications for regulatory exclusivity), licenses, notifications, registrations or authorizations of any Regulatory Authority necessary for the ownership, use or other commercialization of any Product or for any Product Development and Commercialization Activities with respect thereto in any country or jurisdiction.

“Product Development and Commercialization Activities” means, with respect to any Product, any (i) research, development, manufacture, compliance, importation, exportation shipping, use, sale, storage, design, labeling, marketing, promotion, supply, distribution, testing, packaging, licensing, purchasing or other commercialization activities, (ii) receipt of payment or other remuneration in respect of any of the foregoing (including, without limitation, in respect of any licensing, royalty or similar payments), or (iii) any like or other activities the purpose of which is to commercially exploit any such Product.

“Product Related Information” means, with respect to any Product, all Product Agreements, books, records, lists, ledgers, files, manuals, Contracts, correspondence, reports, plans, drawings, data and other information of every kind (in any form or medium), and all techniques and other know-how, owned or possessed by the Borrower or any of its Subsidiaries that is necessary or useful for any Product Development and Commercialization Activities relating to such Product, including (i) brand materials, packaging and other trade dress, customer targeting and other marketing, promotion and sales materials and information, referral, customer, supplier and other contact lists and information, product, business, marketing and sales plans, research, studies and reports, sales, maintenance and production records, training materials and other marketing, sales and promotional information, (ii) clinical data, information included or supporting any Product Authorizations or other Regulatory Approval, any regulatory filings, updates, notices and correspondence (including adverse event and other pharmacovigilance and other post-marketing reports and information, etc.), technical information, product development and operational data and records, and all other documents, records, files, data and other information relating to product development, manufacture and use, (iii) litigation and dispute records, and accounting records; (iv) all documents, records and files relating to Intellectual Property, including all correspondence from and to third parties (including Intellectual Property counsel and patent, trademark and other intellectual property registries, including the U.S. Patent & Trademark Office), and (v) all other information, techniques and know-how necessary or useful in connection with the Product Development and Commercialization Activities for any Product.

“Product Standards” means all safety, quality and other specifications and standards applicable to any Product or Product Development and Commercialization Activities, including all medical device and other standards promulgated by any Regulatory Authority.

“Prohibited Payment” means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any Law for the purpose of influencing any act or decision of such payee in such payee’s official capacity, inducing such payee to do or omit to do any act in violation of such payee’s lawful duty, securing any improper advantage or inducing such payee to use such payee’s influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

“**Proportionate Share**” means, with respect to each Lender, the percentage obtained by dividing (i) the sum of all Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of all Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

“**Qualified Equity Interest**” means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

“**Qualified Plan**” means an employee Benefit Plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be Tax qualified under Section 401(a) of the Code.

“**Real Property Security Documents**” means any Landlord Consents, Bailee Letters and any mortgage or deed of trust or any other real property security document executed or required hereunder to be executed by any Obligor and granting a security interest in real property owned or leased (as tenant) by any Obligor in favor of the Administrative Agent for the benefit of the Secured Parties, in each case, as amended, supplemented or otherwise modified from time to time.

“**Recipient**” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any Obligation, as applicable.

“**Redemption Price**” has the meaning set forth in **Section 3.03(a)(i)**.

“**Reference Rate**” means One-Month Term SOFR; provided that if One-Month Term SOFR can no longer be determined by the Administrative Agent for any reason (in its sole but reasonable discretion, which determination shall be conclusive absent manifest error), including as a result of the One-Month Term SOFR not being available or published on a current basis or as a result of the occurrence of a Reference Rate Transition Event, then the Administrative Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to One-Month Term SOFR that gives due consideration to the then prevailing market convention for determining a rate of interest for middle-market loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable; provided, further that, until such alternate rate of interest is agreed upon by the Administrative Agent and the Borrower, the Reference Rate for purposes hereof and of each other Loan Document shall be the Wall Street Journal Prime Rate.

“**Reference Rate Transition Event**” means the occurrence of one or more of the following events with respect to the Reference Rate then in effect:

(a) a public statement or publication of information by or on behalf of the administrator of such Reference Rate announcing that such administrator has ceased or will cease to provide such Reference Rate, permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Reference Rate;

(b) a public statement or publication of information by the Governmental Authority governing or regulating the administrator of such Reference Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the then-current administrator for such Reference Rate, a resolution authority with jurisdiction over the then-current administrator for such Reference Rate or a court or an entity with similar insolvency or resolution authority over the administrator for such Reference Rate, which in any case states that the then-current administrator of such Reference Rate has ceased or will cease to provide such Reference Rate permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Reference Rate; or

(c) a public statement or publication of information by the Governmental Authority governing or regulating the then-current administrator of such Reference Rate announcing that such Reference Rate is no longer representative.

For the avoidance of doubt, a “**Reference Rate Transition Event**” will be deemed to have occurred with respect to any Reference Rate if a public statement or publication of information set forth above has occurred with respect to each then-current available tenor of such Reference Rate (or the published component used in the calculation thereof).

“**Refinanced Debt**” means the Indebtedness and related obligations under that certain Loan and Security Agreement dated as of March 2, 2020 (as amended, restated or otherwise modified from time to time), among, *inter alios*, the Borrower, the lenders parties thereto from time to time and SLR Investment Corp. (f/k/a Solar Capital Ltd.), as agent.

“**Register**” has the meaning set forth in **Section 14.05(d)**.

“**Regulation T**” means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

“**Regulation U**” means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

“**Regulation X**” means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

“**Regulatory Approvals**” means any Governmental Approval and clearance relating to any Product or Product Development and Commercialization Activities, including all Product Authorizations held by any Obligor or any of their respective licensors, as applicable, or that are pending before the FDA or equivalent non-U.S. Governmental Entity with respect to the Products.

“**Regulatory Authority**” means any Governmental Authority (including the FDA and all equivalent Governmental Authorities having jurisdiction outside the U.S.) that is concerned with or has regulatory oversight with respect to the use, permitting, control, safety, efficacy, reliability, manufacturing, marketing, distribution, sale or other Product Development and Commercialization Activities relating to any Product.

“**Related Fund**” means, with respect to any Lender, any Fund which is managed or advised by the same investment manager or investment adviser as such Lender or, if it is managed by a different investment manager or investment adviser, a Fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of such Lender.

“**Related Parties**” has the meaning set forth in **Section 14.16**.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Responsible Officer**” means, of any Person, each of the chief executive officer, president, vice president, treasurer, secretary, chief financial officer and each similar officer of such Person.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of the Borrower or any of its Subsidiaries, any payment of interest, principal or fees in respect of any Indebtedness owned by the Borrower or any of its Subsidiaries to any holder of any Equity Interests of the Borrower or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of the Borrower or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of the Borrower or any of its Subsidiaries.

“**Restrictive Agreement**” means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets (other than (x) customary provisions in Contracts (including without limitation leases and licenses of Intellectual Property) restricting the assignment thereof and (y) restrictions or conditions imposed by any Contract governing secured Permitted Indebtedness permitted under **Section 9.01(f)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of the Borrower or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to, or to Guarantee Indebtedness of, the Borrower or any of its Subsidiaries.

“**Sanction**” means any international economic sanction administered or enforced by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union or its member states, His Majesty’s Treasury or other relevant sanctions authority.

“**Secured Party**” means each Lender, the Administrative Agent, each other Indemnified Party, any other holder of any Obligation, and any of their respective permitted transferees or assigns.

“**Securities Account**” means any securities account, as such term is defined in Section 8-501 of the NY UCC.

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

“**Security Agreement**” means the Security Agreement, dated as of the date hereof, among the grantors party thereto (including the Borrower) and the Administrative Agent, granting a security interest in such grantor’s personal property in favor of the Administrative Agent, for the benefit of the Secured Parties, as amended or otherwise modified from time to time.

“**Security Documents**” means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement, registration, recordation, filing, instrument or approval required, entered into or recommended to grant, perfect and otherwise render enforceable Liens in favor of the Secured Parties for purposes of securing the Obligations, including (without limitation) pursuant to **Section 8.11**, in each case, as amended or modified from time to time.

“**Short-Form IP Security Agreements**” means short-form copyright, patent or trademark (as the case may be) security agreements, substantially in the form attached as Exhibits B, C, and D to the Security Agreement, entered into by one or more Obligor in favor of the Administrative Agent, for the benefit of the Secured Parties, each in form and substance satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time).

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**Solvent**” means, as to any Person as of any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Subsidiary**” means, with respect to any Person (for purposes of this definition, the “**parent**”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which Equity Interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, Controlled or held, directly or indirectly, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more direct or indirect Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent. Unless otherwise specified, references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantors**” means each of the Subsidiaries of the Borrower identified under the caption “SUBSIDIARY GUARANTORS” on the signature pages hereto and each Subsidiary of the Borrower that becomes, or is required to become, a “Subsidiary Guarantor” after the date hereof pursuant to **Section 8.11(a)**.

“**Summary of Terms**” means the Proposal Letter, dated June 20, 2024, between the Borrower and Perceptive Advisors LLC, together with the Outline of Proposed Terms and Conditions attached thereto.

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

“**Technical Information**” means all data and other information of a scientific, technical or commercial nature related to any Product Development and Commercialization Activities of the Borrower and its Subsidiaries, including (without limitation) (i) all data or information submitted to any Regulatory Authorities for purposes of obtaining commercialization, marketing or other Regulatory Approvals, (ii) all trade secrets, invention disclosures, know-how (whether proprietary or non-proprietary and including related plans, specifications, manuals or methodologies), Product standards and specifications, documented research and all developmental, demonstration or engineering work (including models and samples), (iii) all computer programs, software installation guides and similar information technology and (iv) all user manuals, API documentation, service level agreements, Product Related Information and all other similar data or information, plans, specifications, manuals and methodologies.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Title IV Plan**” means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any of its Subsidiaries or any ERISA Affiliate thereof or to which the Borrower or any of its Subsidiaries or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

“**Trademarks**” means all trade names, trademarks and service marks, monograms, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including (i) all renewals of trademark and service mark registrations, (ii) all rights to recover for all past, present and future infringements thereof and all rights to sue therefor, and (iii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof.

“**Tranche 1 Loan**” has the meaning set forth in the first recital hereto.

“**Tranche 2 Borrowing Date**” means the date of the Borrowing of the Tranche 2 Loan hereunder, which shall be no sooner than the date on which each of the conditions precedent set forth in **Section 6.02** shall have been satisfied.

“**Tranche 2 Loan**” has the meaning set forth in the first recital hereto.

“**Tranche 3 Borrowing Date**” means the date on which the Tranche 3 Loan is made pursuant to the terms and conditions hereof.

“**Tranche 3 Loan**” has the meaning set forth in the first recital hereto.

“**Transactions**” means the negotiation, preparation, execution, delivery and performance by each Obligor or any Subsidiary of this Agreement and the other Loan Documents to which such Obligor or Subsidiary is, or is intended to be, a party, the Borrowings of the Loans and the use of the proceeds thereof, the granting and perfection of the Liens created under and pursuant to the Loan Documents, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents.

“**U.S. Government Securities Business Day**” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**U.S. Person**” means a “United States Person” within the meaning of Section 7701(a)(30) of the Code.

“**U.S. Tax Compliance Certificate**” has the meaning set forth in **Section 5.03(f)(ii)(B)(3)**.

“**UCC**” means the Uniform Commercial Code as in effect in the applicable jurisdiction, as may be modified from time to time.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**United States**” or “**U.S.**” means the United States of America, its fifty (50) states and the District of Columbia.

“**Wall Street Journal Prime Rate**” means the Wall Street Journal Prime Rate, as published and defined in The Wall Street Journal.

“**Warrant Certificate**” means each Warrant Certificate in substantially the form of **Exhibit I**, executed and delivered by the Borrower to the Lender party thereto, as amended or otherwise modified pursuant to the terms hereof or thereof.

“**Warrant Obligations**” means all Obligations of the Borrower arising out of, under or in connection with the Warrant Certificates.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness on any date, the number of years obtained by dividing: (i) the sum of the product obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) then outstanding principal amount of such Indebtedness.

“**Withdrawal Liability**” means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

“**Write-Down and Conversion Powers**” means, (i) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (ii) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Accounting Terms and Principles. Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. For the purposes of calculations made pursuant to the terms of this Agreement or otherwise for purposes of compliance herewith, GAAP will be deemed to treat operating leases in a manner consistent with their current treatment under GAAP as in effect on the date of this Agreement, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires,

- (a) the terms defined in this Agreement include the plural as well as the singular and vice versa;
- (b) words importing gender include all genders;

(c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;

(d) any reference to “this Agreement” refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;

(e) references to days, months and years refer to calendar days, months and years, respectively;

(f) all references herein to “include” or “including” shall be deemed to be followed by the words “without limitation”;

(g) the word “from” when used in connection with a period of time means “from and including” and the word “until” means “to but not including”;

(h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or intangible, real or personal, including cash, Equity Interests, rights under Contractual obligations and permits and any right or interest in any such assets or property;

(i) the word “will” shall have the same meaning as the word “shall”;

(j) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly;

(k) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall be deemed to be a Lien for the benefit of the Secured Parties; and

(l) references to any Law will include all statutory and regulatory provisions amending, consolidating, replacing, supplementing or interpreting such Law from time to time.

Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other Contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents.

1.04 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware Law (or any comparable event under a different jurisdiction’s Laws): (i) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (ii) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.05 Reference Rate Replacement. For purposes of this Agreement and each other Loan Document, the Obligors jointly and severally acknowledge and agree for the benefit of each Secured Party as follows:

(a) Upon the occurrence of an event of the type described in the first proviso of the definition of “Reference Rate”, the Administrative Agent will promptly notify the Borrower thereof and, as set forth in such proviso, the Administrative Agent and the Borrower shall endeavor, in good faith, to establish an alternate rate of interest to One-Month Term SOFR. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to One-Month Term SOFR or any other rate referenced herein or in any other Loan Document or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, whether the composition or characteristics of any such alternative, successor or replacement Reference Rate will be similar to, or produce the same value or economic equivalence of, One-Month Term SOFR or have the same volume or liquidity as did One-Month Term SOFR prior to its discontinuance or unavailability).

(b) There is no assurance that the composition or characteristics of any such alternative, successor or replacement Reference Rate will be similar to or produce the same value or economic equivalence as One-Month Term SOFR or that it will have the same volume or liquidity as did One-Month Term SOFR prior to its discontinuance or unavailability.

1.06 Equivalent Amounts. The applicable amount of any currency other than Dollars for purposes of the Loan Documents shall be such Equivalent Amount in Dollars as determined by the Administrative Agent.

SECTION 2 THE COMMITMENT AND THE LOANS

2.01 Loans.

(a) On the terms and subject to the conditions of this Agreement, the Initial Lender agrees to make the Tranche 1 Loan to the Borrower in a single Borrowing on the Closing Date.

(b) On the terms and subject to the conditions of this Agreement, each Lender agrees to make the Tranche 2 Loan to the Borrower in a single Borrowing on the Tranche 2 Borrowing Date occurring after the Closing Date and on or prior to December 31, 2025.

(c) On the terms and subject to the conditions of this Agreement, in the sole discretion of the Majority Lenders, the Borrower may request the Tranche 3 Loan in a single Borrowing on the Tranche 3 Borrowing Date occurring after the Closing Date and on or prior to June 30, 2026.

(d) No amounts repaid or prepaid with respect to any Loan may be reborrowed.

2.02 Borrowing Procedures. At least three (but not more than ten) Business Days prior to the proposed Borrowing Date, the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice (which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. New York City time on a Business Day, shall be deemed to have been delivered on the next Business Day).

2.03 Notes. If requested by any Lender, the Loans shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to each requesting Lender such promissory note(s) payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and substantially in the form attached hereto as **Exhibit C**. Thereafter, the Loans and interest thereon shall at all times (including after assignment pursuant to **Section 14.05**) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

2.04 Use of Proceeds. The Borrower shall use the proceeds of the Loans for the purposes of (i) the repayment in full of the Refinanced Debt on the Closing Date, (ii) working capital and general corporate purposes, and (iii) without duplication, the payment of fees and expenses associated with this Agreement and the other Loan Documents and the Transactions contemplated hereby and thereby.

SECTION 3 PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayments and Prepayments Generally; Application.

(a) There will be no scheduled repayments of the principal on the Loans prior to the Maturity Date. On the Maturity Date the Borrower shall repay the entire remaining outstanding principal balance of the Loans, together with all accrued and unpaid interest and fees, including all applicable accrued and unpaid (or payable) Early Prepayment Fees and accrued and unpaid interest thereon, as applicable, in full and in cash.

(b) The Borrower agrees that all amounts payable hereunder or under any other Loan Document, in respect of any Loans, fees or interest accrued or accruing thereon, or any other Obligations, shall be repaid and prepaid solely in Dollars and no other currency. Except as otherwise provided in this Agreement, proceeds of each payment (including each repayment and prepayment of Loans) by or on behalf of the Borrower shall be deemed to be made ratably to the Lenders in accordance with their respective Proportionate Shares of the Loans being repaid or prepaid.

3.02 Interest.

(a) **Interest Generally.** The outstanding principal amount of the Loans, as well as the amount of all other outstanding Obligations (including, without limitation, any applicable Early Prepayment Fee), shall accrue interest at the Interest Rate on and from the Closing Date. The Administrative Agent's determination of the Interest Rate shall be binding on the Borrower, its Subsidiaries and the Lenders in the absence of manifest error.

(b) **Default Interest.** Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Applicable Margin shall increase automatically by four percent (4.00%) *per annum* (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "**Default Rate**"). If any Obligation is not paid when due under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) **Interest Payment Dates.** Accrued interest on the Loans shall be payable in cash in arrears on each Payment Date with respect to the most recently completed Interest Period, and upon the payment or prepayment of the Loans, in whole or in part (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate, or any accrued interest not paid on or before the Maturity Date, shall also be payable from time to time in cash on demand by the Administrative Agent until paid in full.

(d) **Conforming Changes.** In connection with the use or administration of One-Month Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of One-Month Term SOFR.

(e) **Compensation for Losses.** In the event of the payment of any principal of any Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), then, in any such event, the Borrower shall compensate each Lender for any loss, cost or expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this **Section 3.02(e)** shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

3.03 Prepayments; Prepayment Fees.

(a) Optional Prepayments.

(i) Subject to prior written irrevocable notice pursuant to **clause (ii)** below and the payment of the Early Prepayment Fee pursuant to **clause (c)** below, the Borrower shall have the right to optionally prepay, in whole or in part, the outstanding principal amount of the Loans on any Business Day; provided that, in addition to such prepaid principal amount and the applicable Early Prepayment Fee, the Borrower shall also make payment in full in cash on such Prepayment Date of all accrued but unpaid interest on the principal amount of the Loans being prepaid (such aggregate amount of principal, the applicable Early Prepayment Fee and accrued interest, the "**Redemption Price**").

(ii) A notice of optional prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (New York City time) on a date not less than three (nor more than five) Business Days prior to the proposed Prepayment Date. Each notice of optional prepayment shall specify the proposed Prepayment Date, the principal amount of the Loans to be prepaid, the amount of accrued and unpaid interest that will be paid on the Prepayment Date, and, in reasonable detail, a calculation of the Early Prepayment Fee, if applicable, payable on such Prepayment Date in connection with such proposed prepayment. Each notice of optional prepayment shall be irrevocable once received by the Administrative Agent (but may be conditioned upon the consummation of another transaction).

(b) **Mandatory Prepayments.** Within three (3) Business Days of the receipt by any Obligor of Net Cash Proceeds from the occurrence of any Casualty Event or Asset Sale (excluding, for the avoidance of doubt, any Asset Sale consisting of sales of inventory in the ordinary course of its business on ordinary business terms pursuant to **Section 9.09(a)**), the Borrower shall apply an amount equal to one hundred percent (100%) of the Net Cash Proceeds received with respect to such Casualty Event or Asset Sale, as the case may be, to (i) the prepayment of outstanding Loans, (ii) the payment of accrued and unpaid interest on the principal amount of the Loans being prepaid and (iii) the payment of the Early Prepayment Fee. Such Net Cash Proceeds shall be allocated to such prepayment and payments such that the full amount of principal, interest and the Early Prepayment Fee, if applicable, payable hereunder shall be paid in full with such Net Cash Proceeds. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing or shall immediately result therefrom, if, within three (3) Business Days following the occurrence of any such Casualty Event or Asset Sale, a Responsible Officer of the Borrower delivers to the Administrative Agent a notice to the effect that the Borrower intends to apply (or cause to be applied) the Net Cash Proceeds from such Casualty Event or Asset Sale, to repair, refurbish, restore, replace or rebuild the asset subject to such Casualty Event or Asset Sale or to the cost of purchase or constructing other assets useful in the business of the Borrower or another Obligor, then such Net Cash Proceeds of such Casualty Event or Asset Sale may be applied for such purpose in lieu of such mandatory prepayment otherwise required pursuant to this **clause (b)** to the extent such Net Cash Proceeds of such Casualty Event or Asset Sale are actually applied for such purpose; provided that, in the event that Net Cash Proceeds have not been so applied within one hundred and eighty (180) days following the occurrence of such Casualty Event or Asset Sale, the Borrower shall make a mandatory prepayment of the Loans to be made in an aggregate amount equal to one hundred percent (100%) of the unused balance of such Net Cash Proceeds with respect to such Casualty Event or Asset Sale, as the case may be, together with payment of accrued and unpaid interest on the principal amount of the Loans being so prepaid and the applicable Early Prepayment Fee, if applicable, with such amount of Net Cash Proceeds being allocated to the prepayment of principal, the payment of accrued and unpaid interest on such principal amount of the Loans being prepaid and the payment of the Early Prepayment Fee, if applicable, such that the full amount payable with respect to such mandatory prepayment is paid with such unused balance of Net Cash Proceeds.

(c) **Early Prepayment Fee.** Without limiting the foregoing, whenever any prepayment of Loans is made hereunder pursuant to **Section 3.03(a)** or **Section 3.03(b)** or otherwise, whether voluntary, involuntary, mandatory, as a result of a Default, acceleration or otherwise, or any other repayment, prepayment or cancellation of Loans is made or occurs at any time prior to the scheduled Maturity Date, an Early Prepayment Fee shall be payable in full in cash on the applicable Prepayment Date for such repayment, prepayment or cancellation, as the case may be.

3.04 Upfront Fee. On the Closing Date, the Borrower shall pay to the Initial Lender a fee equal to one million three hundred thousand dollars (\$1,300,000) (the "**Upfront Fee**"). The Upfront Fee may be deducted from the proceeds of the Loan made on the Closing Date and, once paid by the Borrower, shall be non-refundable.

**SECTION 4
PAYMENTS, ETC.**

4.01 Payments.

(a) **Payments Generally.** Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (New York City time) on the date on which such payment is due (each such payment made after such time on such due date shall be deemed to have been made on the next succeeding Business Day).

(b) **Application of Insufficient Payments.** Subject to **Section 3.03(b)** (with respect to the application of mandatory prepayment proceeds) and **Section 11.04** (with respect to the application of any proceeds upon the occurrence and during the continuance of an Event of Default), if at any other time insufficient funds are received by or made available to the Administrative Agent or the Lenders, as the case may be, for purposes of fully paying all amounts of principal, interest, fees and other amounts then due hereunder, such funds shall be applied (i) first, to pay interest, fees and other amounts then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and other amounts then due to such parties, and (ii) second, to pay principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) **Non-Business Days.** If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall continue to accrue and be payable through the period of such extension.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable.

4.03 Set-Off.

(a) **Set-Off Generally.** Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing, by the Administrative Agent, such Lender or any of their Affiliates, to or for the credit or the account of any Obligor against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to the Administrative Agent, such Lender or any of their Affiliates, whether or not such Person shall have made any demand and although such obligations may be contingent or unmatured or are owed to an Affiliate different from the Affiliate holding such

deposit or obligated on such indebtedness. Any Person exercising rights of set-off hereunder agrees promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, each Lender and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required.** Nothing contained in **Section 4.03(a)** shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of any Obligor.

(c) **Payments Set Aside.** To the extent that any payment by or on behalf of any Obligor is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (i) to the extent of such recovery, 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 setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

SECTION 5 YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Change in Laws Generally.** If, on or after the date hereof, the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any Lender (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof, against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or other Recipient or shall impose on a Lender (or its lending office) or other Recipient any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender or other Recipient of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender or other Recipient under this Agreement or any other Loan Document, or subject any Lender or other Recipient to any Taxes on its Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital

(if any) attributable thereto (other than (i) Indemnified Taxes, (ii) Taxes described in **clause (ii)** or **(iv)** of the definition of “*Excluded Taxes*” and (iii) Connection Income Taxes), then the Borrower shall pay to such Lender or other Recipient on demand such additional amount or amounts as will compensate such Lender or other Recipient for such increased cost or reduction.

(b) **Change in Capital Requirements.** If a Lender shall have determined that, on or after the date hereof, the adoption of any Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof, has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender’s obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender.** Each Lender promptly will notify the Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) **Delays in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this **Section 5.01** shall not constitute a waiver of such Lender’s right to demand such compensation.

(e) **Other Changes.** Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof the adoption of or any change in any Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which (i) such Lender’s Commitment shall be suspended until such time as such Lender may again make and maintain the Loans hereunder and (ii) if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Redemption Price applicable on the date of such prepayment in accordance with **Section 3.03(a)**.

5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments to any Lender by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by any Law. If any Law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by an Obligor in respect of any Obligation, then such Obligor shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5.03**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower.** The Borrower shall timely pay to the relevant Governmental Authority in accordance with Law, or at the option of the Administrative Agent or the applicable Lender, timely reimburse it for, Other Taxes.

(c) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5.03**, the Borrower shall deliver to each applicable Recipient the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment.

(d) **Indemnification by the Obligors.** The Borrower and each other Obligor each hereby jointly and severally agrees to indemnify and hold harmless and reimburse each applicable Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5.03**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by such applicable Recipient shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 14.05(e)** relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of

such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this **clause (e)**.

(f) Status of Lenders.

(i) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that, other than in the case of U.S. federal withholding Taxes, such Recipient has received written notice from the Borrower advising it of the availability of such exemption or reduction and containing all applicable documentation. In addition, each applicable Recipient shall deliver such other documentation prescribed by Law as reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Sections 5.03(f)(ii)(A), (ii)(B), and (ii)(D)**) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Recipient that is a U.S. Person shall deliver to the Borrower on or prior to the date on which such Recipient becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of IRS Form W-9 (or successor form) certifying that such Recipient is exempt from U.S. federal backup withholding tax;

(B) any non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), whichever of the following is applicable:

(1) in the case of a non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI (or successor form);

(3) in the case of a non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit D-1** to the effect that such non-U.S. Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the applicable the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

(4) to the extent a non-U.S. Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate, substantially in the form of **Exhibit D-2** or **D-3**, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the non-U.S. Lender is a partnership and one (1) or more direct or indirect partners of such non-U.S. Lender are claiming the portfolio interest exemption, such non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-4** on behalf of each such direct and indirect partner on behalf of each such direct and indirect partner.

(C) any non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of any other form prescribed by Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Law to permit the Borrower to determine the withholding or deduction required to be made; and

(D) any non-U.S. Lender shall deliver to the Borrower any forms and information necessary to establish that such non-U.S. Lender is not subject to withholding tax under FATCA.

(g) **Treatment of Certain Refunds.** If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5.03** (including by the payment of additional amounts pursuant to this **Section 5.03**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5.03** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(g)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant

to this **Section 5.03(g)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This **Section 5.03(g)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) **Mitigation Obligations.** If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Recipient or to any Governmental Authority for the account of any Recipient pursuant to **Section 5.01** or this **Section 5.03**, then such Recipient shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office, if in existence, for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Recipient, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.03**, as the case may be, in the future, (ii) not subject such Recipient to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Recipient. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Recipient in connection with any such designation or assignment and delegation.

(i) **Survival.** Each party's obligations under this **Section 5** shall survive the assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 6 CONDITIONS PRECEDENT

6.01 Conditions to the Borrowing of the Tranche 1 Loan. The obligation of the Initial Lender to make the Tranche 1 Loan on the Closing Date shall be subject to (i) the execution and delivery of this Agreement by the parties hereto, (ii) the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, (iii) the delivery of a funds flow memorandum summarizing, in reasonable detail, the use of proceeds of the Tranche 1 Loan, and (iv) the prior or concurrent satisfaction (or waiver thereof by the Administrative Agent) of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from each Obligor party to a Loan Document on the Closing Date:

(i) a copy of a good standing certificate (or equivalent thereof), dated a date reasonably close to the Closing Date, for each such Person and

(ii) a certificate, dated as of the Closing Date, duly executed and delivered by such Person's secretary, assistant secretary, managing member, general partner or equivalent, as to:

(A) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed and delivered by such Person and the Transactions;

(B) the incumbency and signatures of those of its officers, managing member or general partner or equivalent authorized to act with respect to each Loan Document to be executed and delivered by such Person; and

(C) true and complete copies of each Organic Document of such Person and copies thereof;

which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the secretary, assistant secretary, managing member, general partner or equivalent of any such Person cancelling or amending the prior certificate of such Person.

(b) **Closing Date Certificate.** The following statements shall be true and correct, and the Administrative Agent shall have received a certificate, dated as of the Closing Date (the “*Closing Date Certificate*”), substantially in the form of **Exhibit J** and otherwise in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower certifying that: (i) both immediately before and after giving effect to the Borrowing on the Closing Date, (x) the representations and warranties set forth in each Loan Document that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all respects as of such earlier date, (y) the representations and warranties set forth in each Loan Document that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date, and (z) no Default has occurred and is continuing, or could reasonably be expected to result from the Borrowing of the Tranche 1 Loan, or the consummation of any Transactions contemplated to occur, on the Closing Date, and (ii) all of the conditions set forth in **Section 6.01** have been satisfied (or waived in writing by the Administrative Agent). All documents and agreements required to be appended to the certificate delivered pursuant to this **Section 6.01(b)**, if any, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties, and shall be in full force and effect.

(c) **Delivery of Notes.** Each requesting Lender shall have received a Note in favor of such Lender evidencing such Lender’s Loan, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower.

(d) **Financial Information, Etc.** The Administrative Agent shall have received:

(i) audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2023; and

(ii) unaudited consolidated balance sheets of the Borrower and its Subsidiaries for the quarter ended March 31, 2024, together with the related consolidated statement of operations, shareholder’s equity and cash flows for each such fiscal quarter.

(e) **Minimum Liquidity Covenant Compliance.** The Administrative Agent shall have received evidence reasonably satisfactory to it that, immediately after giving effect to the Borrowing of the Tranche 1 Loan on the Closing Date, the Borrower will be in compliance with the covenant set forth in **Section 10.01**.

(f) **Solvency Certificate.** The Administrative Agent shall have received a Solvency Certificate, substantially in the form of **Exhibit K**, duly executed and delivered by the chief financial or accounting Responsible Officer of the Borrower, dated as of the Closing Date, in form and substance satisfactory to the Administrative Agent.

(g) **Security Documents.** The Administrative Agent shall have received executed counterparts of each Security Document, dated as of the date hereof, duly executed and delivered by each Obligor, together with:

(i) delivery of all certificates (in the case of Equity Interests that are securities (as defined in the NY UCC)) evidencing the issued and outstanding Equity Interests owned by the Borrower and each Subsidiary that are required to be pledged under the Security Documents, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the NY UCC), confirmation and evidence satisfactory to the Administrative Agent that the security interest required to be pledged therein under the Security Documents has been transferred to and perfected by the Administrative Agent for the benefit of the Secured Parties in accordance with Articles 8 and 9 of the NY UCC and all Laws otherwise applicable to the perfection of the pledge of such Equity Interests;

(ii) financing statements naming each Obligor as a debtor and the Administrative Agent as the secured party, or other similar instruments, registrations or documents, in each case suitable for filing, filed under the UCC (or equivalent Law) of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Liens of the Secured Parties pursuant to the Security Documents;

(iii) UCC-3 termination statements, if any, necessary to release all Liens (other than Permitted Liens) and other rights of any Person in any collateral described in the Security Documents previously granted by any Person; and

(iv) all Short-Form IP Security Agreements, and any other agreement, document or instrument required to be provided under any Security Document, duly executed and delivered by the applicable Obligors.

(h) **Information and Collateral Certificate.** The Administrative Agent shall have received a fully completed Information and Collateral Certificate, in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower, which is true and correct as of the Closing Date. All documents required to be appended to the Information and Collateral Certificate, if any, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed by the requisite parties and shall be in full force and effect.

(i) **Lien Searches.** The Administrative Agent shall be satisfied with Lien searches regarding the Borrower and its Subsidiaries made within thirty (30) days prior to the Borrowing of the Tranche 1 Loan.

(j) **Closing Date Warrant Certificate.** The Initial Lender shall have received an executed counterpart of a Warrant Certificate, dated as of the Closing Date, exercisable in the aggregate into 1,125,000 shares of the Borrower's common stock duly executed, delivered and validly issued by the Borrower.

(k) **Insurance.** The Administrative Agent shall have received:

(i) certificates of insurance evidencing that the insurance required to be maintained pursuant to **Section 8.05** is in full force and effect, in form and substance reasonably satisfactory to the Administrative Agent; and

(ii) certified copies of the insurance policies (or binders in respect thereof), from one or more insurance companies satisfactory to the Administrative Agent, required to be maintained pursuant to **Section 8.05**.

(l) **Opinions of Counsel.** The Administrative Agent shall have received one or more legal opinions (including from such local counsel as the Initial Lender may determine, in its sole discretion, is reasonably necessary), each dated as of the Closing Date and addressed to the Administrative Agent and the Lenders, from independent legal counsel to the Borrower and the other Obligor satisfactory to the Administrative Agent, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

(m) **Payoff of Refinanced Debt.** The Refinanced Debt, together with all accrued and unpaid interest and related fees, costs and expenses, shall be, substantially contemporaneously with the funding of the Tranche 1 Loan, paid in full, and the Administrative Agent shall have received executed payoff letters, in form and substance reasonably satisfactory to the Administrative Agent, providing for such payment in full (and irrevocable termination) of the Refinanced Debt and satisfactory arrangements shall have been made for the termination of all loan documents evidencing such Refinanced Debt and all Liens granted in connection therewith. On the Closing Date, after giving effect to the Transactions, the Borrower and its Subsidiaries shall not have any Indebtedness other than the Obligations and other Permitted Indebtedness.

(n) **Anti-Terrorism Laws.** The Administrative Agent shall have received, as applicable, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation.

(o) **Material Adverse Change.** Since December 31, 2023, no Material Adverse Change shall have occurred.

(p) **All Other Loan Documents.** The Administrative Agent shall have received all other Loan Documents in form and substance satisfactory to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, opinions, documents or instruments as the Administrative Agent or its counsel may reasonably request.

(q) **Satisfactory Legal Form.** All documents (including all Loan Documents), including any attachments or appendices thereto, executed, delivered or submitted pursuant hereto by or on behalf of the Borrower or any of its Subsidiaries shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, opinions, documents or instruments as the Administrative Agent or its counsel may reasonably request.

(r) **Governmental Approvals and Third Party Consents.** The Administrative Agent shall have received evidence that the Borrower and its applicable Subsidiaries have obtained all Governmental Approvals and third party permits, licenses, approvals and consents necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties.

(s) **Upfront Fee, Other Fees, Expenses, Etc.** The Administrative Agent shall have received for its account and the account of each Lender, the Upfront Fee, and all other fees, costs and expenses due and payable pursuant to the Summary of Terms and **Section 14.03**, including all closing costs and fees and all unpaid expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's legal fees and expenses) in excess of the Expense Deposit.

6.02 Conditions to the Borrowing of the Tranche 2 Loan. The obligation of each Lender to make its Tranche 2 Loan shall be subject to (i) the prior making of the Tranche 1 Loan, (ii) the delivery of a Borrowing Notice for the Tranche 2 Loan as required pursuant to **Section 2.02**, and (iii) the satisfaction (or waiver thereof by the Administrative Agent) of each of the conditions precedent set forth below in this **Section 6.02**.

(a) **Minimum Net Revenue.** The Administrative Agent shall have received evidence satisfactory to it that the Borrower and its Subsidiaries have received Net Revenue for the period of twelve (12) consecutive months ending immediately prior to the requested Tranche 2 Borrowing Date in an aggregate amount of not less than eighty five million dollars (\$85,000,000).

(b) **Tranche 2 Borrowing Date.** The Tranche 2 Borrowing Date shall have occurred on or before December 31, 2025.

(c) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from each Obligor party to a Loan Document on the Tranche 2 Borrowing Date:

(i) a copy of a good standing certificate (or equivalent thereof), dated a date reasonably close to the Tranche 2 Borrowing Date, for each such Person and

(ii) a certificate, dated as of the Tranche 2 Borrowing Date, duly executed and delivered by such Person's secretary, assistant secretary, managing member, general partner or equivalent, as to:

(A) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed and delivered by such Person on the Tranche 2 Borrowing Date and the Transactions contemplated to be consummated in connection with the Borrowing of the Tranche 2 Loan;

(B) the incumbency and signatures of those of its officers, managing member or general partner or equivalent authorized to act with respect to each Loan Document to be executed and delivered by such Person on the Tranche 2 Borrowing Date; and

(C) true and complete copies of each Organic Document of such Person and copies thereof;

which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the secretary, assistant secretary, managing member, general partner or equivalent of any such Person cancelling or amending the prior certificate of such Person.

(d) **Tranche 2 Borrowing Date Certificate.** The following statements shall be true and correct, and the Administrative Agent shall have received a certificate, dated as of the Tranche 2 Borrowing Date, in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower certifying that: (i) both immediately before and after giving effect to the Borrowing of the Tranche 2 Loan on the Tranche 2 Borrowing Date, (x) the representations and warranties set forth in each Loan Document that are qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all respects as of such earlier date, (y) the representations and warranties set forth in each Loan Document that are not qualified by materiality, Material Adverse Effect or the like are, in each case, true and correct in all material respects; provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date, and (z) no Default has occurred and is continuing, or could reasonably be expected to result from the Borrowing of the Tranche 2 Loan, or the consummation of any Transactions contemplated to occur on the Tranche 2 Borrowing Date, and (ii) all of the conditions set forth in this **Section 6.02** have been satisfied (or waived in writing by the Administrative Agent); provided that, with respect to the representation, warranty and certification referenced in clauses (x) and (y) above relating to representations and warranties set forth in each Loan Document, (1) references in such representations and warranties to "the Closing Date" or "the date hereof" shall be deemed to be references to "the Tranche 2 Borrowing Date" and (2) the Borrower may supplement the schedules to this Agreement and the other Loan Documents as reasonably necessary in order for such certification to be true and correct on the Tranche 2 Borrowing Date; provided, further, that no such supplement shall be permitted if the Administrative Agent reasonably determines that the circumstance or event necessitating such supplement either (A) was the result of the occurrence of an Event of Default, or (B) constituted a Material Adverse Effect or was otherwise materially adverse to the interests of the Lenders under the Loan Documents. All documents and agreements required to be appended to the certificate delivered pursuant to this **Section 6.02(d)**, if any, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties, and shall be in full force and effect.

(e) **Delivery of Notes.** Each requesting Lender shall have received a Note in favor of such Lender evidencing such Lender's Tranche 2 Loan, dated as of the Tranche 2 Borrowing Date, duly executed and delivered by a Responsible Officer of the Borrower.

(f) **Compliance With Financial Covenants.** The Administrative Agent shall have received evidence reasonably satisfactory to it that, immediately after giving effect to the Borrowing of the Tranche 2 Loan on the Tranche 2 Borrowing Date, the Borrower will be in compliance with the covenants set forth in **Section 10.01** and **Section 10.02**, if applicable.

(g) **Tranche 2 Borrowing Date Warrant.** The Initial Lender shall have received an executed counterpart of a Warrant Certificate, dated as of the Closing Date, exercisable in the aggregate into 337,500 shares of the Borrower's common stock duly executed, delivered and validly issued by the Borrower.

(h) **Information and Collateral Certificate.** The Administrative Agent shall have received a fully completed Information and Collateral Certificate, in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Tranche 2 Borrowing Date, duly executed and delivered by a Responsible Officer of the Borrower, which is true and correct as of the Tranche 2 Borrowing Date; provided that the Borrower may supplement the Information and Collateral Certificate delivered on the Closing Date in order for such certification to be true and correct as of the Tranche 2 Borrowing Date; provided, further that no such supplement shall be permitted if the Administrative Agent reasonably determines that the circumstance or event necessitating such supplement either (i) was the result of the occurrence of a Default or (ii) constituted a Material Adverse Effect or was otherwise materially adverse to the interests of the Lenders under the Loan Documents. All documents required to be appended to the Information and Collateral Certificate, if any, shall be in form and substance satisfactory to the Administrative Agent, shall have been executed by the requisite parties and shall be in full force and effect.

(i) **Material Adverse Change.** Since December 31, 2023, no Material Adverse Change shall have occurred.

(j) **All Other Loan Documents.** The Administrative Agent shall have received all other Loan Documents to be entered into in connection with the Borrowing of the Tranche 2 Loan in form and substance satisfactory to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, opinions, documents or instruments as the Administrative Agent or its counsel may reasonably request.

(k) **Satisfactory Legal Form.** All documents (including all Loan Documents), including any attachments or appendices thereto, executed, delivered or submitted pursuant hereto by or on behalf of the Borrower or any of its Subsidiaries in connection with the Borrowing of the Tranche 2 Loan shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel, and the Administrative Agent and its counsel shall have received all information, approvals, resolutions, opinions, documents or instruments as the Administrative Agent or its counsel may reasonably request.

(l) **Fees, Expenses, Etc.** The Administrative Agent shall have received for its account and the account of each Lender all fees, costs and expenses due and payable pursuant to **Section 14.03**, including all costs and fees and all unpaid expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions contemplated in connection with the Borrowing of the Tranche 2 Loan (including the Administrative Agent's legal fees and expenses).

6.03 Conditions to the Borrowing of the Tranche 3 Loan. After the Borrowing of the Tranche 1 Loan as provided herein, the Borrower may request that the Lenders (and/or, with the consent of the Majority Lenders, other Eligible Transferees) make the Tranche 3 Loan in an aggregate principal amount of up to \$25,000,000; provided that, notwithstanding any such request or any other term or provision of this Agreement or any other Loan Document, the making of the Tranche 3 Loan shall be subject to the prior consent of the Majority Lenders after receiving such request from the Borrower (which consent may be provided or denied in the sole discretion of the Majority Lenders), and no Lender shall have any commitment to make or participate in the making of the Tranche 3 Loan unless such Lender elects to participate in the Tranche 3 Loan and the Majority Lenders have provided such consent in writing to the Borrower, the Administrative Agent and the other Lenders hereunder. In the event (and only in the event) the Majority Lenders so consent to make and a Lender affirmatively elects to participate in, the Tranche 3 Loan, in whole or in part, as provided above, the obligation of the Lenders to fund their share of the Tranche 3 Loan shall be subject to the delivery of a Borrowing Notice by the Borrower, the delivery of a funds flow memorandum by the Borrower summarizing, in reasonable detail, the application of proceeds of the Tranche 3 Loan, and the prior or concurrent satisfaction (or waiver thereof by the Administrative Agent) of such customary additional conditions as the Majority Lenders may reasonably request (including the payment of an upfront fee or equivalent in the amount of \$500,000 and some or all conditions of the type set forth in **Section 6.01**).

SECTION 7 REPRESENTATIONS AND WARRANTIES

The Obligors hereby jointly and severally represent and warrant to the Administrative Agent and each Lender that:

7.01 Power and Authority. Each of the Borrower and its Subsidiaries (i) is duly organized and validly existing under the Laws of its jurisdiction of organization, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own or lease its assets and carry on its business as now being or as proposed to be conducted except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify (either individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect, and (iv) has full power, authority and legal right to execute, deliver and perform its Obligations under each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. Each of the Transactions to which an Obligor or any of its Subsidiaries is a party (or to which it or any of its assets or properties is subject) is within such Person's corporate or other powers and has been duly authorized by all necessary corporate action and, if required, by all necessary approvals by holders of Equity Interests. This Agreement and each other Loan Document to which an Obligor or any of its Subsidiaries is a party has been duly executed and delivered by each such Person and constitutes, and each of the other Loan Documents to which such Person is a party when executed and delivered by such Person will constitute, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar Laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law).

7.03 Governmental and Other Approvals; No Conflicts. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person (other than those that have been duly obtained or made and which are in full force and effect) is required for the due execution, delivery or performance by any Obligor or any of its Subsidiaries of any Loan Document to which it is a party, except for filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents. The execution, delivery and performance by each Obligor and each of its Subsidiaries of each Loan Document to which it is a party will not (i) violate or conflict with any material Law in any material respect, (ii) violate or conflict with any Organic Document of any such Person, (iii) except to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event, violate or conflict with any material Governmental Approval of any Governmental Authority, (iv) violate or result in a breach or default under any Material Agreement binding upon the Borrower or any of its Subsidiaries that results in the termination or acceleration of such Material Agreement (or has a similar result or effect) or gives any counterparty to such Material Agreement the right to terminate or accelerate such Material Agreement (or the right to cause a similar result or effect) or (v) result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Borrower or any of its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements.** The Borrower has heretofore furnished to the Administrative Agent and the Lenders certain consolidated financial statements as provided for in **Section 8.01**. Such financial statements, and all other financial statements delivered by the Borrower to the Administrative Agent or the Lenders (whether prior to the Closing Date or otherwise) present fairly, in all material respects, the consolidated financial conditions and results of operations and cash flows and shareholders' equity of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements of the type described in **Section 8.01(a)**. Neither the Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change.** Since December 31, 2023, there has been no Material Adverse Change.

7.05 Properties.

(a) **Property Generally.** With respect to all real and personal assets and properties of the Borrower and each of its Subsidiaries (other than Intellectual Property which is covered in **clause (b)** below), the Borrower and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, all such real and personal assets and properties, whether tangible or intangible, subject only to Permitted Liens and except for minor defects in title that could not reasonably be expected to (i) interfere with its ability to conduct its business as currently conducted or to utilize such assets and properties for their intended purposes, including in connection with Product Development and Commercialization Activities, and (ii) prevent or interfere with the ability of any Obligor or any of its Subsidiaries to conduct any Product Development and Commercialization Activities.

(b) Intellectual Property.

(i) **Schedule 7.05(b)(i)** contains, with respect to the Borrower and each of its Subsidiaries (set forth on a Person-by-Person basis):

(A) a complete and accurate list of all applied for, issued or registered Patents that qualify as Material Intellectual Property, owned by or licensed to the Borrower or any of its Subsidiaries, including the jurisdiction and patent number;

(B) a complete and accurate list of all registered, unregistered or applied for Trademarks that qualify as Material Intellectual Property, owned by or licensed to the Borrower or any of its Subsidiaries, including the jurisdiction, trademark application or registration number and the application or registration date;

(C) a complete and accurate list of all applied for or registered Copyrights that qualify as Material Intellectual Property, owned by or licensed to the Borrower or any of its Subsidiaries; and

(D) a summary of all Technical Information that qualify as Material Intellectual Property necessary for the Product Development and Commercialization Activities of the Borrower and its Subsidiaries in the ordinary course.

(ii) With respect to any such Intellectual Property listed on **Schedule 7.05(b)(ii)** that is in-licensed by the Borrower or any of its Subsidiaries from a third party, such in-licensing arrangement is subject to a license agreement or similar Contract that is in full force and effect, there are no unpaid fees or royalties (or similar payment obligations) payable by the Borrower or any of its Subsidiaries currently past due and there is no currently outstanding breach or default under any such licensing agreement or other Contract.

(iii) With respect to all Intellectual Property listed on **Schedule 7.05(b)** other than any such Intellectual Property described in **Schedule 7.05(b)(ii)** above, the Borrower or one of its Subsidiaries, as applicable, is the absolute registered beneficial owner of all right, title and interest in and to all such Intellectual Property, with no breaks in chain of title and with good and marketable title, free and clear of any Liens or Claims (other than Permitted Liens) and the Borrower or such Subsidiary, as the case may be, has the right to exercise its rights under such Intellectual Property in the ordinary course of its Product Development and Commercialization Activities as currently conducted and as anticipated to be conducted. Without limiting the foregoing, and except as set forth on **Schedule 7.05(b)(iii)**:

(A) other than customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Permitted Liens), Claims, or other agreements or arrangements relating to or otherwise adversely affecting any Material Intellectual Property, including any development, submission, services, research, license or support agreements which bind, obligate or otherwise restrict the Borrower or any of its Subsidiaries with respect to any Material Intellectual Property;

(B) the use by the Borrower or any of its Subsidiaries of any of its respective Material Intellectual Property in the ordinary course of business (including in connection with Product Development and Commercialization Activities) does not breach, violate, infringe or interfere with or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person;

(C) (1) there are no pending or, to the Borrower's knowledge, threatened Claims against the Borrower or any of its Subsidiaries relating to any of their respective Material Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property; and (2) neither the Borrower nor any of its Subsidiaries have received any notice from, or Claim by, any other Person asserting that the Product Development and Commercialization Activities of the Borrower or any of its Subsidiaries, or the use of any Material Intellectual Property by the Borrower or any of its Subsidiaries, infringes upon, violates or constitutes a misappropriation of, or may infringe upon, violate or constitute a misappropriation of, or otherwise interfere with, any Intellectual Property of any such other Person, in each case, in any material respect, which has not been finally resolved;

(D) to the Borrower's knowledge no Material Intellectual Property of the Borrower or any of its Subsidiaries is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Borrower; neither the Borrower nor any of its Subsidiaries has put any other Person on notice of actual or potential infringement, violation or misappropriation of any such Material Intellectual Property, and neither the Borrower nor any of its Subsidiaries has initiated the enforcement of any Claim in respect of any of the foregoing against any Person with respect to any such Material Intellectual Property;

(E) all relevant current and former employees of the Borrower and each of its Subsidiaries have executed written confidentiality agreements (or equivalents) and have either entered into or are obligated to enter into invention assignment Contracts with the Borrower or such Subsidiary, as applicable, that irrevocably assign to the Borrower or such Subsidiary, as applicable, or its designee all rights of such employees to any Inventions relating to all Product Development and Commercialization Activities of the Borrower and its Subsidiaries as currently conducted and anticipated to be conducted; and

(F) the Borrower and each of its Subsidiaries has taken reasonable precautions to protect the secrecy, confidentiality and value of its respective Material Intellectual Property comprised of trade secrets or information of a proprietary or confidential nature.

(iv) With respect to Material Intellectual Property of the Borrower and its Subsidiaries consisting of Patents, except as set forth on **Schedule 7.05(b)(iv)**, and without limiting the representations and warranties in **Section 7.05(b)(iii)**:

(A) no Claim has been asserted in writing (or, to the knowledge of the Borrower, threatened) by any Person that any of the issued claims in such Patents owned by the Borrower or any of its Subsidiaries or exclusively licensed to the Borrower or any of its Subsidiaries is not valid or enforceable;

(B) each inventor named in any such Patents has executed, or has an obligation to execute, one or more written Contracts that irrevocably assigns to the Borrower, one of its Subsidiaries or one of their respective predecessors-in-interest all of such inventor's rights, title and interest to any of the Inventions claimed in such Patents;

(C) all such Patents are in good standing and none of the Patents, or the Inventions claimed in any such Patent, have been dedicated to the public;

(D) to the knowledge of the Borrower, all prior art material to such Patents has been adequately disclosed to or considered by the respective patent offices during prosecution of such Patents;

(E) subsequent to the issuance of such Patents, neither the Borrower nor any of its Subsidiaries nor, to the knowledge of the Borrower, any of their respective predecessors-in-interest, has filed any disclaimer or made or permitted any other voluntary reduction in the scope of the claims set forth in such Patents;

(F) no written Claim has been made or, to the Borrower's knowledge, threatened, by any Person that any allowable or allowed Claim in such Patents is subject to any competing conception claims of allowable or allowed subject matter of any Patent applications or Patents of any third party, and no such allowable or allowed Claim has been the subject of any interference or been the subject of any re-examination, opposition or other post-grant proceedings, and there is no written or, to the Borrower's knowledge threatened, Claim by any Person for any such interference, re-examination, opposition, inter partes review, post grant review or any other post-grant proceedings;

(G) none of such Patents owned by or exclusively licensed to the Borrower or any of its Subsidiaries have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable patent office recorded with respect to any such Patents, neither the Borrower nor any of its Subsidiaries has received any notice asserting that any such Patent is invalid, unpatentable or unenforceable; and to the extent any such Patent is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) neither the Borrower nor, to the knowledge of the Borrower, any of its Subsidiaries has received a written opinion from patent counsel which concludes that a challenge to the validity or enforceability of any such Patents is more likely than not to succeed;

(I) neither the Borrower, nor any of its Subsidiaries nor, to the knowledge of the Borrower, any prior owner of any such Patent, or any of their respective agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patent; and

(J) all maintenance fees, annuities, and the like due or payable on or with respect to any Patents have been timely paid, except to the extent failure to pay, whether individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(v) The Borrower and its Subsidiaries, taken together, license or otherwise own or hold rights to all Intellectual Property necessary and required to conduct their current Product Development and Commercialization Activities.

7.06 No Actions or Proceedings.

(a) **Litigation.** There is no litigation, investigation or proceeding pending or, to the Borrower's knowledge, threatened with respect to the Borrower or any of its Subsidiaries by or before any Governmental Authority or arbitrator (i) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or result in a Material Regulatory Event, except as specified in **Schedule 7.06(a)** or (ii) that involves this Agreement, any other Loan Document or any of the Transactions.

(b) **Environmental Matters.** The operations and property of the Borrower and each of its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

(c) **Labor Matters.** There are no strikes, lockouts or other material labor disputes against the Borrower or any of its Subsidiaries or, to the Borrower's knowledge, threatened against or affecting the Borrower or any such Subsidiary, and no material unfair labor practice complaint is pending against the Borrower or any such Subsidiary or, to the knowledge of the Borrower, threatened against any of them before any Governmental Authority. Except as set forth on **Schedule 7.06(c)**, neither the Borrower nor any of its Subsidiaries is a party to any collective bargaining agreements or Contracts, no union representation exists on any facilities of the Borrower or any of its Subsidiaries and neither the Borrower nor any of its Subsidiaries have any knowledge of any union organizing activities that are taking place in respect thereof.

7.07 Kickbacks.

(a) Except where noncompliance individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event:

(i) all financial relationships between or among any Obligor or any of its Subsidiaries, on the one hand, and any healthcare provider, on the other hand (i) comply with all applicable Healthcare Laws including, without limitation, the Federal Anti-Kickback Statute and applicable state antikickback and self-referral Laws; (ii) reflect fair market value, have commercially reasonable terms and were negotiated at arm's length; and (iii) do not obligate the healthcare provider to purchase, use, recommend or arrange for the use of any Products or services of any Obligor or any of its respective Subsidiaries; and

(ii) each Obligor and each of its Subsidiaries has implemented policies and procedures to monitor, collect, and report, any payments or transfers of value to certain healthcare providers and teaching hospitals, in accordance with industry standards and the Affordable Care Act of 2010 and its implementing regulations and any applicable state disclosure and transparency Laws.

7.08 Taxes. The Borrower and each of its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (i) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (ii) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower or any of its Subsidiaries to the Administrative Agent or any Lender in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished), taken as a whole, or in connection with any of the Transactions contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

7.10 Securities Law Regulation.

(a) **Investment Company Act.** Neither the Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(b) **Margin Stock.** Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

7.11 Solvency. The Borrower is and its Subsidiaries, on a consolidated basis, are, and, immediately after giving effect to any Borrowing and the use of proceeds of any Loan, will be, Solvent.

7.12 Subsidiaries and Other Investments.

(a) Set forth on **Schedule 7.12(a)** is a complete and correct list of all direct and indirect Subsidiaries of the Borrower as of the Closing Date. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in **Schedule 7.12(a)**, and the percentage ownership by the Borrower (or any of its Subsidiaries) of each such Subsidiary is as shown in **Schedule 7.12(a)**.

(b) Set forth on **Schedule 7.12(b)** is a complete and correct list of all other Equity Interests held by each Obligor in any Person that is not a direct or indirect Subsidiary of the Borrower as of the Closing Date. Such **Schedule 7.12(b)** also sets forth, in reasonable detail, the type of Equity Interest held by each such Obligor in such Person.

7.13 Continuing Secured Indebtedness; Priority of Obligations. Set forth on **Schedule 7.13** is a complete and correct list of all Indebtedness of the Borrower and each of its Subsidiaries outstanding as of the date hereof that (i) will remain outstanding immediately after the Borrowing of the Loans and the application of the proceeds therefrom on the Closing Date and (ii) is secured by a Lien on assets or properties of the Borrower or any of its Subsidiaries. Such **Schedule** sets forth, in reasonable detail, the assets or properties (and the locations thereof) secured by any such Lien. Except as set forth on **Schedule 7.13**, other than the Obligations, no Indebtedness of the Borrower or any of its Subsidiaries is secured by a Lien. Neither the Borrower nor any of its Subsidiaries is party to any Contract that would require the subordination of (or have the effect of subordinating) any monetary Obligation arising hereunder or under any other Loan Document to any other Indebtedness.

7.14 Material Agreements. Set forth on **Schedule 7.14** is a complete and correct list, of each Material Agreement (including any such Contract creating or evidencing Material Intellectual Property or Material Indebtedness). Accurate and complete copies of each Contract disclosed on such schedule have been made available to the Administrative Agent. All such Material Agreements are in full force and effect without material modification from the form in which the same were disclosed to the Administrative Agent. None of the Obligors nor any of their Subsidiaries is in default under any such Material Agreement, and none of the Obligors has knowledge of any default by any counterparty to such Material Agreement and there are no pending or, to any Obligor's knowledge, threatened in writing Claims against any Obligor or any of its Subsidiaries asserted by any other Person relating to any Material Agreements, including any Claims of breach or default under any such Material Agreements.

7.15 Restrictive Agreements. Neither the Borrower nor any of its Subsidiaries is subject to any Restrictive Agreement, except those listed on **Schedule 7.15** or otherwise permitted under **Section 9.11**.

7.16 Real Property. Neither the Borrower nor any of its Subsidiaries owns or leases (as tenant thereof) any real property, except as described on **Schedule 7.16**.

7.17 Pension Matters. Schedule 7.17 sets forth a complete and correct list of, and that separately identifies, (i) all Title IV Plans, (ii) all Multiemployer Plans and (iii) all material Benefit Plans of the Borrower and each of its Subsidiaries. Each Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Laws so qualifies. Each Plan is in material compliance with applicable provisions of ERISA, the Code and other Laws; except as could not reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event, there are no existing or pending (or, to the knowledge of the Borrower, threatened) Claims (other than routine Claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigations involving any Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and no ERISA Event is reasonably expected to occur. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and none of the Borrower nor any of its Subsidiaries nor any of their ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. As of the date hereof, no ERISA Event has occurred or is reasonably expected to occur in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Compliance with Laws and Agreements; Governmental Approvals, Regulatory Approvals, etc.

(a) Each of the Borrower and its Subsidiaries are in compliance in all material respects with all material Laws and Material Agreements binding upon it or its property or businesses; except, with respect to any Material Agreement, in such instances in which the failure to so comply, either individually or in the aggregate, could not reasonably be expected to result in the termination or acceleration of such Material Agreement (or have a similar result or effect) or give any counterparty to such Material Agreement the right to terminate or accelerate such Material Agreement (or the right to cause a similar result or effect); provided that, for purposes of this **Section 7.18**, the term “property” shall not include Intellectual Property, which is covered by **Section 7.05**.

(b) Each of the Borrower and its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all Product Authorizations, Regulatory Approvals and other Governmental Approvals necessary or required for such Person to conduct its operations and businesses in the ordinary course in the manner currently conducted, including marketing, labeling, distribution, storage, import, export, Good Manufacturing Practice and Quality System Regulation Requirements, and all Regulatory Approvals, Governmental Approvals and Product Authorizations with respect to each Product and all Product Development and Commercialization Activities related thereto.

(c) Set forth on **Schedule 7.18(c)** is a complete and accurate list of all material Regulatory Approvals and Product Authorizations that are either necessary or required in order for the Borrower or any of its Subsidiaries to conduct their respective operations and business in the ordinary course in the manner currently conducted, including all Product Development and Commercialization Activities and each of their Products. All such Regulatory Approvals and Product Authorizations are (i) legally and beneficially owned or held exclusively by the Borrower or such Subsidiary, as the case may be, free and clear of all Liens other than Permitted Liens and (ii) are valid, enforceable and in full force and effect.

(d) Except to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event, (i) all regulatory filings, notices, registrations, listings, reports and similar items required to be filed or made by any Regulatory Authority or in respect of any Product Authorization or Regulatory Approval with respect to any Product of any Product Development and Commercialization Activity have been made, and all such filings are complete and correct in all respects and have complied in all respects with all Laws, (ii) all clinical and pre-clinical trials, if any, of investigational Products have been and are being conducted by the Borrower and its Subsidiaries according to all Laws along with appropriate monitoring of clinical investigator trial sites for their compliance, and (iii) the Borrower and its Subsidiaries have disclosed to the Administrative Agent all material regulatory filings and all material communications between representatives of the Borrower or its Subsidiaries and any Regulatory Authority.

(e) Except as set forth on **Schedule 7.18(e)**, and without limiting the generality of any other representation or warranty made by the Borrower hereunder or under any other Loan Document: (i) all Products comply in all material respects with (A) all applicable Laws of the FDA and each other applicable Regulatory Authority, whether U.S. or non-U.S., and (B) all Product Authorizations and other Regulatory Approvals and Governmental Approvals; (ii) neither the Borrower, nor any of its Subsidiaries nor, to the knowledge of the Borrower, any of their respective officers, employees, agents or Collaboration Partners have received any inspection reports, FDA Form 483, warning letters, finding of deficiency or “untitled letter,” or notices or similar documents and communications with respect to any Product from any Regulatory Authority within the last six (6) years that asserts lack of compliance with any applicable Laws, Regulatory Approvals, Governmental Approvals or other orders, injunctions, or decrees; (iii) neither the Borrower, nor any of its Subsidiaries nor, to the knowledge of the Borrower, any of their respective officers, employees, agents or Collaboration Partners have received any notification from any Regulatory Authority within the last six (6) years, asserting that any Product lacks a required Regulatory Approval or Product Authorization; (iv) there is no pending or obligation arising under an administrative or regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews), or response or commitment made to the FDA or applicable Regulatory Authority against the Borrower, any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective officers, employees, agents, Collaboration Partners or contractors with respect to any Product, and, to the knowledge of the Borrower, there is no reasonable basis for any adverse regulatory action against the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any of their respective officers, employees, agents or Collaboration Partners with respect to any Product; and (v) without limiting the foregoing, (A) (1) there have been no product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, undertaken or issued by the Borrower or any of its Subsidiaries, whether voluntary, at the request, demand or order of any Regulatory Authority or otherwise, with respect to any Product within the last six (6) years, (2) no such product

recall, safety alert, correction, withdrawal, marketing suspension, removal, closure or suspension of any related manufacturing facility or operation, or the like has been requested, demanded or ordered by any Regulatory Authority within the last six (6) years, and, to the knowledge of the Borrower, there is no reasonable basis for the issuance of any such product recall, safety alert, correction, withdrawal, marketing suspension, removal, closure or suspension of any related manufacturing facility or operation, or the like with respect to any Product, and (B) no criminal, injunctive, seizure, detention, civil penalty action, or allegation of misbranding or adulteration has been commenced or threatened in writing by any Regulatory Authority within the last six (6) years with respect to or in connection with any Product, there are no consent decrees (including plea agreements) that relate to any Product, and, to the knowledge of the Borrower, there is no reasonable basis for the commencement of any criminal injunctive, seizure, detention or civil penalty action by any Regulatory Authority relating to any Product or for the issuance of any consent decree. Neither the Borrower nor any of its Subsidiaries, including respective officers, directors, employees, nor any of their respective agents, suppliers, nor, to the knowledge of the Borrower, Collaboration Partners, licensees or licensors is employing or utilizing the services of any individual who has been debarred, temporarily suspended, or excluded under any applicable Law, including but not limited to 21 U.S.C. § 335a.

(f) Neither the Borrower nor any of its Subsidiaries, any officer, employee or agent thereof, has made an untrue statement of a material fact or fraudulent statements to the FDA or any other Regulatory Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Regulatory Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made (or was not made), could reasonably be expected to provide a basis for the FDA or any such other Regulatory Authority to invoke its policy respecting Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities, set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy.

(g) The clinical, preclinical, safety and other studies and tests conducted by or on behalf of or sponsored by the Borrower or any of its Subsidiaries, or in respect of which any Products or Product candidates under development have participated, were (and if still pending, are) being conducted materially in accordance with standard medical and scientific research procedures and all applicable Laws, Regulatory Approvals and Product Authorizations. Neither the Borrower nor any of its Subsidiaries has received any notices or other correspondence from the FDA or any such other Regulatory Authority or IRB requiring the termination or suspension of any clinical, preclinical, safety or other studies or tests used to support regulatory clearance of, or any Product Authorization or Regulatory Approval for, any Product.

(h) Each of the Borrower and its Subsidiaries are operating, and at all times during the past three (3) years has operated, in compliance in all material respects with all Healthcare Laws. None of the Borrower or any of its Subsidiaries or their respective affiliates, directors, officers, employees, managers or, to the knowledge of the Borrower, their respective consultants, is in violation of any Healthcare Laws. Neither the Borrower nor any of its Subsidiaries have, within the past three (3) years, been the subject of any investigation conducted by any Governmental Authority, or a defendant in any qui tam or other False Claims Act litigation. As of the date of this Agreement, neither the Borrower nor any of its Subsidiaries, are subject to any enforcement, regulatory or administrative proceedings against or affecting the Borrower or its Subsidiaries relating to or arising under any Healthcare Law, and to the Borrower's knowledge, no such enforcement, regulatory or administrative proceeding has been threatened.

(i) Neither the Borrower nor any of its Subsidiaries, are or have during the past three (3) years participated in any Federal Health Care Programs.

(j) Neither the Borrower nor any of its Subsidiaries and, to the Borrower's knowledge, none of their respective officers, employees, agents, or contractors (while employed or engaged by the Borrower or any of its Subsidiaries) are or have been (i) debarred, excluded or suspended from participating in any Federal Health Care Program, (ii) subject to a civil monetary penalty assessed under Section 1128A of the Social Security Act or (iii) listed on the General Services Administration published list of parties excluded from federal procurement programs and non-procurement programs.

7.19 Transactions with Affiliates. Except as set forth on **Schedule 7.19**, neither the Borrower nor any of its Subsidiaries is a party to any transaction or other arrangement (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate that, after giving effect to the Closing Date, would not be permitted pursuant to **Section 9.10**.

7.20 Sanctions. Neither the Borrower nor any of its Subsidiaries, their respective directors, officers or employees nor, to the knowledge of the Borrower, any agents or other Persons acting on behalf of any of the foregoing (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction or (iv) is or has ever been in violation of or subject to an investigation relating to Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or indirectly, to lend, contribute or provide to, or has been or will be otherwise made available to fund, any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Administrative Agent, the Lenders and their Affiliates) of Sanctions.

7.21 Anti-Corruption. Neither the Borrower nor any of its Subsidiaries, their respective directors, officers or employees nor, to the knowledge of the Borrower, any agents or other persons acting on behalf of any of the foregoing, directly or indirectly, has (i) violated or is in violation of any applicable anti-corruption Law, (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or indirectly, any Prohibited Payment or (iii) been subject to any investigation by any Governmental Authority with regard to any actual or alleged Prohibited Payment.

7.22 Deposit and Disbursement Accounts. **Schedule 7.22** contains a list of all banks and other financial institutions at which the Borrower or any of its Subsidiaries maintains Deposit Accounts, Securities Accounts, Commodity Accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts, whether within or outside the U.S., and such Schedule correctly identifies the name, address and telephone number of each bank or financial institution, the name in which the account is held, the type of account, and the complete account number therefor.

7.23 Royalty and Other Payments. Except as set forth on **Schedule 7.23**, neither the Borrower nor any of its Subsidiaries is obligated to pay any royalty, milestone payment, deferred payment or any other contingent payment in respect of any Product.

7.24 Non-Competes. Neither the Borrower nor any of its Subsidiaries or their respective directors, officers or employees is subject to an enforceable non-competition agreement that materially prohibits or will materially interfere with the Product Commercialization and Development Activities.

7.25 Internal Controls. The Borrower acknowledges that its management is responsible for the preparation and fair presentation of the financial statements of the Borrower and each of its Subsidiaries provided to the Administrative Agent and the Lenders pursuant to **Section 8.01**, in each case, in accordance with GAAP. The Borrower has designed, implemented and maintained internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

SECTION 8 AFFIRMATIVE COVENANTS

Each Obligor jointly and severally covenants and agrees, for the benefit of the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent (with sufficient copies for each Lender):

(a) Within forty (40) days after the end of each fiscal quarter, (i) an unaudited consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal quarter, and (ii) the related unaudited consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case, prepared in accordance with GAAP consistently applied (subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes), all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of the Borrower stating that such financial statements (x) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and the results of operations of the Borrower and its Subsidiaries for the period ended on such date and (y) have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this **Section 8.01(a)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" and notice of such availability is provided to the Administrative Agent.

(b) As soon as available and in any event within ninety (90) days after the end of each fiscal year, (i) the audited consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year, and (ii) the related audited consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of any "Big Four" accounting firm or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with GAAP, consistently applied, and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and in the case of such consolidated financial statements, certified by a Responsible Officer of the Borrower; provided that documents required to be furnished pursuant to this **Section 8.01(b)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" and notice of such availability is provided to the Administrative Agent.

(c) (i) Together with the financial statements required pursuant to **Sections 8.01(a)** and **8.01(b)**, a compliance certificate delivered by the chief financial Responsible Officer of the Borrower as of the end of the applicable accounting period, substantially in the form of **Exhibit E** (a "**Compliance Certificate**") including a summary of Net Revenue (in reasonable detail) and which evidences the Obligor's compliance with **Section 10.02** and, with respect to the financial statements delivered pursuant to **Section 8.01(b)**, details of any issues that are material that are raised by the Borrower's auditors and (ii) together with the financial statements required pursuant to **Sections 8.01(a)** and **8.01(b)**, a management discussion and analysis, prepared in writing and in reasonable detail, discussing the Borrower's financial condition and results of operations as set forth in such financial statements.

(d) As soon as available and in any event no later than sixty (60) days following the end of each fiscal year of the Borrower, copies of an annual budget (or equivalent) on a consolidated basis for the Borrower and its Subsidiaries, approved by the Borrower's Board, for the then current fiscal year, in form reasonably satisfactory to the Administrative Agent, together with the projections used in the preparation thereof, accompanied by a certificate of the chief financial officer of the Borrower certifying (in his or her capacity as an officer of the Borrower and not in his or her individual capacity) that such projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such projections are incorrect or misleading in any material respect.

(e) Promptly, and in any event within ten (10) days after receipt thereof by the Borrower or any of its Subsidiaries, copies of (x) each material notice or other material correspondence received from any securities regulator or exchange to the authority of which any Obligor or any of its Subsidiaries may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of such Obligor or any such Subsidiary and (y) all press releases; provided that documents required to be furnished pursuant to this **Section 8.01(e)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" and notice of such availability is provided to the Administrative Agent.

(f) Promptly, and in any event within ten (10) days, after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to all the stockholders of the Borrower or any of its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or any of its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which the Borrower or any such Subsidiary, as applicable, may become subject from time to time; provided that documents required to be furnished pursuant to this **Section 8.01(f)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR” and notice of such availability is provided to the Administrative Agent.

(g) Upon request of the Administrative Agent, the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**.

(h) Promptly following the Administrative Agent’s reasonable request at any time, proof of the Borrower’s compliance with **Section 10**.

(i) Within five (5) Business Days of delivery, copies of all statements, reports and notices (including board kits) made available to holders of the Borrower’s Equity Interests or to the Borrower’s Board; provided that any such material may be redacted by the Borrower to exclude information relating to the Lenders (including the Borrower’s strategy regarding the Loans).

(j) Such other information respecting the operations, properties, business, liabilities or condition (financial or otherwise) of the Borrower and each of its Subsidiaries (including with respect to the Collateral) as the Administrative Agent or any Lender may from time to time reasonably request.

The Borrower hereby acknowledges that the Administrative Agent or the Lenders may not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and the Administrative Agent, the Lenders or their respective personnel may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower covenants and agrees that, for purposes of both this **Section 8.01** and **Section 8.02** below, after any time the Borrower or any of its Subsidiaries becomes subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act, neither the Borrower nor any Person acting on its behalf will provide, or become obligated to provide, the Administrative Agent or any Lender or their respective representatives or agents with any information that the Borrower reasonably believes constitutes material non-public information, unless prior thereto, such receiving Person shall have confirmed to the Borrower in writing that it consents to receive such information; provided that, notwithstanding the foregoing, the information required to be delivered pursuant to (i) **clauses (a), (b), (c), (d), (g), and (k)** of **Section 8.01** and (ii) **clauses (a), (g), (j), (k) and (l)** of **Section 8.02** shall be furnished and delivered to the Administrative Agent as provided herein whether or not such information qualifies as material non-public information. The Borrower hereby acknowledges that the Administrative Agent and each Lender is relying on the foregoing covenant in effecting transactions in securities of the Borrower.

8.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent written notice of the following promptly, but in any event within five (5) Business Days, after a Responsible Officer of the Borrower or any of its Subsidiaries first learns of or acquires knowledge of the existence of any of the below circumstances or events (prepared in reasonable detail):

(a) The occurrence or existence of any Default or any event, circumstance, act or omission that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect or a Material Regulatory Event.

(b) The occurrence of any event with respect to any property or assets of the Borrower or any of its Subsidiaries resulting in a Loss aggregating \$1,000,000 (or the Equivalent Amount) or more.

(c) Any Claim, action, suit, notice of violation, hearing, investigation or other proceeding that involves more than \$1,000,000 pending, or to the best of the Borrower's knowledge, threatened against or affecting the Borrower or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties or related to any Product or Product Development and Commercialization Activity.

(d) The filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority or any other Person against or affecting the Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event.

(e) (i) On or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) promptly, and in any event within ten (10) days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know (A) that an ERISA Event has occurred or is reasonably expected to occur or (B) that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect to either of the foregoing, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto.

(f) (i) The termination of any Material Agreement other than in accordance with its terms, including as a result of a breach or default; (ii) the entry into any new Material Agreement by the Borrower or any of its Subsidiaries (and a copy thereof); or (iii) any material amendment to a Material Agreement (and a copy thereof) that would have the effect of materially increasing the payment or performance obligations of the Borrower or any of its Subsidiaries. In the event that the Borrower or any of its Subsidiaries enters into or creates any new Material Agreement, the Borrower shall update **Schedule 7.14** to reflect such new Material Agreement and shall delivery the updated **Schedule 7.14** (along with a copy of such Material Agreement) to the Administrative Agent within thirty (30) days after the end of the fiscal quarter during which such new Material Agreement is executed.

(g) Promptly after the occurrence thereof, notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving the Borrower or any of its Subsidiaries.

(h) Any licensing agreement or similar arrangement entered into by the Borrower or any of its Subsidiaries in connection with (or as a result of) any infringement or alleged infringement by the Borrower or any of its Subsidiaries of the Intellectual Property of another Person.

(i) Concurrently with the delivery of financial statements under **Section 8.01(a)** or **(b)**, the creation, development or other acquisition of any new Intellectual Property by the Borrower or any Subsidiary after the date hereof and during such prior fiscal quarter or fiscal year, as applicable, for which such financial statements were delivered, which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority.

(j) Any change to the ownership of the Deposit Accounts, Securities Accounts and Commodity Accounts of the Borrower or any of its Subsidiaries, by delivering the Administrative Agent an updated Schedule 1 to the Security Agreement setting forth a complete and correct list of all such accounts as of the date of such change.

(k) The occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.07** or **Section 7.18** to be incorrect in any material respect if such representation or warranty was to be made at the time the Borrower learned of such event, circumstance, act or omission.

(l) The Acquisition by the Borrower or any of its Subsidiaries, in a single or series of related transactions, of any fee interest in any real property having a fair market value in excess of \$1,000,000.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a financial officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

8.03 Existence; Conduct of Business. The Borrower shall, and shall cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and all Governmental Approvals necessary or material to its Product Development and Commercialization Activities.

8.04 Payment of Obligations. The Borrower shall, and shall cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful Claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any Subsidiary, except to the extent such Taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP, and (ii) all lawful Claims which, if unpaid, would by Law become a Lien upon any property or asset of the Borrower or any Subsidiary, other than any Permitted Lien.

8.05 Insurance. The Borrower shall, and shall cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the request of the Administrative Agent, the Borrower shall furnish the Administrative Agent from time to time with (i) full information as to the insurance carried by each Obligor and each of its Subsidiaries and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid, that such policies are in full force and effect. The Borrower shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed in a manner adverse to the insured Person without at least thirty (30) days' prior written notice to the Borrower and the Administrative Agent. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle Secured Parties to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Borrower (payable on demand). The amount of any such expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

8.06 Books and Records; Inspection Rights. The Borrower shall, and shall cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower shall, and shall cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and independent accountants, all at such reasonable times (but not more often than once a year unless an Event of Default has occurred and is continuing) as the Administrative Agent or any Lender may request. The Obligors shall pay all costs and expenses of all such inspections.

8.07 Compliance with Laws, Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc.

(a) The Borrower shall, and shall cause each of its Subsidiaries to, (i) comply in all material respects with all applicable Laws (including Environmental Laws), Regulatory Approvals and Governmental Approvals (including all such Laws, Regulatory Approvals and Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties), and (ii) comply in all material respects with the terms of all Material Agreements to which it or any of its assets or properties are subject.

(b) With respect to the Products and all Product Development and Commercialization Activities, the Borrower shall, and shall cause each of its Subsidiaries and Collaboration Partners to, (i) maintain in full force and effect all Regulatory Approvals (including all Product Authorizations), Contracts, Material Intellectual Property, and other rights, interests or assets (whether tangible or intangible) necessary or required for the operations of the Borrower's or such

Subsidiary's business, as the case may be, in the ordinary course as currently conducted, including any Product Development and Commercialization Activities, (ii) notify the Administrative Agent, promptly after learning of (x) any product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, to be undertaken or issued by the Borrower, any such Subsidiary or any of their respective suppliers, as the case may be, whether or not at the request, demand or order of any Governmental Authority or otherwise with respect to any Product or any Product Development and Commercialization Activities, or (y) any basis for undertaking or issuing any such action or item, (iii) maintain in full force and effect all Material Intellectual Property owned or controlled by the Borrower or any such Subsidiary that is necessary or required for the operations of the business of such Person in the ordinary course as currently conducted, including Product Development and Commercialization Activities, (iv) except to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Effect or a Material Regulatory Event, notify the Administrative Agent, promptly after learning thereof, of any infringement or other violation by any Person of the Borrower's or any other Subsidiary's Intellectual Property that is used in the operations of the business of such Person, or in connection with any Product Development and Commercialization Activities, and aggressively pursue any such infringement or other violation, to the extent the Borrower deems it commercially reasonable to do so, (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all new Material Intellectual Property developed or controlled by the Borrower or any other Subsidiary, as the case may be, that is necessary or required for the operations of the business of such Person, or in connection with any Product Development and Commercialization Activities, and (vi) notify the Administrative Agent, promptly after learning thereof, of (x) any claim by any Person that the conduct of the Borrower's or any such Subsidiary's business (including any Product Development and Commercialization Activities) infringes any Intellectual Property of such Person, or (y) any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.18** to be incorrect in any material respect if such representation or warranty was to be made at the time the Borrower or such Subsidiary learned of such event, circumstance, act or omission.

8.08 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, whether tangible or intangible, necessary or useful in the proper conduct of the Borrower's or such Subsidiary's business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

8.09 Action under Environmental Laws. The Borrower shall, and shall cause each of its Subsidiaries to, upon becoming aware of the release of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, and restore their respective businesses, operations or properties to a condition in compliance with applicable Environmental Laws.

8.10 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.04**. Without limiting the foregoing, no part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.11 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors.** The Borrower shall take such action from time to time as shall be necessary to ensure that (x) each of its Subsidiaries that is a party to this Agreement as of the date hereof will be and will remain an Obligor and Subsidiary Guarantor hereunder (except as otherwise permitted by **Section 9.03**), and (y) each of its other Subsidiaries, whether direct or indirect, now existing or hereafter created, will, within ten (10) Business Days of becoming a Subsidiary, become an “Obligor” and a “Subsidiary Guarantor” pursuant to this **Section 8.11**. Without limiting the generality of the foregoing, if the Borrower or any of its Subsidiaries forms or acquires any new Subsidiary, then the Borrower concurrently shall (unless otherwise agreed by the Administrative Agent in its sole discretion), within ten (10) Business Days of such event:

(i) cause such Subsidiary to become an “Obligor” and a “Subsidiary Guarantor” hereunder, a “Grantor” (or the equivalent thereof) under the applicable Security Document, and a “Subsidiary Party” under the Intercompany Subordination Agreement;

(ii) take such action or cause such Subsidiary to take such action (including joining the Security Agreement or the applicable Security Documents and delivering certificated Equity Interests together with undated transfer powers executed in blank, applicable control agreements, and other instruments) as shall be deemed reasonably necessary or desirable by the Administrative Agent to create and perfect, in favor of the Administrative Agent, for the benefit of the Secured Parties, valid and enforceable first priority Liens on substantially all of the personal property of such new Subsidiary as collateral security for the Obligations hereunder;

(iii) cause the parent of such Subsidiary to execute and deliver a pledge agreement in favor of the Administrative Agent, for the benefit of the Secured Parties, in respect of all outstanding issued Equity Interests of such Subsidiary (or, with respect to any Foreign Subsidiary, sixty five percent (65%) of the Equity Interests in such Foreign Subsidiary to the extent that a pledge of more than sixty five percent (65%) would result in a U.S. income tax consequence to the Borrower that would be both material and adverse) for the purpose of creating and perfecting, in favor of the Administrative Agent, for the benefit of the Secured Parties, a valid and perfected first priority Lien on such Equity Interests; and

(iv) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** or as the Administrative Agent shall have reasonably requested.

(b) Further Assurances.

(i) Each Obligor shall, and shall cause each of its direct or indirect Subsidiaries (including any newly formed or newly acquired Subsidiaries) to, take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement (including this **Section 8.11**) and the applicable Security Documents.

(ii) In the event that the Borrower or any of its Subsidiaries holds or acquires any Intellectual Property or other assets or properties, the Borrower or any such Subsidiary shall take any action as shall be reasonably necessary to ensure that the provisions of this Agreement and the Security Agreement shall apply thereto and any such Intellectual Property or other assets or properties shall constitute part of the Collateral under the Security Documents.

(iii) Without limiting the generality of the foregoing, within ten (10) Business Days following written request from the Administrative Agent, the Borrower shall cause each Person that is required to be a Subsidiary Guarantor or an Obligor hereunder to take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments, and delivering certificated Equity Interests together with undated transfer powers executed in blank) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, a first priority perfected security interest and Lien in substantially all of the assets and property of such Person as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the applicable Security Documents.

(iv) In the event that the Borrower or any of its Subsidiaries acquires any real property with a value in excess of \$1,000,000 during the term of this Agreement, the Borrower shall promptly notify the Administrative Agent and provide the Administrative Agent with a description of such real property, the acquisition date thereof and the purchase price therefor. Upon the request of the Administrative Agent, the Borrower or any such Subsidiary shall execute and deliver a mortgage with respect to such acquired real property to secure the Obligations.

(c) **Costs and Benefits.** Notwithstanding any term or provision of this **Section 8.11** to the contrary, without limiting the right of the Administrative Agent or the Lenders to require a Lien or a security interest in the Equity Interests of, or Guarantee from, any newly acquired or created Subsidiary of the Borrower, or a Lien or security interest on any assets or properties of the Borrower or any of its Subsidiaries, so long as no Event of Default has occurred and is continuing, the Borrower may request in writing to the Administrative Agent that the Majority Lenders waive the requirements of this **Section 8.11** to provide a Lien, security interest or Guarantee, as the case may be, due to the cost or burden thereof to the Borrower and its Subsidiaries (when taken as a whole) being unreasonably excessive relative to the benefit that would inure to the Secured Parties, and describing such cost or burden in reasonable detail. Upon receipt of any such written notice, the Administrative Agent shall review and consider such request in good faith and, within five (5) Business Days of receipt of such request, the Administrative Agent shall determine in their sole but commercially reasonable discretion, and notify the Borrower of such determination, whether the Administrative Agent will grant such request for a waiver. With respect to any Subsidiary for which the requirement to provide a Lien, security interest or Guarantee, as the case may be, has been waived by the Administrative Agent in accordance with this **Section 8.11(c)**, such waiver may be terminated by the Administrative Agent if it determines in its sole but commercially reasonable discretion that the cost or burden of providing such Lien, security interest or Guarantee is no longer unreasonably excessive relative to the benefits that would inure to the Secured Parties. If such waiver is terminated, such Subsidiary shall be required to comply with the requirements of this **Section 8.11**.

8.12 Intellectual Property.

(a) In the event that any of the Obligors or any of their respective Subsidiaries acquire, develop or create Intellectual Property during the term of this Agreement, then the provisions of this Agreement and the other Loan Documents, to the extent applicable, shall automatically apply thereto and any such Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such acquisition, development or creation (except that any representations or warranties of any Obligor shall apply to any such Intellectual Property only from and after the date, if any, subsequent to such acquisition or creation that such representations and warranties are brought down or made anew as provided herein). Promptly after such creation, development or acquisition of Intellectual Property that constitutes Material Intellectual Property, the Borrower shall give written notice thereof, in reasonable detail, to the Administrative Agent.

(b) The Borrower shall, and shall cause each of its Subsidiaries (to the extent applicable) to, (i) promptly upon obtaining knowledge thereof, notify the Administrative Agent of any material infringement or other material violation by any Person of the Material Intellectual Property owned by the Borrower or any such Subsidiary, and pursue any such infringement or other violation, except where the Borrower reasonably determines in good faith that it is not commercially reasonable or necessary to do so, (ii) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all new Material Intellectual Property owned by the Borrower or any of its Subsidiaries, as the case may be, and (iii) promptly after obtaining knowledge thereof, notify the Administrative Agent of any written Claim by any Person that the conduct of the business of the Borrower or any of its Subsidiaries (including any Product Development and Commercialization Activities with respect to any Product) has infringed upon any Intellectual Property of another Person that could reasonably be expected to result in a Material Adverse Effect.

8.13 Litigation Cooperation. The Borrower shall, and shall cause each of its Subsidiaries to, make available to the Administrative Agent and the Lenders, without expense to the Administrative Agent or the Lenders, reasonable access to each Obligor, each of such Obligor's Subsidiaries and each of their officers, employees and agents and the books and records of each such Obligor and its Subsidiaries, to the extent that the Administrative Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against the Administrative Agent or any Lender with respect to any Collateral, the subject of any Loan Document or relating to any Obligor or any of its Subsidiaries.

8.14 ERISA Compliance. The Borrower shall comply, and shall cause each of its Subsidiaries to comply, in all material respects, with the provisions of ERISA with respect to any Plans to which the Borrower or any Subsidiary is a party as employer.

8.15 Cash Management. The Borrower shall, and shall cause each of its Subsidiaries to:

(a) maintain at all times all Deposit Accounts, Securities Accounts, Commodity Accounts, lockboxes and similar accounts held by the Borrower and each of its Subsidiaries with a bank or financial institution that has executed and delivered to the Administrative Agent an Account Control Agreement in favor of the Administrative Agent, in form and substance satisfactory to the Administrative Agent (each such Deposit Account, Securities Account, Commodity Account, lockbox or similar account, a "**Controlled Account**");

(b) maintain each such Controlled Account as a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and the Borrower and each of its Subsidiaries (as the case may be) shall have granted a Lien and security interest to the Administrative Agent, for the benefit of the Secured Parties, over such Controlled Accounts;

(c) deposit promptly, and in any event no later than three (3) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts receivable, Contracts or any other rights and interests into one or more Controlled Accounts;

(d) at any time after the occurrence of an Event of Default, at the request of the Administrative Agent, direct all payments constituting proceeds of accounts receivable to be directed into lockbox accounts pursuant to agreements in form and substance reasonably satisfactory to the Administrative Agent; and

(e) in the event of any change to any Obligor's ownership of any Deposit Account, Securities Account or Commodity Account, within five (5) Business Days of the occurrence of such change deliver written notice to the Administrative Agent (prepared in reasonable detail) of such change and the reason or circumstance causing such change.

8.16 Conference Calls. No later than five (5) Business Days after delivery of the financial statements pursuant to **Sections 8.01(a) and 8.01(b)**, at the request of the Administrative Agent, the Borrower shall cause its chief financial officer (or its chief executive officer) to participate in conference calls with the Administrative Agent and the Lenders to discuss, among other things, the financial condition of each Obligor and any financial or earnings reports; provided that such conference calls shall be held at reasonable times during normal business hours and, so long as no Event of Default has occurred and is continuing, not more frequently than once per fiscal quarter.

8.17 Post-Closing Covenants. The Borrower shall have delivered to the Administrative Agent or, solely with respect to the requirement set forth in **clause (b)**, shall use commercially reasonable efforts to have delivered to the Administrative Agent, in each case, in form and substance satisfactory to the Administrative Agent:

(a) Within fourteen (14) days of the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), insurance endorsements naming the Administrative Agent, for the benefit of the Lenders, as additional insured and loss payee under the Borrower's insurance policies required to be maintained pursuant to **Section 8.05**.

(b) Within thirty (30) days of the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), Landlord Consents and Bailee Letters in respect of the following locations, in each case in form and substance satisfactory to the Administrative Agent, duly executed and delivered by the Borrower and each other Person party thereto:

(i) 3222 Phoenixville Pike, Malvern, PA 19355;

(ii) 200 S. College Street; Charlotte, NC 28202;

(iii) 22740 Lunn Road, Strongsville OH 44149;

(iv) Building 15, Qingxi New District three, Liuqing Street, Yiwu City 322000, China; and

(v) 16990 Goldentop Rd, San Diego CA 92127.

(c) Within thirty (30) days of the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), evidence that all Deposit Accounts, Securities Accounts, Commodities Accounts, lockboxes or other similar accounts of the Borrower are Controlled Accounts, together with a legal opinion of legal counsel to the Borrower, dated as of the date of delivery and addressed to the Administrative Agent and the Lenders.

(d) Within seven (7) days of the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), a legal opinion of legal counsel to the Borrower, dated as of the date of delivery and addressed to the Administrative Agent and the Lenders, covering the Warrant Certificate delivered pursuant to **Section 6.01(j)** and other matters the Administrative Agent may reasonably request.

SECTION 9 NEGATIVE COVENANTS

Each Obligor jointly and severally covenants and agrees, for the benefit of the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no Claim has been made) have been paid in full indefeasibly in cash:

9.01 Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except for the following:

(a) the Obligations;

(b) Indebtedness existing on the Closing Date and set forth in **Schedule 7.13(a)** and Permitted Refinancings thereof; provided that, in each case, such Indebtedness is subordinated to the Obligations on terms satisfactory to the Administrative Agent;

(c) Indebtedness in respect of any agreement providing for customary treasury, depository or cash management services, including in connection with any automated clearing house transfers of funds or any similar transfers, netting services, overdraft protections and other cash management and similar arrangements, in each case in the ordinary course of business;

(d) Indebtedness consisting of Guarantees resulting from endorsement of negotiable instruments for collection by any Obligor in the ordinary course of business;

(e) Indebtedness of an Obligor, including in respect of Guarantees owed, owing to any other Obligor; provided that, in each case, such Indebtedness is subordinated to the Obligations pursuant to an Intercompany Subordination Agreement;

(f) ordinary course of business equipment financing and leasing; provided that (i) if secured, the collateral therefor consists solely of the assets being financed, and (ii) the aggregate outstanding principal amount of such Indebtedness does not exceed \$500,000 (or the Equivalent Amount) at any time;

(g) advances or deposits from customers or vendors received in the ordinary course of business;

(h) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, commercial letters of credit and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business; and

(i) Indebtedness in respect of workers' compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations and reclamation and statutory obligations, in each case incurred in the ordinary course of business;

(j) Indebtedness assumed pursuant to any Permitted Acquisition; provided that (i) the aggregate amount of Indebtedness permitted pursuant to this **Section 9.01(g)** shall not exceed \$500,000 at any time outstanding and (ii) no such Indebtedness shall have been created or incurred in connection with, or in contemplation of, such Permitted Acquisition;

(k) unsecured Indebtedness in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) at any time incurred under insurance premium financing in the ordinary course of business and which are payable within one (1) year, in each case in an amount not to exceed the amount of the applicable insurance premium in respect of any such policy plus interest and financing charges applicable thereto;

(l) Indebtedness incurred under a standby letter of credit issued on the Borrower's behalf in favor of the Borrower's landlords in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) for all landlords;

(m) Indebtedness in connection with corporate credit cards, purchasing cards or bank card products in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) at any time; and

(n) Indebtedness under Hedging Agreements permitted pursuant to **Section 9.05(m)**.

9.02 Liens. The Borrower shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien or security interest on any property or asset now or in the future owned by it or such Subsidiary, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except for the following:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of the Borrower or any of its Subsidiaries existing on the Closing Date and set forth in **Schedule 7.13**; provided that (i) no such Lien shall extend to any other property or asset of the Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) Liens securing Indebtedness permitted under **Section 9.01(f)**; provided that such Liens do not at any time encumber any assets other than the assets financed by such Indebtedness;

(d) Liens imposed by Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' Liens and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof in the operations of the business of the Borrower or any Subsidiary or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

(e) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other similar social security legislation;

(f) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(g) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any Law and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to Laws; and (iii) rights of expropriation, access or use or any similar right conferred or reserved by or in any Law, which, in the aggregate for **clauses (i), (ii) and (iii)** above, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

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

(j) Liens securing Indebtedness permitted under **Section 9.01(j)**; provided that (i) such Lien is not created in contemplation of or in connection with the applicable Permitted Acquisition, (ii) such Lien shall not apply to any other property or asset of the Borrower or any of its Subsidiaries other than the property or asset being acquired pursuant to such Permitted Acquisition, and (iii) such Lien shall secure only those obligations that it secured immediately prior to the consummation of such Permitted Acquisition and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(k) Deposits with landlords to secure performance of lease obligations, or to secure letters of credit in favor of landlords permitted under **Section 9.01(l)**, not exceeding Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate at any given time;

provided that no Lien otherwise permitted under any of **clauses (b) through (i)** above shall apply to any Material Intellectual Property.

9.03 Fundamental Changes and Acquisitions. The Borrower shall not, and shall not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any of its Disqualified Equity Interests, (iv) make an Asset Sale of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person or (iv) make any Acquisition, except for the following (in each case, solely to the extent that no Event of Default has occurred and is continuing, or could reasonably be expected to result therefrom):

(a) the merger, amalgamation or consolidation of any Subsidiary with or into any Obligor ; provided that with respect to any such transaction involving the Borrower, the Borrower shall be the surviving or successor entity of such transaction, and with respect any transaction involving any other Obligor and a Subsidiary that is not an Obligor, the Obligor shall be the surviving or successor entity of such transaction;

(b) the sale, lease, transfer or other disposition by any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to an Obligor;

(c) the sale, transfer or other disposition of the Equity Interests of any Subsidiary to any Obligor;

(d) Permitted Acquisitions; and

(e) Asset Sales permitted pursuant to **Section 9.09**.

9.04 Lines of Business. The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the Closing Date by the Borrower or such Subsidiary or a business reasonably related thereto and reasonable extensions thereof.

9.05 Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except for the following:

(a) Investments outstanding on the date hereof and identified in **Schedule 9.05**;

(b) operating Deposit Accounts, Securities Accounts or Commodity Accounts with banks in compliance with **Section 8.16**;

- (c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business;
- (d) cash and Permitted Cash Equivalent Investments in Controlled Accounts;
- (e) Investments in the form of Indebtedness owing by the Borrower or any of its Subsidiaries to the Borrower or any such Subsidiary, to the extent such Indebtedness **is permitted pursuant to Section 9.1**;
- (f) Investments consisting of security deposits with utilities and other like Persons made in the ordinary course of business;
- (g) employee loans, travel advances and Guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by Laws) which in the aggregate shall not exceed \$500,000 outstanding at any time (or the Equivalent Amount);
- (h) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;
- (i) Permitted Acquisitions;
- (j) other Investments in an aggregate amount at any time outstanding not to exceed One Hundred Fifty Thousand Dollars (\$150,000);
- (k) non-cash Investments in joint ventures or strategic alliances in the ordinary course of the Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support; provided that any cash Investments by the Borrower do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any period of twelve (12) consecutive months;
- (l) repurchases of capital stock of former employees, directors, officers or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of any such repurchase and would not exist after giving effect to any such repurchase; provided that the aggregate amount of all such repurchases does to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in any period of twelve (12) consecutive months; and
- (m) so long as no Event of Default has occurred and is continuing or could reasonably be expected to result therefrom, Hedging Agreements entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure and that are not for speculative purposes and in an aggregate notional amount for all such Hedging Agreements not in excess of Five Hundred Thousand Dollars (\$500,000) at any time outstanding.

9.06 Restricted Payments. The Borrower shall not, and shall not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except for the following (in each case, solely to the extent that no Event of Default has occurred and is continuing, or could reasonably be expected to result therefrom):

- (a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests;

(b) the Borrower's purchase, redemption, retirement, or other acquisition of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests or in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate in any period of twelve (12) consecutive months); and

(c) dividends paid by any Subsidiary Guarantor to any other Obligor .

9.07 Payments of Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, (ii) scheduled payments (and not accelerated, voluntary or other similar contractually unscheduled payments) of other Permitted Indebtedness and (iii) repayment of intercompany Indebtedness permitted in reliance upon **Section 9.01(e)**.

9.08 Change in Fiscal Year. The Borrower shall not, and shall not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower.

9.09 Sales of Assets, Etc. The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, lease, license, transfer or otherwise dispose of any of its assets or properties (including accounts receivable, Intellectual Property and Equity Interests of Subsidiaries), whether now owned or existing or hereafter acquired or arising, grant or enter into any Exclusive License, or forgive, release or compromise any amount owed to the Borrower or such Subsidiary, in each case, in one transaction or series of transactions (any thereof, an "**Asset Sale**"); provided that, notwithstanding the forgoing, (i) Asset Sales of the type described in **clauses (b) and (d)** set forth below shall be permitted hereunder so long as no Event of Default has occurred and is continuing or could reasonably be expected to result therefrom and (ii) all other Asset Sales of the types described in the other clauses set forth below shall be permitted hereunder:

(a) sales of inventory in the ordinary course of its business on ordinary business terms;

(b) the forgiveness, release or compromise of any amount owed to the Borrower or to any of its Subsidiaries in the ordinary course of business; provided that, in any period of twelve (12) consecutive months, the aggregate amount forgiven, released or compromised shall not exceed \$150,000.

(c) Asset Sales that constitute outbound licenses permitted pursuant to **Section 9.13(b)**;

(d) transfers of property (other than Material Intellectual Property) by any Subsidiary to any Obligor;

(e) dispositions of any property that is obsolete or worn out or no longer used or useful in such Person's business;

(f) in connection with any transaction permitted under **Section 9.03** or **9.05**; and

(g) other transfers of property or Asset Sales (other than Material Intellectual Property) not to exceed One Hundred Fifty Thousand Dollars (\$150,000) in the aggregate since the Closing Date.

9.10 Transactions with Affiliates. The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except for the following:

(a) transactions between or among Obligor;

(b) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of the Borrower or any Subsidiary in the ordinary course of business; and

(c) any other transaction of the Borrower or any of its Subsidiaries that is (i) on fair and reasonable terms that are no less favorable (including with respect to the amount of cash or other consideration receivable or payable in connection therewith) to the Borrower or such Subsidiary, as applicable, than it could obtain in an arm's-length transaction with a Person that is not an Affiliate of the Borrower or such Subsidiary, and (ii) of the kind which would be entered into by a prudent Person in the position of the Borrower or such Subsidiary, as applicable, with another Person that is not an Affiliate of the Borrower or such Subsidiary, as applicable.

9.11 Restrictive Agreements. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by Law or by the Loan Documents and (ii) the Restrictive Agreements listed on **Schedule 7.15**, which Restrictive Agreements may not be amended or otherwise modified without the consent of the Administrative Agent.

9.12 Modifications and Terminations of Material Agreements and Organic Documents. The Borrower shall not, and shall not permit any of its Subsidiaries to:

(a) waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document, in any manner that could be materially adverse to the interests of the Secured Parties or any of the Obligations; or

(b) waive, amend, replace or otherwise modify any term or provision of, or take or omit to take any action that results in the termination of, any Material Agreement in any manner materially adverse to the interests of the Secured Parties or any of the Obligations.

9.13 Inbound and Outbound Licenses.

(a) **Material Inbound Licenses.** Set forth on **Schedule 9.13(a)** is a list of all Material Inbound Licenses entered into on or prior to the Closing Date that are currently in effect and as to which the Borrower or any of its Subsidiaries is subject. After the Closing Date neither the Borrower nor any of its Subsidiaries shall enter into any Material Inbound License unless (i)

such license has been entered into by the Borrower or one of its Subsidiaries, as the case may be, in the ordinary course of business on an arm's-length basis, on commercially reasonable terms with a non-Affiliated third party, and (ii) the Borrower has provided prior written notice to the Administrative Agent of the material terms of such license or agreement with a description of its anticipated and projected impact on the Borrower's or such Subsidiary's business or financial condition, as the case may be.

(b) **Material Outbound Licenses.** The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or become or remain bound by any outbound license, including any collaboration or development agreement, of Material Intellectual Property of the Borrower or any of its Subsidiaries unless such outbound license (i) has been entered into by the Borrower or one of its Subsidiaries, as the case may be, in the ordinary course of business on an arm's-length basis, on commercially reasonable terms with a non-Affiliated third party, (ii) does not prevent or impair the ability of any Secured Party from fully exercising its rights under any of the Loan Documents, including in the event of an Event of Default (including a disposition or liquidation in connection with a foreclosure) and (iii) is not an Exclusive License.

9.14 Sales and Leasebacks. Except as disclosed on **Schedule 9.14**, the Borrower shall not, and shall not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which the Borrower or such Subsidiary has sold or transferred or is to sell or transfer to any other Person, and (ii) which the Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.15 Hazardous Material. The Borrower shall not, and shall not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

9.16 Off-Label Promotion. The Borrower shall not, and shall not permit any of its Subsidiaries or Collaboration Partners to, promote the off-label use of Device in violation of FDA "intended use" regulations.

9.17 Accounting Changes. The Borrower shall not, and shall not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.18 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that would, in the aggregate, have a Material Adverse Effect. No Obligor or Subsidiary thereof shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

9.19 Inconsistent Agreements. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any agreement containing any provision which would (i) be violated or breached by such Person hereunder or by the performance by such Person of any of its obligations hereunder or under any other Loan Document, (ii) prohibit any such Person from granting to the Administrative Agent a Lien on any of its assets or (iii) create or permit to exist or become effective any Lien or restriction on the ability of any Obligor to (x) pay dividends or make other Restricted Payments to the Borrower, or pay any Indebtedness owed to the Borrower, (y) make loans or advances to the Borrower or (z) transfer any of its assets or properties to the Borrower.

9.20 Sanctions; Anti-Corruption; Use of Proceeds. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (B) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as Administrative Agent, Lender, underwriter, advisor, investor, or otherwise).

SECTION 10 FINANCIAL COVENANTS

10.01 Minimum Liquidity. The Borrower shall at all times hold and maintain a minimum aggregate balance of five million dollars (\$5,000,000) in unrestricted cash-on-hand and Permitted Cash Equivalent Investments in one or more Controlled Accounts maintained with one or more commercial banks or similar deposit-taking institutions in the U.S. that are free and clear of all Liens, other than Liens granted under the Loan Documents in favor of the Administrative Agent for the benefit of the Secured Parties.

10.02 Minimum Net Revenue. On each calculation date set forth in the table below (each, a “*Calculation Date*”), the Borrower and its Subsidiaries shall have received Net Revenue for the period of twelve (12) consecutive months ending on such Calculation Date, in an aggregate amount not less than the corresponding amount set forth opposite such Calculation Date:

<u>Calculation Date</u>	<u>Net Revenue</u>
December 31, 2024	\$70,000,000
March 31, 2025	\$72,500,000
June 30, 2025	\$75,000,000
September 30, 2025	\$77,500,000
December 31, 2025	\$80,000,000
March 31, 2026	\$82,500,000
June 30, 2026	\$85,000,000
September 30, 2026	\$87,500,000
December 31, 2026	\$90,000,000

<u>Calculation Date</u>	<u>Net Revenue</u>
March 31, 2027	\$ 92,500,000
June 30, 2027	\$ 95,000,000
September 30, 2027	\$ 97,500,000
December 31, 2027	\$100,000,000
March 31, 2028	\$102,500,000
June 30, 2028	\$105,000,000
September 30, 2028	\$107,500,000
December 31, 2028	\$110,000,000
March 31, 2029	\$112,500,000
June 30, 2029	\$115,000,000

**SECTION 11
EVENTS OF DEFAULT**

11.01 Events of Default. Each of the following events shall constitute an “*Event of Default*”:

(a) **Principal or Interest Payment Default.** The Borrower shall fail to pay any principal of or interest on the Loans, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.

(b) **Other Payment Defaults.** Any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) **Representations and Warranties.** Any representation or warranty made or deemed made by or on behalf of any Obligor or any of its Subsidiaries under or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Sections 8.01, 8.02, 8.03** (with respect to the Borrower’s existence), **8.07, 8.10, 8.11, 8.12, 8.13, 8.16, 8.17, Section 9** or **Section 10**.

(e) **Other Covenants.** Any Obligor or any of its Subsidiaries shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a), (b) or (d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

(f) **Payment Default on Other Indebtedness.** Any Obligor or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness or other Indebtedness having an aggregate principal amount in excess of \$1,000,000, in any such case, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness.

(g) Other Defaults on Other Indebtedness or any Material Agreement.

(i) (i) Any material breach of, or “event of default” or similar event under, any Contract governing any Material Indebtedness shall occur, (ii) any event or condition occurs (A) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders or beneficiaries of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, or (iii) there occurs under any Hedging Agreement an early termination date (as defined in such Hedging Agreement) resulting from (x) any event of default under such Hedging Agreement as to which the Borrower or any of its Subsidiaries is the defaulting party (as defined in such Hedging Agreement) or (y) any termination event (as defined in such Hedging Agreement) under such Hedging Agreement as to which the Borrower or any Subsidiary is an affected party (as defined in such Hedging Agreement) and, in either event, the termination value (if determined in accordance with the Hedging Agreement) or the amount determined as the mark-to-market value (if the termination value has not been so determined) for such affected Hedging Agreement that is owed by the Borrower or such Subsidiary as a result thereof is greater than \$1,000,000; provided that this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness so long as such Indebtedness is repaid when required under the documents related to such Material Indebtedness.

(ii) (x) Any material breach of, or “event of default” or similar event under any Material Agreement shall occur (after the expiration of any applicable grace period contained therein) (y) any Material Agreement is terminated by any counterparty thereto prior to the scheduled expiration thereof or (z) the Borrower or any of its Subsidiaries loses any material right under any Material Agreement to which it is a party.

(h) Insolvency, Bankruptcy, Etc.

(i) The Borrower or any of its Subsidiaries fails to be Solvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its Indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors.

(ii) The Borrower or any of its Subsidiaries commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so).

(iii) The Borrower or any of its Subsidiaries institutes any proceeding seeking to adjudicate it as insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any applicable Law, whether U.S. or non U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding.

(iv) The Borrower or any of its Subsidiaries applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property.

(v) The Borrower or any of its Subsidiaries takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof.

(vi) Any petition is filed, application made or other proceeding instituted against or in respect of the Borrower or any of its Subsidiaries:

(A) seeking to adjudicate it as insolvent;

(B) seeking a receiving order against it;

(C) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any applicable Law, whether U.S. or non U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of sixty (60) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if the Borrower or such Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply.

(vii) Any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in **Section 11.01(h)** above.

(i) **Judgments.** One or more judgments for the payment of money which, together with all other outstanding judgments for the payment of money, in an aggregate amount in excess of \$1,000,000 (or the Equivalent Amount) shall be rendered against any Obligor or any of its Subsidiaries or any combination thereof and the same shall remain undismissed, unsatisfied or undischarged for a period of thirty (30) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment.

(j) **ERISA and Pension Plans.** (i) An ERISA Event shall have occurred that, in the opinion of the Administrative Agent, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding (i) \$500,000 in the aggregate since the Closing Date.

(k) **Change of Control.** A Change of Control shall have occurred.

(l) **Material Adverse Change, Etc.** A Material Adverse Change or Material Regulatory Event shall have occurred.

(m) **Impairment of Security, Etc.** If any of the following events occurs: (i) other than as a result of any act or omission of the Administrative Agent or any other Secured Party, any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens), (ii) other than as a result of any act or omission of the Administrative Agent or any other Secured Party, any material rights or remedies of the Secured Parties (or their ability to exercise such rights or remedies) as secured creditors under and pursuant to the Security Documents are diminished, impeded or otherwise impaired (including the exercise of acceleration, foreclosure and related rights upon the occurrence and continuance of an Event of Default), (iii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee (including that contained in **Section 13**) shall for whatever reason cease to be in full force and effect, or (iv) any Obligor shall, directly or indirectly, contest in any manner the effectiveness, validity, binding nature or enforceability of any Lien or related secured creditor rights created pursuant to any Loan Document.

(n) **Failure to be Registered.** The outstanding shares of common stock of the Borrower at any time fail to be registered with the United States Securities and Exchange Commission in good standing or such common stock fails to remain listed for trading on the Nasdaq Stock Market, in either case, which failure continues unremedied for a period of thirty (30) calendar days.

11.02 Remedies. Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**), and at any time thereafter, the Administrative Agent may, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be immediately due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, shall become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor; and upon the occurrence of an Event of Default described in **Section 11.01(h)**, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, shall automatically become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor. Unless expressly provided otherwise herein, upon the occurrence thereof Events of Default shall remain outstanding until waived or otherwise cured in writing by the Administrative Agent.

11.03 Additional Remedies. Upon the occurrence of an Event of Default, if the Borrower or any of its Subsidiaries shall be in uncured default under a Material Agreement, the Administrative Agent or the Lenders shall have the right (but not the obligation) to cause the default or defaults under such Material Agreement to be remedied (including without limitation by paying any unpaid amount thereunder) and otherwise exercise any and all rights of the Borrower or such Subsidiary, as the case may be, thereunder, as may be necessary to prevent or cure any default. Without limiting the foregoing, upon any such default, the Borrower and each of its Subsidiaries shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as may reasonably be required of the Borrower or such Subsidiary to permit the Administrative Agent and the Lenders to cure any default under the applicable Material Agreement or permit the Administrative Agent and the Lenders to take such other action required to enable the Administrative Agent and the Lenders to cure or remedy the matter in default and preserve the interests of the Administrative Agent or Lenders. Any amounts paid by the Administrative Agent or Lenders pursuant to this **Section 11.03** shall be payable on demand by Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "**Obligations**."

11.04 Application of Payment. Notwithstanding anything herein to the contrary, following the occurrence and during the continuance of an Event of Default, all payments received on account of the Obligations shall be applied by the Administrative Agent as follows:

(a) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees and disbursements and other charges of counsel payable under **Section 14.03**) payable to the Administrative Agent in its capacity as such;

(b) second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees and disbursements and other charges of counsel payable under **Section 14.03**) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this **clause (b)** payable to them;

(c) third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (c)** payable to them;

(d) fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans ratably among the Lenders in proportion to the respective amounts described in this **clause (d)** payable to them;

(e) fifth, to the payment in full of all other Obligations, in each case ratably among the Administrative Agent and the Lenders based upon the respective aggregate amounts of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(f) finally, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

SECTION 12 THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to **clause (c)** below:

(a) **Appointment of the Administrative Agent.** Each of the Lenders hereby irrevocably appoints Perceptive Credit Holdings IV, LP (together with any successor to the Administrative Agent pursuant to **Section 12.09**) as the administrative agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from the Borrower or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) **Duties as Collateral and Disbursing Agent.** Without limiting the generality of **Section 12.01(a)**, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized by each Lender, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding); provided that (x) the Administrative Agent shall only be required to act in such agency capacity if it has notified the Borrower and the Lenders in writing that it has elected to do so, and (y) so long as the Administrative Agent has not delivered any such election notice it shall not be deemed to be acting as a disbursing and collecting agent for any other Lender or Secured Party and no Person shall be authorized to make any payment to the Administrative Agent for such purpose, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary

or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by any Obligor with, and cash and Permitted Cash Equivalent Investments held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties.** The Lenders and the Obligors hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions and (ii) subject only to the notice provisions set forth in **Section 12.09**, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature and do not (and are not intended to) create any fiduciary obligations, notwithstanding the use of the defined term “the Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**.

12.02 Binding Effect. Each Lender agrees that (i) any action taken by the Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

12.03 Use of Discretion.

(a) **No Action without Instructions.** The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions.** Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12**, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Parties thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document, applicable Law or the best interests of the Administrative Agent or any of its Affiliates or Related Parties.

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this **Section 12** to the extent provided by the Administrative Agent.

12.05 Reliance and Liability.

(a) The Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any document and information and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waives and shall not assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Majority Lenders or for the actions or omissions of any of their Related Parties selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender and the Borrower hereby waives and agrees not to assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action it might have against the Administrative Agent based thereon.

12.06 Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Majority Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

12.07 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of each Obligor and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Obligor), from and against such Lender's aggregate Proportionate Share of the liabilities (including Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent or any of its Related Parties in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such Loan Document, or, in each case, any action taken or omitted to be taken by the Administrative Agent or any of its Related Parties under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent or any of its Related Parties to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

12.09 Resignation of the Administrative Agent.

(a) At any time upon not less than five (5) Business Days prior written notice, the Administrative Agent may resign as the "the Administrative Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent), effective on the date set forth in such notice, which effective date shall not be less than five (5) Business Days following delivery of such notice. If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right to appoint a successor to the Administrative Agent reasonably satisfactory to the Borrower; provided that if a successor to the Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent, then the resigning Administrative Agent may, on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor to the Administrative Agent.

(b) Effective immediately upon its resignation, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor the Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Parties shall no longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent continues to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Administrative Agent shall take

such action as may be reasonably necessary to assign to the successor the Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor the Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs the Administrative Agent to release (or, in the case of **Section 12.10(b)(ii)**, release or subordinate) the following:

(a) any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.11(a)**; and

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent) and (ii) all of the Collateral and all Obligors upon (w) termination of the Commitments, (x) payment and satisfaction in full of all Loans and all other Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made) that the Administrative Agent has been notified in writing are then due and payable, (y) deposit of cash collateral with respect to all contingent Obligations (other than inchoate indemnification and expense reimbursement obligations for which no Claim has been made), in amounts and on terms and conditions and with parties satisfactory to the Administrative Agent and each Indemnified Party that is owed such Obligations, and (z) to the extent requested by the Administrative Agent, receipt by the Secured Parties of liability releases from the Obligors, each in form and substance acceptable to the Administrative Agent.

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the Guarantees and Liens when and as directed in this **Section 12.10**.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender so long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this **Section 12** and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Proportionate

Share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

SECTION 13 GUARANTEE

13.01 The Guarantee. The Subsidiary Guarantors hereby jointly and severally Guarantee to the Secured Parties, the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans, all fees and other amounts and Obligations from time to time owing to the Secured Parties by the Borrower under this Agreement or under any other Loan Document and by any other Obligor under any of the Loan Documents, in each case strictly in accordance with the terms hereof and thereof (such obligations being herein collectively called the “*Guaranteed Obligations*”). The Subsidiary Guarantors hereby further jointly and severally agree that if the Borrower or any other Obligor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

13.02 Obligations Unconditional. The obligations of the Subsidiary Guarantors under **Section 13.01** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of the Borrower or any other Obligor under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other Guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by Law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 13.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other Loan Document, agreement or instrument referred to herein shall be waived or any other Guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(d) any Lien or security interest granted to, or in favor of, the Secured Parties as security for any of the Guaranteed Obligations shall fail to be perfected.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower or any other Subsidiary Guarantor under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other Guarantee of, or security for, any of the Guaranteed Obligations.

13.03 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable costs and expenses (including fees of counsel) incurred by such Persons in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar Law.

13.04 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that, until the payment and satisfaction in full of all Guaranteed Obligations and the expiration and termination of the Commitments, they shall not exercise any right or remedy arising by reason of any performance by them of their Guarantee in **Section 13.01**, whether by subrogation or otherwise, against the Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

13.05 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors, on one hand, and the Secured Parties, on the other hand, the Obligations of the Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 13.01**.

13.06 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the Guarantee in this **Section 13** constitutes an instrument for the payment of money, and consents and agrees that the Secured Parties, at their sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

13.07 Continuing Guarantee. The Guarantee in this **Section 13** is a continuing Guarantee, and shall apply to all Guaranteed Obligations whenever arising.

13.08 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate Law, or any state or federal bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 13.01** would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, the Administrative Agent, any Lender or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 14 MISCELLANEOUS

14.01 No Waiver. No failure on the part of the Administrative Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by Law.

14.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, another Obligor, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

14.03 Expenses, Indemnification, Etc.

(a) **Expenses.** Each Obligor, jointly and severally, agrees to pay or reimburse (i) the Administrative Agent and the Lenders for all of their reasonable out of pocket costs and expenses (including the reasonable fees and expenses of Morrison & Foerster LLP, special counsel to the Administrative Agent and the Initial Lender, and any sales, goods and services or other similar Taxes applicable thereto, and printing, reproduction, document delivery, communication and

travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), and the Administrative Agent and the Lenders agree to apply the Expense Deposit to such costs and expenses, (y) post-closing costs (including, without limitation, costs and expenses associated with the maintenance and preservation of Liens and related rights in respect of the Collateral) and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) the Administrative Agent and the Lenders for all of their out of pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default.

(b) Exculpation, Indemnification, etc.

(i) In no event shall the Administrative Agent, any Lender, any successor, transferee or assignee of the Administrative Agent or any Lender, or any of their respective Affiliates, directors, officers, employees, attorneys, agents, advisors or controlling parties (each, an “**Exculpated Party**”) have any obligation or responsibility for (and the Obligors jointly and severally waive any claims they may have in respect of) any Loss, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans; provided that nothing in this **clause (i)** shall relieve any Obligor of any obligation such Obligor may have to indemnify an Indemnified Party, as provided in **clause (ii)** below, against any special, indirect, consequential or punitive damages asserted against such Indemnified Party by a third party. Each Obligor agrees, to the fullest extent permitted by applicable Law, that it will not assert, directly or indirectly, any Claim against any Exculpated Party with respect to any of the foregoing.

(ii) Each Obligor, jointly and severally, hereby indemnifies the Administrative Agent, the Lenders, and their respective successors, transferees or assigns and their Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an “**Indemnified Party**”) from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the Transactions or any use made or proposed to be made with the proceeds of the Loans, whether or not such investigation, litigation or proceeding is brought by the any Obligor, any of its Subsidiaries, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans.

14.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document may be modified or supplemented only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders directly affected thereby shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Document if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or any Commitment of any Lender, reduce the fees payable to any Lender hereunder, reduce interest rates or other amounts payable with respect to the Loans held by any Lender, extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans held by any Lender or extend the repayment dates of the Loans held by any Lender;

(ii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release a material part of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or

(iii) amend this **Section 14.04** or the definition of “*Majority Lenders*”.

(c) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Majority Lenders to the Administrative Agent within ten (10) Business Days following receipt of notice thereof.

14.05 Successors and Assigns.

(a) **General.** The provisions of this Agreement and the other Loan Documents shall be binding upon and shall inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents without the prior written consent of the Administrative Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the provisions of **Section 14.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 14.05(e)** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 14.05(f)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 14.05(e)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender.** Any Lender may at any time assign to one or more Eligible Transferees (or, if an Event of Default has occurred and is continuing, to any Person) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Commitment and the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to any Obligor, an Affiliate of any Obligor, or any employees or directors of any Obligor at any time and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent. Subject to the recording thereof by the Lenders pursuant to **Section 14.05(d)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lenders under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 14.03**. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 14.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 14.05(e)**.

(c) **Amendments to Loan Documents.** Each of the Administrative Agent, the Lender, the Borrower and its Subsidiaries agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably satisfactory to the Administrative Agent, the Lender, the Borrower and such Subsidiaries, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 14.05**.

(d) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a register for the recordation of the name and address of any assignee of a Lender and the Commitment and outstanding principal amount (and stated interest) of the Loans owing thereto (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the "Lender" hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural person or any Obligor or any of its Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly

with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 14.05(f)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Section 5** (subject to the requirements and limitations therein including under **Section 5.03(g)** (it being understood that the documentation required under **Section 5.03(g)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.05(b)**; provided that such Participant agrees to be subject to the provisions of **Section 5.03(h)** as if it were an assignee under **Section 14.05(b)** above. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were the Lender.

(f) **Limitations on Rights of Participants.** A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.03** than its participating Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation.

(g) **Participant Register.** Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other Obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, or its other Obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(h) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement and any other Loan Document to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of their obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

14.06 Survival. The obligations of the Obligors under **Sections 3.02(e), 4.03, 5.01, 5.02, 5.03, 12, 14.03, 14.05, 14.06, 14.09, 14.10, 14.11, 14.12, 14.13, 14.14 and 14.16**, and the obligations of the Subsidiary Guarantors under **Section 13** (solely to the extent Guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Obligations and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made pursuant to a Borrowing Notice (or other certificate required to be delivered hereunder at any time), herein or pursuant hereto shall survive the making of such representation and warranty.

14.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

14.08 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. Any signature (including, without limitation, (x) any electronic symbol or process attached to, or associated with, a Contract or other record and adopted by a Person with the intent to sign, authenticate or accept such Contract or record and (y) any facsimile or .pdf signature) hereto or the other Loan Documents or to any other certificate, agreement or document related to any Loan Document or the Transactions, and any contract formation or record-keeping, in each case, through electronic means, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state Law based on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

14.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the Law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the Laws of any other jurisdiction; provided that Section 5-1401 of the New York General Obligations Law shall apply.

14.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction.** Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in New York, New York and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 14.10(a)** is for the benefit of the Secured Parties only and, as a result, no Secured Party shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by any Law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process.** Nothing herein shall in any way be deemed to limit the ability of the Secured Parties to serve any process or summons in any manner permitted by any applicable Law.

(c) **Waiver of Venue, Etc.** Each Obligor irrevocably waives to the fullest extent permitted by Law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by Law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

14.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

14.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to so claim and hereby irrevocably waives such immunity with respect to its Obligations under this Agreement and the other Loan Documents.

14.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH THE ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

14.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

14.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

14.16 Confidentiality. The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them in writing by any Obligor pursuant to this Agreement that is designated by such Obligor as confidential in accordance with its customary procedures for handling its own confidential information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) to the Administrative Agent, any other Lender or, subject to an agreement to comply with the provisions of this **Section 14.16**, any Affiliate of a Lender or any Eligible Transferee or other assignee permitted under **Section 14.05(b)**, (ii) subject to an agreement to comply with the provisions of this Section, to any actual or prospective direct or indirect counterparty to any Hedging Agreement (or any professional advisor to such counterparty), (iii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its “**Related Parties**”), (iv) upon the request or demand of any Governmental Authority or any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (vi) if requested or required to do so in connection with any litigation or similar proceeding, (vii) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 14.16**), (viii) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender’s investment portfolio in connection with ratings issued with respect to such Lender, (ix) in connection with the exercise of any remedy hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loan or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loan or (xi) to any other party hereto.

14.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable Law (collectively, “**charges**”), shall exceed the maximum lawful rate (the “**Maximum Rate**”) that may be contracted for, charged, taken, received or reserved by the Administrative Agent and a Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

14.18 Early Prepayment Fee . If the Loans are accelerated or otherwise become due prior to the Maturity Date, as a result of an Event of Default (including upon the occurrence of a Insolvency Proceeding (including the acceleration of claims by operation of law)), the amount of principal of and premium on the Loans that becomes due and payable shall equal 100% of the principal amount of the Loans plus the applicable Early Prepayment Fee in effect on the date of such acceleration or such other prior due date, as if such acceleration or other occurrence were a voluntary prepayment of the Loans accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to the scheduled Maturity Date, in respect of any Event of Default (including upon the occurrence of a Insolvency Proceeding (including the acceleration of claims by operation of law)), the Early Prepayment Fee will also be due and payable on the date of such acceleration or such other prior due date as though the Loans were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's loss as a result thereof. Any such premium payable above shall be presumed to be the liquidated damages sustained by each Lender and each Obligor agrees that it is reasonable under the circumstances currently existing. THE OBLIGORS HEREBY, JOINTLY AND SEVERALLY, EXPRESSLY WAIVE (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE EARLY PREPAYMENT FEE. Each Obligor expressly agrees (to the fullest extent it may effectively do so) that: (i) the Early Prepayment Fee is reasonable and the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (ii) the Early Prepayment Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made; (iii) there has been a course of conduct between the Lenders and the Obligors giving specific consideration in this transaction for such agreement to pay the Early Prepayment Fee; and (iv) each Obligor shall be estopped hereafter from claiming differently than as agreed to in this Section.

14.19 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in US Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Obligors in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to

the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

14.20 USA PATRIOT Act. The Administrative Agent and the Lenders hereby notify the Borrower and its Subsidiaries that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*") and the Beneficial Ownership Regulation, they are required to obtain, verify and record information that identifies the Borrower and its Subsidiaries, which information includes the name and address of each of the Borrower and its Subsidiaries and other information that will allow such Person to identify the Borrower or such Subsidiary in accordance with the Patriot Act and the Beneficial Ownership Regulation.

14.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

NEURONETICS, INC.

By: _____
Name: Stephen Furlong
Title: Executive Vice President, Chief Financial
Officer, and Treasurer

Address for Notices:

[SIGNATURE PAGE TO CREDIT AGREEMENT AND GUARANTY]

INITIAL LENDER AND ADMINISTRATIVE AGENT:

PERCEPTIVE CREDIT HOLDINGS IV, LP

By Perceptive Credit Opportunities GP, LLC, its general partner

By: _____
Name: Sandeep Dixit
Title: Chief Credit Officer

By: _____
Name: Sam Chawla
Title: Portfolio Manager

Perceptive Credit Holdings IV, LP
c/o Perceptive Advisors LLC
51 Astor place, 10th floor
New York, NY 10003
Attn: Sandeep Dixit
Email: [***]

[SIGNATURE PAGE TO CREDIT AGREEMENT AND GUARANTY]

Neuronetics Announces the Closing of up to \$90 Million Senior Secured Credit Facility with Perceptive Advisors

MALVERN, Pa., July 30, 2024 (GLOBE NEWSWIRE) — Neuronetics, Inc. (NASDAQ: STIM), a medical technology company focused on designing, developing, and marketing products that improve the quality of life for patients who suffer from neurohealth disorders, today announced that it entered into a debt facility of up to \$90 million with Perceptive Advisors LLC (Perceptive). Under the term loan, Neuronetics received the first tranche of \$50 million at closing. Part of the initial \$50 million tranche will be used to pay off, in full, the Company's existing SLR Capital term loan. Upon achieving certain milestones, a second tranche of \$15 million will be available until December 31, 2025. Under the third tranche, the Company can request to borrow \$25.0 million on or before June 30, 2026.

“We are pleased to announce this new credit facility with Perceptive Advisors, which strengthens our balance sheet and provides additional financial flexibility to support our initiatives and programs,” said Keith Sullivan, President and Chief Executive Officer of Neuronetics. “This funding will allow us to continue to invest in our commercial initiatives, expand our clinical indications, and drive adoption of our NeuroStar Advanced Therapy for Mental Health.”

The loan has a 5-year term, maturing on the fifth anniversary of the closing date. Interest will accrue on the outstanding principal balance of the facility at a rate per annum equal to the greater of (a) forward-looking one-month term SOFR as posted by the CME group and (b) four and one-half percent 4.50% per annum, plus an applicable margin of 7.00%.

As part of the agreement, Neuronetics has issued warrants to purchase 1,125,000 shares of its common stock to Perceptive, with the potential for additional warrants if the second tranche is borrowed. The per share exercise price for the warrants is equal to the 10-day volume weighted average price (VWAP) ending on the business day immediately preceding the closing date.

“Neuronetics has established itself as a leader in the field of non-invasive neuromodulation for mental health disorders,” said Sam Chawla at Perceptive Advisors. “We are excited to partner with the Company and support their mission to improve the lives of patients suffering from depression and other mental health conditions. This financing reflects our confidence in the company's growth potential and the increasing adoption of NeuroStar therapy.”

Credo 180 acted as the sole financial advisor to Neuronetics on this transaction.

About Perceptive Advisors

Founded in 1999 and based in New York, NY, Perceptive Advisors is an investment management firm focused on supporting the progress of the life sciences industry by identifying opportunities and directing financial resources to the most promising technologies in healthcare. For more information about Perceptive, visit www.perceptivelife.com.

About Neuronetics

Neuronetics, Inc. believes that mental health is as important as physical health. As a global leader in neuroscience, Neuronetics is redefining patient and physician expectations with its NeuroStar Advanced Therapy for Mental Health. NeuroStar is a non-drug, noninvasive treatment that can improve the quality of life for people suffering from neurohealth conditions when traditional medication hasn't helped. NeuroStar is indicated for the treatment of depressive episodes and for decreasing anxiety symptoms for those who may exhibit comorbid anxiety symptoms in adult patients suffering from MDD and who failed to achieve satisfactory improvement from previous antidepressant medication treatment in the current episode. It is also FDA-cleared as an adjunct for adults with obsessive-compulsive disorder and for adolescent patients aged 15-21 with MDD. NeuroStar Advanced Therapy is the leading TMS treatment for MDD in adults with over 6.4 million treatments delivered. Neuronetics is committed to transforming lives by offering an exceptional treatment that produces extraordinary results. For safety and prescribing information, NeuroStar.com.

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