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): **October 16, 2024**

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware	**1-37897**	**26-1828101**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

18 Technology Drive, Suite 110 **Irvine, CA**	**92618**
(Address of principal executive offices)	(Zip Code)

(949) 429-6680
(Registrant's telephone number, including area code)

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

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))

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

Title of Class	**Trading Symbol**	**Name of Exchange on which Registered**
Common stock, $0.001 par value per share	RSLS	The Nasdaq Capital Market

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

In a private transaction, on October 16, 2024, ReShape Lifesciences Inc. (the "Company") entered into a securities purchase agreement (the "SPA") with an institutional investor (the "Investor"). Pursuant to the SPA, the Company agreed to issue the Investor a senior secured convertible note in the aggregate original principal amount of $833,333.34 (the "Note"), and also issue to the Investor 7,983 shares of common stock, par value $0.001, of the Company ("Common Stock") as "commitment shares" to the Investor.

The Company is the issuer of the Note, and its respective subsidiaries will guaranty the obligations under the Note pursuant to a Guaranty, dated October 16, 2024 (the "Guaranty"). The Note will be fully secured by collateral of the Company and its subsidiaries. The security interest in favor of the Investor, as collateral agent, will cover substantially all assets of the Company including, without limitation, the intellectual property, trademark, and patent rights of the Company. The parties entered into a Security Agreement (the "Security Agreement") and certain intellectual property security agreements granting such security interest in favor of the Investor.

Form of Note. In connection with the SPA, the Company issued to the Investor the Note on October 16, 2024, which bears an interest rate of 10% per annum and is due and payable on the earlier of (i) January 16, 2025 and (ii) the date of consummation or termination of the Company's previously announced merger with Vyome Therapeutics, Inc. The initial conversion price of the Note is $5.22 per share of Common Stock. The Note may not be converted by the Investor into shares of Common Stock if such conversion would result in the Investor and its affiliates owning in excess of 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of all shares issuable upon conversion of the Note. The Note provides for certain events of default that are typical for a transaction of this type, including, among other things, any breach of the representations or warranties made by the Company or its subsidiaries. In connection with any event of default that results in the acceleration of payment of the Note and while it is continuing, the interest rate on the Note shall accrue at an interest rate equal to the lesser of 24% per annum or the maximum rate permitted under applicable law.

Registration Rights Agreement. In connection with the SPA, the Company entered into a Registration Rights Agreement with the Investor, dated October 16, 2024 (the "RRA"). The RRA provides that the Company will file a registration statement to register the shares of Common Stock underlying the Note and the commitment shares within 30 days after the date of the SPA and will use its best efforts to cause the registration statement to be declared effective within 30 days after the filing date.

Lock-Up Agreement. In connection with the SPA, the directors and officers of the Company each entered into a lock-up agreement (the "Lock-Up Agreement"), pursuant to which each agreed to, from the date of the Lock-Up Agreement until the Note is no longer outstanding, subject to certain customary exceptions, not offer, sell, contract to sell, hypothecate, pledge or otherwise dispose of any shares of Common Stock of the Company or securities convertible, exchangeable or exercisable into, shares of Common Stock of the Company beneficially owned, held or acquired by the person signing the Lock-Up Agreement.

Leak-Out Agreement. In connection with the SPA, the Company entered into a Leak-Out Agreement with the Investor, dated October 16, 2024 (the "Leak-Out Agreement"), pursuant to which the Investor agreed that on any trading day while the Note, or shares of Common Stock issued to the Investor upon conversion of the Note, remains outstanding, the Investor will not, and will cause each of its trading affiliates not to, sell, dispose or otherwise transfer, in the aggregate, more than 10% of the composite daily trading volume of the Common Stock as reported by Bloomberg, LP.

The foregoing descriptions of the SPA, the Note, the RRA, the Security Agreement, the Guaranty, the Lock-Up Agreement and the Leak-Out Agreement do not purport to be complete and are qualified in their entirety by the terms and conditions of the SPA, the Note, the RRA, the Security Agreement, the Guaranty, the Lock-Up Agreement and the Leak-Out Agreement, respectively filed as Exhibit 10.1, Exhibit 10.2, Exhibit 10.3, Exhibit 10.4, Exhibit 10.5, Exhibit 10.6 and Exhibit 10.7 hereto and incorporated by reference herein.

Maxim Group LLC acted as the Company's exclusive financial advisor for the transaction.

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

The information provided in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02 Unregistered Sale of Equity Securities.

The information provided in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Form of Securities Purchase Agreement, dated as of October 16, 2024 by and between the Company and the Investor
10.2	Form of Note, dated as of October 16, 2024
10.3	Form of Registration Rights Agreement, dated as of October 16, 2024 by and between the Company and the Investor
10.4	Form of Security Agreement, dated October 16, 2024
10.5	Form of Guaranty, dated October 16, 2024
10.6	Form of Lock-Up Agreement, dated October 16, 2024
10.7	Form of Leak-Out Agreement, dated October 16, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

RESHAPE LIFESCIENCES INC.

By: /s/ Paul F. Hickey
Paul F. Hickey
Chief Executive Officer

Dated: October 17, 2024

SECURITIES PURCHASE AGREEMENT

This **Securities Purchase Agreement** (this "**Agreement**") is dated as of October 16, 2024, by and among ReShape Lifesciences Inc., a Delaware corporation (together with the Person surviving the Business Combination and their successors and, if permitted, assigns, the "**Company**"), and the purchasers identified on the signature pages hereto (each, an "**Initial Purchaser**") or that becomes a party hereto at the Additional Closing pursuant to **Section 2.1(a)(ii) (**together with each Initial Purchaser and, in each case, including their respective successors and permitted assigns, a "**Purchaser**") and _____, a _____ ("_____"), as collateral agent for the Purchaser Parties (in such capacity, and together with any successor and replacement named in accordance with this Agreement, the "**Collateral Agent**").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (together with the Regulations promulgated thereunder, the "**Securities Act**"), the Company desires to issue and sell to the Initial Purchasers, and the Initial Purchasers desire to purchase from the Company for cash and other valuable consideration, the Purchased Securities as defined and described more fully in this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms have the following meaning:

"Additional Closing" means the closing of the purchase and sale of the Additional Notes pursuant to **Section 2.1(a)(i)**.

"Additional Closing Date" means the date the Additional Closing occurs.

"Additional Closing Deadline" means the Maturity Date of the Initial Notes.

"Additional Closing Notice" has the meaning specified in **Section 2.1(a)(ii)**.

"Additional Purchasers" means the Purchasers (including any third party becoming a Purchaser for such purpose) purchasing Additional Notes at the Additional Closing.

"Additional Notes" has the meaning specified in **Section 2.1(a)(ii)**.

"**Affiliate**" means each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person. For purpose of this definition, "control" and related words are used as such terms are used in and construed under Rule 405 under the Securities Act. Notwithstanding the foregoing, the Purchaser and its Subsidiaries, on the one hand, and the Company Parties and their Subsidiaries, on the other hand, shall not be considered "**Affiliates**" of each other.

"**AML/CTF Regulation**" has the meaning specified in **Section 3.1(kk).**

"**Asset Sale**" means the sale of substantially all of the assets of the Company pursuant to the Asset Purchase Agreement, dated as of July 8, 2024, by and between the Company and Ninjour Health International Limited ("**Ninjour**"), with such modifications thereto as may be approved by each Purchaser and the Collateral Agent, each in their sole discretion (the "**Asset Purchase Agreement**").

"**BHCA**" has the meaning specified in **Section 3.1(ff)**.

"**Board of Directors**" means the board of directors of the Company.

"Business Combination" means the business combination of the Company with Vyome Therapeutics, Inc., a Delaware corporation, pursuant to the Agreement and Plan of Merger, dated as of July 8, 2024, by and among the Company, Raider Lifesciences Inc. and Vyome Therapeutics, Inc. ("**Vyome**" and such agreement the "**Merger Agreement**"), with such modifications thereto as may be approved by each Purchaser and the Collateral Agent, each in their sole discretion.

"**Business Day**" means any day except Saturdays, Sundays, any day that is a federal holiday in the United States and any day on which the Federal Reserve Bank of New York is not open for business.

"**Capital Lease**" means, as applied to any Person, any lease of, or other arrangement conveying the right to use, any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means all shares, participation or other equivalent (however designated) of capital stock (whether denominated as common stock or preferred stock), and all other equity interests, including all beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

"**Closing Dates**" means each of the Initial Closing Date and the Additional Closing Date.

"**Closings**" means each of the Initial Closing and the Additional Closing.

"Collateral" means any and all "Collateral" as defined in the Security Agreement or any other Transaction Document granting a Lien to the Collateral Agent or any other Purchaser Party, as applicable, together with all property and interests in property and proceeds thereof now owned or hereafter acquired by any Company Party in or upon which a Lien is granted or purported to be granted pursuant to any Transaction Document.

"**Commission**" means the United States Securities and Exchange Commission.

"Commitment Shares" means, for each Initial Note of each Initial Purchaser, that number of shares of Common Stock, valued at the Conversion Price, that equals five percent (5.0%) of the aggregate Initial Principal Amount of such Initial Note.

"**Common Stock**" means the common stock of the Company, par value $0.001 per share, any Capital Stock into which such shares of common stock shall have been changed, and any share capital resulting from a reclassification of such common stock.

"**Common Stock Equivalents**" means any securities of any Company Party which would entitle the holder thereof to acquire at any time Common Stock, including whether or not presently convertible, exchangeable or exercisable, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to purchase, subscribe or otherwise receive, Common Stock.

"Company Party" means each of the Company and its Subsidiaries and any other Person party or that is required to be party to the Guaranty as "Guarantor" thereunder or to the Security Agreement as "Grantor" thereunder.

"**Company Covered Person**" has the meaning specified in **Section 3.1(ll)**.

"Consents" means any approval, consent, authorization, notice to, or any other action by, any Person other than any Governmental Authority.

"**Contractual Obligation**" means, with respect to any Person, any provision of any security or similar instrument issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (other than a Transaction Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

"**Control Agreement**" means an agreement in form and substance satisfactory to each Initial Purchaser and the Collateral Agent, granting "control" (as defined under the applicable UCC) to the Collateral Agent over the Collateral described thereunder.

"**Conversion Price**" means, with respect to any Note, the "Conversion Price" under and as defined in such Note.

"**Conversion Shares**" means any "Conversion Share" under and as defined in any Note.

"**Currency Agreement**" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement. For purposes of this definition, cryptocurrencies shall be considered currencies.

"Default" means any event constituting a "Default" under and as defined in any Note.

"**Derivative**" means any Interest Rate Agreement, Currency Agreement, futures or forward contract, spot transaction, commodity swap, purchase or option agreement, other commodity price hedging arrangement, cap, floor or collar transaction, any credit default or total return swap, any other derivative instrument, any other similar speculative transaction and any other similar agreement or arrangement designed to alter the risks of any Person arising from fluctuations in any underlying variable, including interest rates, currency values, insurance, catastrophic losses, climatic or geological conditions or the price or value of any other derivative instrument. For the purposes of this definition, "derivative instrument" means "any derivative instrument" as defined in Statement of Financial Accounting Standards No. 133 (Accounting for Derivative Instruments and Hedging Activities) of the United States Financial Accounting Standards Board, and any defined with a term similar effect in any successor statement or any supplement to, or replacement of, any such statement.

"**Disclosure Certificate**" means a certificate disclosing detailed information about the Company Parties and the Collateral in form and substance satisfactory to each Initial Purchaser and the Collateral Agent, together with any update with respect to the Collateral or to any other information set forth in such certificate separately required to be provided pursuant to, and provided in accordance with, any Transaction Document.

"**Disqualification Event**" has the meaning specified in **Section 3.1(ll)**.

"Dollars" and the sign **"$"** each mean the lawful money of the United States of America.

"Equity Line of Credit" means any transaction involving a Contractual Obligation of any Person with a counterparty whereby such Person has an option to Sell its Securities to such counterparty over an agreed period of time and at future determined price or price formula, other than customary "preemptive" or "participation" rights or "weighted average" or "full-ratchet" anti-dilution provisions and other than in connection with fixed-price rights public offerings and similar transactions.

"**Evaluation Date**" has the meaning specified in **Section 3.1(o)**.

"Event of Default" means any event constituting an "Event of Default" under and as defined in any Note.

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

"**Federal Reserve**" has the meaning specified in **Section 3.1(ff)**.

"**GAAP**" means United States generally accepted accounting principles as in effect from time to time, applied consistently throughout the periods referenced and consistently with (a) the principles and standards set forth in the opinions and pronouncements of the Financial Accounting Standards Board or any successor entity, (b) to the extent consistent with such principles, generally accepted industry practices and (c) to the extent consistent with such principles and practices, the past practices of the Company as reflected in its financial statements disclosed in the Disclosure Certificate.

"Governmental Authority" means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, any municipality, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing, including any central bank stock exchange regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

"**Guaranty**" means that certain Guaranty required to be delivered pursuant to **Section 2.2** of this Agreement, in the form attached hereto as **Exhibit B** with such changes satisfactory to each Initial Purchaser and the Collateral Agent, and issued by the Company Parties (other than the Company) for the benefit of the Collateral Agent, the Purchasers and the other Purchaser Parties.

"**Guaranty Obligation**" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose or intent of such Person in incurring the Guaranty Obligation is to provide assurance to the holder of such Indebtedness that such Indebtedness will be paid or discharged, that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if in the case of any agreement described under *clause (b)(i)*, *(ii)*, *(iii)*, *(iv)* or *(v)* above the primary purpose or intent thereof is to provide assurance that Indebtedness of another Person will be paid or discharged, that any agreement relating thereto will be complied with or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported.

"**Indebtedness**" means, with respect to any Person, without duplication, the following: (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services other than accounts payable and accrued liabilities incurred in respect of property or services purchased in the ordinary course of business (**provided**, that such accounts payable and accrued liabilities are not overdue by more than 180 days), (c) all obligations of such Person evidenced by notes, bonds, debentures or similar borrowing or securities instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (e) all obligations of such Person as lessee under Capital Leases, (f) all reimbursements and all other obligations of such Person with respect to (i) letters of credit, bank guarantees or bankers' acceptances or (ii) surety, customs, reclamation, performance or other similar bonds, (g) all obligations of such Person secured by Liens on the assets of such Person, (h) all Guaranty Obligations of such Person, (i) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Capital Stock, Stock Equivalent (valued, in the case of redeemable preferred stock, at the greater of its voluntary liquidation

preference and its involuntary liquidation preference plus accrued and unpaid dividends) or any warrants, rights or options to acquire such Capital Stock, (j) after taking into account the effect of any legally-enforceable netting Contractual Obligation of such Person, all payments that would be required to be made in respect of any Derivative in the event of a termination (including an early termination) on the date of determination and (k) all obligations of another Person of the type described in clauses (a) through (j) secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on the assets of such Person (whether or not such Person is otherwise liable for such obligations of such other Person).

"Initial Closing" means the closing of the purchase and sale of the Initial Notes and other Purchased Securities pursuant to **Section 2.1(a)(i)**.

"Initial Closing Date" means the date on which the Initial Closing occurs.

"Initial Notes" has the meaning specified in **Section 2.1(a)(i)**.

"Initial Principal Amount" means, as to any Note of any Purchaser, the principal amount of such Note set forth on **Schedule I.**

"**Intellectual Property Rights**" means, collectively, all copyrights, patents, trademarks, service marks, trade names, internet domain names, and all applications for any of the foregoing or for any renewal thereof, together with: (i) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (ii) all licenses or user or other agreements granted with respect to any of the foregoing, in each case whether now or hereafter owned or used; (iii) all customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs; (iv) all field repair data, sales data and other information relating to sales or service of products now or hereafter manufactured; (v) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; (vi) all applications for any of the foregoing and (vii) all causes of action, claims and warranties, in each case, now or hereafter owned or acquired in respect of any item listed above.

"**Intellectual Property Security Agreement**" means each Intellectual Property Security Agreement executed by any Company Party and delivered to the Company in the form attached to the Security Agreement and otherwise in form and substance satisfactory to the Collateral Agent.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement.

"**Issuable Securities**" means the Conversion Shares, as well as any other shares of Common Stock either issued or required to be issued by the Company hereunder to any Purchaser or the Collateral Agent under any Transaction Document after the Initial Closing Date, whether as payment for an "Obligation" (under and as defined in any Note) or otherwise.

"**Joinder Agreement**" means each Joinder Agreement by and among each Additional Purchaser that was not an Initial Purchaser, the Collateral Agent and the Company, in the form attached hereto as **Exhibit G** with such changes satisfactory to each Additional Purchaser and the Collateral Agent.

"**Leak-Out Agreements**" means those certain Leak-Out Agreements between the Purchasers and the Company required to be delivered pursuant to **Section 2.2** of this Agreement, each in form attached hereto as **Exhibit F** with such changes satisfactory to each Initial Purchaser and the Collateral Agent.

"**Legend Removal Date**" has the meaning specified in **Section 4.1(c)**.

"**Liabilities**" means all amounts, indebtedness, obligations, liabilities, covenants and duties of every type and description owing by any Company Party from time to time to any Purchaser or any other Purchaser Party, whether direct or indirect, joint or several, absolute or contingent, due or to become due, liquidated or unliquidated, accrued or not, mature or not, secured or unsecured, now existing or hereafter arising and however created, acquired (regardless of whether acquired by assignment), whether or not evidenced by any note or other instrument or for the payment of money and whether arising under Contractual Obligations, Regulations or otherwise, including, without duplication, (i) the principal amount due of the Note, (ii) all other amounts, fees, interest (including any prepayment premium), commissions, charges, costs, expenses, attorneys' fees and disbursements, indemnities, reimbursement of amounts paid and other sums chargeable to the Company under the Note, this Agreement or any other Transaction Document (including attorneys' fees) or otherwise arising under any Transaction Document and (iii) all interest on any item otherwise qualifying as a "Liability" hereunder, whether or not accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or similar Proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such Proceeding.

"**License Agreement**" has the meaning specified in **Section 3.1(m)**.

"**Lien**" means any lien (statutory or other) mortgage, pledge, hypothecation, assignment, security interest, encumbrance, charge, claim, right of first refusal, preemptive right, restriction on transfer or similar restriction or other security arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement and any capital or financing lease having substantially the same economic effect as any of the foregoing.

"**Lock-Up Agreements**" means those certain Lock-Up Agreements between the Purchasers and each director or officer of the Company required to be delivered pursuant to **Section 2.2** of this Agreement, each in form attached hereto as **Exhibit E** with such changes satisfactory to each Initial Purchaser and the Collateral Agent.

"Losses" means all liabilities, rights, demands, covenants, duties, obligations (including indebtedness, receivables and other contractual obligations), claims, damages, Proceedings and causes of actions, settlements, judgments, damages, losses (including reductions in yield), debts, responsibilities, fines, penalties, sanctions, commissions and interest, disbursements, Taxes, interest, charges, costs, fees and expenses (including fees, charges, and disbursements of financial, legal and other advisors, consultants and professionals and, if applicable, any value-added and other taxes and charges thereon), in each case of any kind or nature, whether joint or several, whether now existing or hereafter arising and however acquired and whether or not known, asserted, direct, contingent, liquidated, due, or actual.

"**Material Adverse Effect**" means material adverse effect on, or change in, (a) the legality, validity or enforceability of any portion of any Transaction Document, (b) the operations, assets, business, prospects or condition (financial or otherwise) of any Company Party, (c) the ability of any Company Party to perform on a timely basis its obligations under any Transaction Document for any reason whatsoever, whether foreseen or unforeseen, including due to pandemic, acts of a Governmental Authority, interruption of transportation systems, strikes, terrorist activities, interruptions of supply chains or acts of God, or (d) the Collateral or the perfection or priority of any Liens granted to any Purchaser Party under any Transaction Document.

"Maximum Rate" has the meaning specified in **Section 6.12**.

"**Note**" means each Senior Secured Convertible Promissory Note issued by the Company to an Initial Purchaser or an Additional Purchaser hereunder, in the form attached hereto as **Exhibit A** with such changes satisfactory to such Purchaser and the Collateral Agent.

"**Notice of Conversion**" has the meaning specified in **Section 4.5.**

"**OFAC**" has the meaning specified in **Section 3.1(dd)**.

"**Participation Maximum**" has the meaning specified in **Section 4.7(a)**.

"Permit" means, with respect to any Person, any permit, filing, notice, license, approval, variance, exception, permission, concession, grant, franchise, confirmation, endorsement, waiver, certification, registration, qualification, clearance or other Contractual Obligation or arrangement with, or authorization by, to or under the authority of, any Governmental Authority or pursuant to any Regulation, or any other action by any Governmental Authority in each case whether or not having the force of law and affecting or applicable to or binding upon such Person, its Contractual Obligations or arrangements or other liabilities or any of its property or to which such Person, its Contractual Obligations or any of its property is or is purported to be subject.

"**Person**" means an individual, partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint stock company, land trust, business trust or unincorporated organization, or a government or agency, department or other subdivision thereof or other entity of any kind.

"**Pre-Notice**" has the meaning specified in **Section 4.7(b)**.

"Principal Trading Market" for any Security, means the principal Trading Market for such Security, as listed in the applicable offering documents for such Security. The **"Principal Trading Market"** for the Common Stock is the Nasdaq Capital Market.

"Proceeding" against a Person means an action, suit, litigation, arbitration, investigation, complaint, dispute, contest, hearing, inquiry, inquest, audit, examination or other proceeding threatened or pending against, affecting or purporting to affect such Person or its property, whether civil, criminal, administrative, investigative or appellate, in law or equity before any arbitrator or Governmental Authority.

"Prohibited Short Sale" has the meaning specified in **Section 4.11**.

"**Pro Rata Portion**" means, with respect to a Purchaser and a group of Purchasers as of a particular date, the ratio of (i) the Purchase Price for the Purchased Securities purchased on or prior to such date by such Purchaser (including, for the avoidance of doubt its predecessors and assignors) that remain outstanding on such date to (ii) the aggregate Purchase Price for the Purchased Securities purchased by all Purchasers (including, for the avoidance of doubt, their predecessors and assignors) in such group on or prior to such date that remain outstanding on such date.

"**Public Information Failure**" has the meaning specified in **Section 4.8(b)**.

"**Public Information Failure Payments**" has the meaning specified in **Section 4.8(b)**.

"**Purchase Price**" means, as to any Purchaser, the aggregate amount to be paid for the Notes purchased hereunder as specified on **Schedule I**.

"**Purchaser Party**" has the meaning specified in **Section 4.14**.

"**Purchased Securities**" means the Notes.

"**Registration Rights Agreement**" means that certain Registration Rights Agreement required to be delivered pursuant to **Section 2.2** of this Agreement, in form attached hereto as **Exhibit D** with such changes satisfactory to each Initial Purchaser and the Collateral Agent.

"Regulation" means, all international, federal, state, provincial and local laws (whether civil or common law or rule of equity and whether U.S. or non- U.S.), treaties, constitutions, statutes, codes, tariffs, rules, guidelines, regulations, writs, injunctions, orders, judgments, awards, decrees, rulings, ordinances and administrative or judicial precedents or authorities, including, in each case whether or not having the force of law, the interpretation or administration thereof by any Governmental Authority, all policies, recommendations, directives, requirements, determinations, guidance and requests of any Governmental

Authority and all administrative orders, directed duties and stipulations entered by or with a Governmental Authority.

"**Related Parties**" of any Person means (i) such Person, (ii) each Affiliate of such Person, (iii) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five percent (5%) or more of the Capital Stock having ordinary voting power in the election of directors of such Person or such Affiliate, (iv) each of such Person's or such Affiliate's officers, managers, directors, joint venture partners, partners and employees (and any other Person with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title or classification as a contractor under employment Regulations), (v) any lineal descendants, ancestors, spouse or former spouses (as part of a marital dissolution) of any of the foregoing, (vi) any trust or beneficiary of a trust, of which any of the foregoing are the sole trustees, that is established in whole or in part by any of the foregoing, or that is for the benefit of any of the foregoing. Notwithstanding the foregoing, the Purchaser and its Subsidiaries, on the one hand, and the Company Parties and their Subsidiaries, on the other hand, shall not be considered "**Related Parties**" of each other.

"**Required Filings**" means (a) any filing required pursuant to **Section 4.9** or **4.10**, and (b) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Transaction Securities and the listing of the Transaction Securities for trading thereon in the time and manner required thereby.

"**Required Purchasers**" means Purchasers holding more than fifty percent (50%) of the principal amount of the Notes or, if no Note shall then be outstanding, more than fifty percent (50%) in interest of the Issuable Securities then issued and outstanding.

"**Reserve Amount**" means, as of any date, 250% of the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, calculated (i) including any Issuable Securities issuable upon conversion of the Purchased Securities, (ii) ignoring any conversion limits set forth therein, (iii) assuming that the Conversion Prices of the Notes are, at all times on and after the date of determination, the then-effective Conversion Prices on the Trading Day immediately prior to the date of determination and (iv) adjusting all of the foregoing ratably to account for any reverse stock split or similar reclassification of the Common Stock.

"**Resignation Effective Date**" has the meaning specified in **Section 5.6(a)**.

"Restricted Payment" means, for any Person, (a) any dividend, stock split or other distribution, direct or indirect (including by way of spin off, reclassification, corporate rearrangement, scheme of arrangement or similar transaction), on account of, or otherwise to the holder or holders of, any shares of any class of Capital Stock of such Person now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of such Person by such Person or any Affiliate thereof now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any Stock Equivalents now or hereafter outstanding; **provided**, that, for the avoidance of doubt, (i) any cashless exercise of an employee stock option in which options are cancelled to the extent needed such that the "in-the-money" value of the options (i.e. the excess of market price over exercise price) that are cancelled is utilized to pay the exercise price, and applicable taxes, shall not constitute a "**Restricted Payment**" and (ii) a distribution of rights (including rights to receive assets) or options shall constitute a "**Restricted Payment**".

"**Rule 144**" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar Regulation hereafter adopted by the Commission having substantially the same effect as such rule.

"**Rule 424**" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended or interpreted from time to time, or any similar Regulation hereafter adopted by the Commission having substantially the same purpose and effect as such rule.

"Sale" means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, conveyance, transfer, assignment or other disposition to, or any exchange of property (other than cash and cash equivalents) with, any Person of, or any other transaction permitting any Person to acquire, in one transaction or a series of transactions, any interest in, all or any part of a business or any property of any kind (other than cash and cash equivalents) including a sale, factoring at maturity, collection of or other disposal, with or without recourse, of any notes or accounts receivable. To **"Sell"** shall have a correlative meaning.

"**Sanctioned Jurisdiction**" means, at any time, a country, territory or geographical region that is subject to, the target of, or purported to be subject to, Sanctions Laws.

"**Sanctioned Person**" means (a) any Person that is listed in the annex to, or otherwise subject to the provisions of, Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit and Threaten to Commit or Support Terrorism, effective September 24, 2001; (b) any Person that is named in any Sanctions Laws-related list maintained by OFAC, including the "Specially Designated National and Blocked Person" list; (c) any Person or individual located, organized or resident or determined to be resident in a Sanctioned Jurisdiction that is, or whose government is, the target of comprehensive Sanctions Laws; (d) any organization or Person directly or indirectly owned or controlled by any such Person or Persons described in the foregoing clauses (a) through (c); and (e) any Person that commits, threatens or conspires to commit or supports "terrorism"," as defined in applicable United States Regulations.

"**Sanctions Laws**" means all applicable Regulations concerning or relating to economic or financial sanctions, requirements or trade embargoes imposed, administered or enforced from time to time by OFAC, including the following (together with their implementing Regulations, in each case, as amended from time to time): the International Security and Development Cooperation Act (ISDCA) (22 U.S.C. §23499aa-9 et seq.); the Patriot Act; and the Trading with the Enemy Act (TWEA) (50 U.S.C. §5 et seq.).

"**SEC Reports**" has the meaning specified in **Section 3.1(f)**.

"**Securities**" means any Capital Stock, voting trust certificates, certificates of interest or participation in any profit sharing Contractual Obligation or arrangement, loans, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, any other item commonly known as "security," any other item treated as "security" under the Securities Act, the Investment Company Act of 1940, the Investment Advisers Act of 1940 or any other Regulation of the United States, any State, province or any political subdivision of either of them and any certificate of interest, share or participation in temporary or interim certificates for the purchase or acquisition of, or any option, warrant, right to subscribe to, purchase or acquire, or any Derivative valued by reference to, any item otherwise qualifying as Security hereunder.

"**Securities Act**" has the meaning specified in the recitals.

"**Security Agreement**" means the Security Agreement by and among the Company Parties and the Collateral Agent, for the benefit of, the Collateral Agent, the Purchasers and the other Purchaser Parties, in form attached hereto as **Exhibit C** with such changes satisfactory to the Collateral Agent and each Initial Purchaser.

"**Short Sales**" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act.

"Standard Enforceability Exceptions" means (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally; (ii) as limited by Regulations relating to the availability of specific performance, injunctive relief or other equitable remedies; and (iii) insofar as indemnification and contribution provisions may be limited by applicable Regulations.

"Stock Equivalents" means all Securities and Indebtedness convertible into or exchangeable for Capital Stock or any other Stock Equivalent and all warrants, options, scrip rights, calls or commitments of any character whatsoever, and all other rights or options or other arrangements (including through a conversion

or exchange of any other property) to purchase, subscribe for or acquire, any Capital Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

"**Subsequent Financing**" has the meaning specified in **Section 4.7**.

"**Subsequent Financing Notice**" has the meaning specified in **Section 4.7(b)**.

"**Subsidiary**" means, with respect to any Person, (a) if such Person is the Company, any subsidiary of the Company as set forth in, or otherwise required to be set forth in, the Disclosure Certificate, both on or after the date hereof, and (b) in any case, any other Person (other than natural persons) the management of which is, directly or indirectly, controlled by, or of which an aggregate of fifty percent (50%) or more of the outstanding Voting Stock is, at the time, owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person.

"**Taxes"** means any present or future taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges of whatever nature, including income, receipts, excise, property, sales, use, transfer, license, payroll, withholding, social security and franchise taxes now or hereafter imposed or levied by the United States or any other Governmental Authority and all interest, penalties, additions to tax and similar liabilities with respect thereto, but excluding, in the case of any Purchaser, taxes imposed on or measured by the net income or overall gross receipts of such Purchaser.

"**Trading Day**" means a day on which the Principal Trading Market for the Common Stock is open for trading; **provided**, that, if the Common Stock does not trade on any Trading Market, "Trading Day" shall mean "Business Day".

"**Trading Market**" means, for any Security, any of the following markets or exchanges on which such Security is listed, designated or quoted for trading on the date in question: the NYSE American; the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; OTC Markets or the OTC Bulletin Board (and any successors to any of the foregoing).

"**Transaction Documents**" means this Agreement, the Disclosure Certificate, the Notes, the Guaranty, the Security Agreement, the Intellectual Property Security Agreements, the Control Agreements, the Registration Rights Agreement, the Lock-Up Agreements, the Leak-Out Agreements, the Transfer Agent Instruction Letter, any Joinder Agreements, any Additional Closing Notices, any Subsequent Financing Notices, any Notices of Conversion and any other agreements, notices or other documents executed in connection with the transactions contemplated hereunder.

"Transaction Securities" means the Commitment Shares, the Purchased Securities and the Issuable Securities.

"**Transfer Agent**" means Equiniti Trust Company, LLC located at 6201 15th Avenue, Brooklyn, New York 11219 and any successor transfer agent for the Company's Common Stock.

"**Transfer Agent Instruction Letter**" means the letter from the Company to the Transfer Agent, duly acknowledged and agreed by the Transfer Agent, which instructs the Transfer Agent to issue the Issuable Securities pursuant to the Transaction Documents, in form attached hereto as **Exhibit G** with such changes satisfactory to each Initial Purchaser and the Collateral Agent.

"**UCC**" means the Uniform Commercial Code as from time to time in effect in the State of Delaware; **provided**, that, in the event that, by reason of mandatory provisions of any applicable Regulation, any of the attachment, perfection or priority of the Collateral Agent's or any other Purchaser Party's security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of Delaware, "**UCC**" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

"Voting Stock" means Capital Stock of any Person (i) having ordinary power to vote in the election of any member of the board of directors or any manager, trustee or other controlling Persons of such Person (irrespective of whether, at the time, Capital Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency) and (ii) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (i) of this definition.

ARTICLE II PURCHASE AND SALE

2.1 Closing

(a) **Purchase**

(i) **Initial Closing.** On a Trading Day chosen by the Company and reasonably acceptable to each Initial Purchaser following the date on which the conditions set forth in **Section 2.3** shall have been satisfied or duly waived (the **"Initial Closing Date**"), and upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and each Initial Purchaser party to this Agreement on the date hereof agrees, severally and not jointly, to purchase, Notes (the **"Initial Notes**") having an Initial Principal Amount set forth on **Schedule I** for such Initial Purchaser**,** in exchange for the Purchase Price set forth on **Schedule I** for such Initial Purchaser for such Initial Closing. In the case of the Initial Notes, this Purchase Price reflects the original issue discount shown on **Schedule I**.

(ii) **Additional Closing.** On a Trading Day that (A) is on or before the Additional Closing Deadline, (B) follows the date on which the conditions set forth in **Section 2.4** shall have been satisfied or duly waived and (C) is proposed by the Company and reasonably acceptable to each Initial Purchaser and mutually agreed by the Company and each Initial Purchaser (the **"Additional Closing Date**"), upon the terms and subject to the conditions set forth herein, the Company may request to sell additional Notes (the **"Additional Notes**") having an aggregate principal amount not to exceed $555,555.56 and for a Purchase Price that reflects the same original issue discount shown on **Schedule I** for the Initial Notes, by delivering to the Collateral Agent a notice specifying the aggregate Initial Principal Amount requested, the Purchase Price and the proposed Additional Closing Date, as well as certifying that the conditions set forth on **Section 2.4** (other than the deliveries described in **Section 2.2(c)**) are satisfied as of the date of such notice (the **"Additional Closing Notice**"). The Collateral Agent shall forward such notice to each Purchaser and, upon receipt, each such Purchaser may, in its sole discretion, decide to purchase its Pro Rata Portion of the Additional Notes by notifying the Collateral Agent within five (5) Business Days of receipt of such Additional Closing Notice and indicating in its notice whether such Purchaser is interested in purchasing Additional Notes in excess of its allocated Pro Rata Portion if available and, if so, its maximum additional Purchase Price. Should some Purchasers decline to purchase their Pro Rata Portion of the Additional Notes, the Collateral Agent may, in its sole discretion, reallocate such Pro Rata Portion to Purchasers having indicated such an interest in purchasing Additional Notes in excess of their allocation. Should there not be enough such Purchasers to purchase such Pro Rata Portion, the Collateral Agent may, in its sole discretion, offer such Pro Rata Portion to third parties. Each such third party that agrees to purchase Additional Notes shall execute and deliver to the Collateral Agent a Joinder Agreement and, whether or not such Joinder Agreement shall be acknowledged by the Company, shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Purchaser party hereto on the Additional Closing Date.

(b) **Mechanics**. At each Closing, (i) each Initial Purchaser or Additional Purchaser, as applicable, shall deliver to the Company, without set off or counterclaim, via wire transfer to an account designated by the Company, such Purchaser's Purchase Price in immediately available Dollars, (ii) the Company shall deliver to such Purchaser, as set forth in **Section 2.2(a)**, its Purchased Securities and (iii) the Company and such Purchaser (or, where applicable, the Collateral Agent) shall deliver to each other the other items set forth in **clauses (a)** and **(b)** of **Section 2.2** respectively. Upon satisfaction of the terms and conditions set forth in **Section 2.3**, such Closing shall occur remotely by electronic exchange of Closing documentation using DocuSign or a similar service or, if the parties mutually agree, physically at any location chosen by the parties.

2.2 Deliveries.

(a) **Deliveries to Initial Purchasers.** On or prior to the Initial Closing, the Company shall deliver or cause to be delivered to each Initial Purchaser the following, each dated as of the Initial Closing Date and in form and substance satisfactory to the Collateral Agent and such Initial Purchaser:

(i) this Agreement, duly executed by the Company;

(ii) the Disclosure Certificate, duly executed by the Company Parties;

(iii) an Initial Note for such Initial Purchaser duly executed by the Company with an Initial Principal Amount equal to the amount set forth opposite for such Initial Purchaser on **Schedule I**, registered in the name of such Initial Purchaser;

(iv) the Commitment Shares of such Initial Purchaser, which shall be payment of a one-time, non-refundable Initial Closing fee;

(v) the Guaranty, duly executed by the Company Parties;

(vi) the Security Agreement, duly executed by the Company Parties;

(vii) the Intellectual Property Security Agreements, duly executed by each Company Party having Intellectual Property Rights and covering collectively all such Intellectual Property Rights (subject to de minimis exceptions made by the Collateral Agent in its sole discretion);

(viii) the Registration Rights Agreement, duly executed by the Company;

(ix) the Lock-Up Agreements, duly executed by each officer and director of the Company;

(x) the Leak-Out Agreements, duly executed by the Company and such Initial Purchaser;

(xi) the Transfer Agent Instruction Letter, duly executed by the Transfer Agent in addition to the Company;

(xii) legal opinions of counsel to the Company (including local counsel as may be requested by such Purchaser) in form and substance acceptable to such Initial Purchaser and the Collateral Agent;

(xiii) a certificate from each officer of each Company Party with respect to corporate authorization and incumbency, each in form and substance acceptable to such Initial Purchaser, attaching organizational documents, duly-adopted resolutions approving the Transaction Documents and good standing certificates of such Company Party;

(xiv) an additional certificate from the Company, in form and substance acceptable to such Initial Purchaser, certifying as to the occurrence of various conditions to the Initial Closing;

(xv) evidence reasonably acceptable to such Initial Purchaser and the Collateral Agent that the Company filed a UCC-3 termination statement to terminate the UCC-1 filing filed by Armistice Capital Master Fund Ltd. on March 26, 2020, encumbering all assets of the Company, with the Secretary of State of the State of Delaware;

(xvi) a waiver from Vyome waiving certain covenants of the Company and all Subsidiaries provided in Section 5.02 of the Merger Agreement, in form and substance acceptable to such Initial Purchaser and the Collateral Agent;

(xvii) a waiver from Ninjour pursuant to Section 9.12 of the Asset Purchase Agreement, in form and substance acceptable to such Initial Purchaser and the Collateral Agent;

(xviii) a waiver from holders of Series C Convertible Preferred Stock of the Company pursuant to Section 10 of the certain Agreement to Amend Series C Convertible Preferred stock, dated as of July 8, 2024, by and among the Company and the signatories thereto, in form and substance acceptable to such Initial Purchaser and the Collateral Agent; and

(xix) a closing statement, in form and substance acceptable to such Purchaser, and such other opinions, statements, agreements and other documents as such Initial Purchaser may require.

(b) **Deliveries to the Company on the Initial Closing.** On or prior to the Initial Closing, each Initial Purchaser (or, where applicable, the Collateral Agent) shall deliver or cause to be delivered to the Company, as applicable, the following, each duly executed by such Initial Purchaser (or, as the case may be, by the Collateral Agent) and dated as of the Initial Closing Date:

(i) this Agreement;

(ii) the Guaranty;

(iii) the Security Agreement;

(iv) the Intellectual Property Security Agreements;

(v) the Registration Rights Agreement;

(vi) the Lock-Up Agreements, duly executed by each officer and director of the Company; and

(vii) the Leak-Out Agreements, duly executed by the Company and such Initial Purchaser.

(c) **Deliveries to Additional Purchasers.** On or prior to the Additional Closing, the Company shall deliver or cause to be delivered to each Additional Purchaser the following, each dated as of the Additional Closing Date and in form and substance satisfactory to the Collateral Agent and such Additional Purchaser:

(i) the Additional Note of such Additional Purchaser duly executed by the Company with the Initial Principal Amount allocated to such Initial Purchaser pursuant to **Section 2.1(a)(ii)**;

(ii) if such Additional Purchaser was not an Initial Purchaser, a Joinder Agreement for such Additional Purchaser;

(iii) legal opinions of counsel to the Company (including local counsel as may be requested by such Purchaser) in form and substance acceptable to such Initial Purchaser and the Collateral Agent;

(iv) a certificate from the Company, in form and substance acceptable to such Initial Purchaser, certifying as to the occurrence of various conditions to the Additional Closing; and

(v) a closing statement, in form and substance acceptable to such Purchaser, and such other opinions, statements, agreements and other documents as such Initial Purchaser may require.

(d) **Deliveries to the Company on the Additional Closing.** On or prior to the Additional Closing, each Additional Purchaser that was not an Initial Purchaser shall deliver or cause to be delivered to the Company, as applicable, a Joinder Agreement duly executed by such Additional Purchaser and the Collateral Agent and dated as of the Additional Closing Date.

2.3 Conditions to Closings.

(a) **Conditions to the Company's Obligations.** The obligations of the Company pursuant to **Section 2.1(a)** in connection with each Closing are subject to the satisfaction, or waiver in accordance with this Agreement, of the following conditions on or before the applicable Closing Date:

(i) the representations and warranties of each Purchaser contained herein shall be true and correct as of the applicable Closing Date (unless expressly made as of an earlier date herein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements required to be performed by any Purchaser on or prior to the applicable Closing Date (other than the obligations set forth in **Section 2.1(a)** to be performed at such Closing) shall have been performed; and

(iii) the delivery by each Purchaser of the items each Purchaser is required to deliver prior to the applicable Closing Date pursuant to **Section 2.2**.

(b) **Conditions to the Initial Purchasers' Obligations.** The respective obligations of each Initial Purchaser and the Collateral Agent pursuant to **Section 2.1(a)** in connection with the Initial Closing are subject to the satisfaction, or waiver in accordance with this Agreement, of the following conditions on or before the Initial Closing Date, both before and after giving effect to the Initial Closing:

(i) the representations and warranties of each Company Party contained in any Transaction Document shall be true and correct as of the Initial Closing Date (unless expressly made as of an earlier date herein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements required to be performed by any Company Party or any on or prior to the Initial Closing Date pursuant to any Transaction Document (other than the obligations set forth in **Section 2.2** to be performed at the Initial Closing) shall have been performed;

(iii) the items that the Company is required to deliver on or prior to the Initial Closing Date pursuant to **Section 2.3(a)** shall have been delivered;

(iv) there shall exist no Default or Event of Default;

(v) no Material Adverse Effect shall have occurred from the date hereof through the Initial Closing Date;

(vi) the filing of a Registration Statement on Form S-4 in connection with the Business Combination shall have been filed with the Commission;

(vii) from the date hereof through the Initial Closing Date, trading in the shares of Common Stock shall not have been suspended by the Commission or the Principal Trading Market for such Common Stock and, at any time prior to the Initial Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on Securities of the Company whose trades are reported by such service or on any Trading Market for such Securities, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Initial Purchaser, and without regard to any factors unique to such Initial Purchaser, makes it impracticable or inadvisable to purchase the Purchased Securities at the Initial Closing;

(viii) the Company meets the current public information requirements under Rule 144 in respect of the Commitment Shares and the Issuable Securities;

(ix) the Company has duly submitted a Listing of Additional Shares Notification Form with the Nasdaq Capital Market with respect to each issuance of Transaction Securities pursuant to this Agreement; and

(x) any other conditions to the Initial Closing or the obligations of such Initial Purchaser contained herein or in the other Transaction Documents shall have been satisfied.

(c) **Conditions to the Additional Purchasers' Obligations.** The respective obligations of each Additional Purchaser and the Collateral Agent pursuant to **Section 2.2** in connection with the Additional Closing are subject to the satisfaction, or waiver in accordance with this Agreement, of the following conditions on or before the Additional Closing Date, both before and after giving effect to the Additional Closing:

(i) the representations and warranties of each Company Party contained in any Transaction Document shall be true and correct as of the Additional Closing Date (unless expressly made as of an earlier date herein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements required to be performed by any Company Party or any on or prior to the Additional Closing Date pursuant to any Transaction Document (other than the obligations set forth in **Section 2.2** to be performed at the Additional Closing) shall have been performed;

(iii) the items that the Company is required to deliver on or prior to the Additional Closing Date pursuant to **Section 2.2(c)** shall have been delivered;

(iv) there shall exist no Default or Event of Default;

(v) no Material Adverse Effect shall have occurred from the date hereof through the Additional Closing Date;

(vi) from the date hereof through the Additional Closing Date, trading in the shares of Common Stock shall not have been suspended by the Commission or the Principal Trading Market for such Common Stock and, at any time prior to the Additional Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on Securities of the Company whose trades are reported by such service or on any Trading Market for such Securities, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Initial Purchaser, and without regard to any factors unique to such Initial Purchaser, makes it impracticable or inadvisable to purchase the Additional Notes at the Additional Closing;

(vii) the First Initial Registration Statement (as defined in the Registration Rights Agreement) shall have been declared effective by the Commission;

(viii) the Company has duly submitted a Listing of Additional Shares Notification Form with the Nasdaq Capital Market with respect to each issuance of Transaction Securities pursuant to this Agreement; and

(ix) any other conditions to the Additional Closing or the obligations of such Initial Purchaser contained herein or in the other Transaction Documents shall have been satisfied.

2.4 Post-Closing Deliveries.

(a) Within thirty (30) calendar days of the date hereof, the Company shall deliver to the Collateral Agent (i) a good standing certificate and a certified copy of the certificate of incorporation of Reshape Medical LLC, a Delaware limited liability company, (ii) a good standing certificate of Obalon Center for Weight Loss, Inc., a Delaware

corporation, (iii) foreign qualifications of the Company issued by the State of California, State of Florida, State of Arizona and State of Minnesota, and each jurisdiction where the Company has officers or employees, (iv) a foreign qualification of Reshape Weightloss Inc., a Delaware corporation, issued by the State of California, (v) Control Agreements for each bank account and security account of any Company Party, each duly executed by such Company Party and the bank or broker where such account is held (subject to de minimis exceptions made by the Collateral Agent in its sole discretion), (vi) duly-adopted resolutions from each of Reshape Lifesciences Netherlands B.V., an entity organized under the laws of Netherlands, Reshape Lifesciences Australia PTY Ltd, an entity organized under the laws of Australia, and Reshape Costa Rica Sociedad De Responsabilidad, an entity organized under the laws of Costa Rica (each, a "Foreign Subsidiary"), authorizing such Foreign Subsidiary entering in the Guaranty and the Security Agreement, and (vii) legal opinions of counsel to each Foreign Subsidiary in form and substance acceptable to such Initial Purchaser and the Collateral Agent.

(b) Within fifteen (15) calendar days of the date hereof, the Company shall deliver to the Collateral Agent a certified copy of the certificate of incorporation of Obalon Center for Weight Loss, Inc., a Delaware corporation.

(c) Within ten (10) Business Days following the end of the calendar month containing each Closing, the Company shall provide to the Collateral Agent proof of receipt of the Purchase Price from each party receiving a payment at such Closing, each in form reasonably acceptable to the Collateral Agent.

(d) Within twenty (20) Business Days of the date hereof, the Company shall transfer all bank accounts of Reshape Medical LLC, a Delaware limited liability company, and Obalon Therapeutics Inc., a Delaware corporation, held at the Silicon Valley Bank, a division of First-Citizens Bank & Trust Company, to the Company.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company Parties. The Company hereby makes the following representations and warranties as to each Company Party (and, to the extent provided in the Guaranty or the Security Agreement or any other Transaction Document, each other Company Party makes the following representations and warranties as, and to the extent applicable to, such Company Party) to each Purchaser as of the date hereof and each Closing Date, each subject to the exceptions set forth in the Disclosure Certificate on the date hereof, which Disclosure Certificate is deemed a part hereof and qualifies any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Certificate:

(a) **Subsidiaries**. All direct and indirect Subsidiaries of the Company are set forth on the Disclosure Certificate. The Company owns, directly or indirectly, all Capital Stock and all Stock Equivalents of each of its Subsidiaries free and clear of any Liens, other than as set forth in the Disclosure Certificate on the date hereof, and all of the issued and outstanding shares of Capital Stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) **Organization and Qualification**. Each Company Party is a Person having the corporate form listed on the Disclosure Certificate, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization listed on the Disclosure Certificate and is duly qualified or licensed to transact business in its jurisdiction of organization, the jurisdiction of its principal place of business, any other jurisdiction where the Purchasers have filed a UCC financing statement or a mortgage and, except where the failure to do so would not have a Material Adverse Effect, any other jurisdiction where such qualification is necessary to conduct its business or own the property it purports to own – and no Proceeding exists or has be instituted or threatened in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification. Each Company Party has the right, power and authority to enter into and discharge all of its obligations under each Transaction Document to which it purports to be a party and has the right, power, authority, Permits and License Agreements to own its property and to carry on its business as presently conducted. No Company Party is engaged in the business of extending credit (which shall not include intercompany credit among the Company Parties) for the purpose of purchasing or carrying margin stock or any cryptocurrency, token or other blockchain asset.

(c) **Authorization; Enforcement**. The execution, delivery, performance by each Company Party of its obligations, and exercise by such Company Party of its rights under the Transaction Documents, including, if applicable, the sale of Notes and other securities under this Agreement, (i) have been duly authorized by all necessary corporate actions of such Company Party, (ii) except for the Required Filings, do not require any Consents or Permits that have not been obtained prior to the date hereof and each such Permit or Consent is in full force and effect and not subject of any pending or, to the best of any Company Party's knowledge, threatened, attack or revocation, (iii) are not and will not be in conflict with or prohibited or prevented by or create a breach under (A) except for those that do not have a Material Adverse Effect, any Regulation or Permit, (B) any corporate governance document or resolution or (C) except for those that do not have a Material Adverse Effect, any Contractual Obligation or provision thereof binding on such Company Party or affecting any property of such Company Party and (iv) will not result in the imposition of any Lien on the Collateral other than Liens for the benefit of the Purchaser Parties. Upon execution and delivery thereof, each Transaction Document to which such Company Party purports to be a party shall constitute the legal, valid and binding obligation of such Company Party, enforceable against such Company Party in accordance with its terms, subject only to the Standard Enforceability Exceptions.

(d) **Issuance of the Transaction Securities**. Each Transaction Security is duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents or by applicable Regulations. The Company has reserved from its duly authorized Capital Stock a number of shares of Common Stock for issuance of the Issuable Securities at least equal to the Reserve Amount on the date hereof or as provided for in **Section 4.6(a)**.

(e) **Capitalization**. The capitalization of the Company is as set forth on the Disclosure Certificate, which Disclosure Certificate also includes the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. The Company has not issued any Capital Stock or Stock Equivalent since its most recently filed periodic report under the Exchange Act except (i) as set forth on the Disclosure Certificate, (ii) for the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and (iii) pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act as set forth on the Disclosure Certificate. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in, or triggered by, the transactions contemplated by the Transaction Documents (including the issuance of the Transaction Securities in accordance with the terms of the applicable Transaction Documents) as set forth on the Disclosure Certificate. There are no outstanding Stock Equivalents with respect to any Common Stock, and there are no Contractual Obligations by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents except as set forth on the Disclosure Certificate. The issuance and sale of the Transaction Securities will not obligate the Company to issue shares of Common Stock or any other securities to any Person (other than to any Purchaser) and will not result in a right of any holder of securities issued by any Company Party to adjust the exercise, conversion, exchange or reset price under any Stock Equivalent, except as set forth on the Disclosure Certificate. All of the outstanding shares of Capital Stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all securities Regulations, and no such outstanding share was issued in violation of any preemptive right or similar or other right to subscribe for or purchase securities or any other existing Contractual Obligation. No further approval or authorization of any stockholder or the Board of Directors, and no other Permit or Consent, is required for the issuance and sale of the Transaction Securities. Except as set forth on the Disclosure Certificate on the date hereof, there are no stockholders' agreements, voting agreements or other similar Contractual Obligations with respect to the Company's Capital Stock or Stock Equivalents to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders or other equity investors.

(f) **SEC Reports; Financial Statements**. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the one (1) year preceding the date hereof (or such shorter period as the Company was required by Regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**"). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to

make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the Regulations of the Commission with respect thereto as in effect at the time of filing. Except as disclosed in footnotes to such financial statements, such financial statements have been prepared in accordance with GAAP and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to customary and immaterial year-end audit adjustments.

(g) **Material Adverse Effects; Undisclosed Events, Liabilities or Developments**. Since the date of the latest audited financial statements disclosed in the Disclosure Certificate: (i) there has been no event that has had, or could reasonably be expected to result in, a Material Adverse Effect, (ii) no Company Party has incurred any Indebtedness or other liability (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required by GAAP to be reflected in the Company's financial statements and not required to be disclosed in filings made with the Commission, (iii) no Company Party has altered its fiscal year or accounting methods; (iv) no Company Party has declared or made any Restricted Payment or entered in any Contractual Obligation to do so, (v) no Company Party has issued any Security to any officer, director or other Affiliate, and (vi) there has been no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to any Company Party, their Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by any Company Party under applicable securities Regulations at the time this representation is made or deemed made that has not been publicly disclosed at least one (1) Trading Day prior to the date that this representation is made.

(h) **Litigation**. Except as set forth in the Disclosure Certificate, there is no Proceeding (and, to the knowledge of the Company Parties, no such Proceeding has been threatened) against any Company Party of any Subsidiary of any Company Party or any current or former officer or director of any Company Party or any Subsidiary of any Company Party in its capacity as such which (i) adversely affects or challenges the legality, validity or enforceability of any Transaction Document or Transaction Security, (ii) involves the Commission or otherwise involves violations of securities Regulations or (iii) could, assuming an unfavorable result, have or reasonably be expected to result in a Material Adverse Effect, and none of the Company Parties, their Subsidiaries, or any director or officer of any of them, is or has been the subject of any Proceeding involving a claim of violation of or liability under securities Regulations or a claim of breach of fiduciary duty. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(i) **Labor Relations**. There is (i) no unfair labor practice at any Company Party, (ii) no unfair labor practice complaint pending (or, to the knowledge of any Company Party, threatened) against any Company Party or any Subsidiary of any Company Party before the National Labor Relations Board, (iii) no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is pending (or, to the knowledge of any Company Party, threatened) against any Company Party or any Subsidiary of any Company Party before the National Labor Relations Board, (iv) no strike, work stoppage or other labor dispute in existence (or, to the knowledge of any Company Party, threatened) involving any Company Party or any Subsidiary of any Company Party, (v) no union representation question existing with respect to the employees of any Company Party or any Subsidiary of any Company Party, as the case may be, (vi) no union organization activity that is taking place at any Company Party or any Subsidiary of any Company Party, except, in each case with respect to any matter specified in clauses (i) through (vi) above, for such matters that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. None of any Company Party's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with such Company Party or such Subsidiary, and none of the Company Parties nor any of their Subsidiaries is a party to a collective bargaining agreement. To the knowledge of the Company, the continued service to the Company Parties and their Subsidiaries of the executive officers of the Company Parties and their Subsidiaries is not, and is not expected to be, in violation of any material term of any Contractual Obligation in favor of any third party and does not subject any Company Party or any Subsidiary of any Company Party to any Loss with respect to any of the foregoing matters.

(j) **Compliance**. No Company Party and no Subsidiary thereof, except as set forth in the Disclosure Certificate or as could not have or reasonably be expected to result in a Material Adverse Effect: (i) is in default under

or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has any Company Party or any Subsidiary thereof received notice of a claim that it is in default under or that it is in violation of, any Contractual Obligation (whether or not such default or violation has been waived); (ii) is or has been in violation of any Regulation (including any judgment, decree or order of any Governmental Authority), and to the knowledge of each Company Party, no Person has made or threatened to make any claim that such a violation exists (including relating to taxes, environmental protection, occupational health and safety, product quality and safety, employment or labor matters) or (iii) has incurred, or could reasonably be expected to incur Losses relating to compliance with Regulations (including clean-up costs under environmental Regulations), nor have any such Losses been threatened.

(k) **Permits**. Each Company Party and its Subsidiaries possess all Permits, each issued by the appropriate Governmental Authority, that are necessary to conduct their respective businesses as described in the Disclosure Certificate and which failure to possess could reasonably be expected to result in a Material Adverse Effect and no Company Party nor any Subsidiary thereof has received any notice of Proceedings relating to the revocation or modification of any such Permit.

(l) **Title to Assets**. Each Company Party and their Subsidiaries have good and marketable title in fee simple to all real property owned by them and good title in fee simple to all personal property owned or purported to be owned by any of them that is material to the business of any Company Party or any Subsidiary of any Company Party, in each case free and clear of all Liens except as set forth in the Disclosure Certificate and except for (i) Liens that do not materially affect the value of any such property and do not materially interfere with the use made and proposed to be made of such property by the Company Parties and their Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by any Company Party or any Subsidiary of the Company Parties (and any personal property if such lease is material to the business of any Company Party or any Subsidiary of any Company Party) are held by them under valid, subsisting and enforceable leases with which the Company Parties and their Subsidiaries party thereto are in compliance.

(m) **Intellectual Property**. Except where the failure to do so would not have a Material Adverse Effect, each Company Party and each Subsidiary of the Company Parties have, or have rights to use, all Intellectual Property Rights they purport to have or have rights to use, which, in the aggregate for all such Company Party and such Subsidiary, constitute all Intellectual Property Rights necessary or required for use in connection with the businesses of the Company Parties and their Subsidiary as presently conducted. No Company Party and no Subsidiary of any Company Party has received a notice (written or otherwise) that any of the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, prior to the latest "Maturity Date" (under and as defined in each Note), and, to the knowledge of each Company Party and its Subsidiaries, no event has occurred that permits, or would permit after notice or passage of time or both, the revocation, suspension or termination of such rights. No Company Party and no Subsidiary of any Company Party has received, since the date of the latest audited financial statements listed in the Disclosure Certificate, a written notice of a claim, nor has such a claim been threatened or could reasonably be expected to be made, and no Company Party and no Subsidiary of any Company Party otherwise has any knowledge that any slogan or other advertising device, product, process, method, substance or other Intellectual Property Right or goods or services bearing or using any Intellectual Property Right presently contemplated to be sold by or employed by Intellectual Property Right of any Company Party or any Subsidiary of any Company Party violate or infringe upon the rights of any Person, except as could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Company Party and its Subsidiaries, all such Intellectual Property Rights are enforceable (subject only to the Standard Enforceability Exceptions) and there is no existing infringement by another Person of any of the Intellectual Property Rights. Each Company Party and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Company Party and no Subsidiary of any Company Party has any Intellectual Property Right registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those set forth on the Disclosure Certificate on the date hereof (or any later updates acceptable to each Purchaser), or has granted any licenses with respect thereto other than as set forth on the Disclosure Certificate on the date hereof (or any later updates acceptable to each Purchaser). On the date hereof, the Disclosure Certificate also sets

forth all Contractual Obligations or other arrangements of any Company Party or any Subsidiary of any Company Party as in effect on the date hereof pursuant to which such Company Party or such Subsidiary has a license or other right to use any Intellectual Property Right owned by another Person and the dates of the expiration of such Contractual Obligations or other arrangements (collectively, together with such Contractual Obligations or other arrangements as may be entered into by any Company Party or any Subsidiary of any Company Party after the date hereof, the "**License Agreements**"). All material License Agreements and related rights are in full force and effect, no default or event of default exists with respect thereto in respect of the obligations of licensor or with respect to any royalty or other payment obligations of any Company Party or any Subsidiary of any Company Party or any obligation of any Company Party or any Subsidiary of any Company Party with respect to manufacturing standards, quality control or specifications and each such Company Party or such Subsidiary is in compliance with the terms thereof in all material respects and no owner, licensor or other party thereto has sent any notice of termination or its intention to terminate such license or rights.

(n) **Transactions with Related Parties**. Except as set forth in the Disclosure Certificate, no Company Party and no Subsidiary of any Company Party is a party to any Contractual Obligation or other transaction with any Related Party that is not a Company Party or Subsidiary of a Company Party, including (a) investments by any Company Party or any Subsidiary thereof in such other Related Party, whether in Capital Stock, Stock Equivalents, other Securities, Indebtedness owing by such Related Party or otherwise, or Indebtedness owing to any such other Related Party and (b) transfers, sales, leases, assignments or other acquisitions or dispositions of any asset, in each case except for (x) transactions in the ordinary course of business on a basis no less favorable to the Company Parties and their Subsidiaries as would be obtained in a comparable arm's length transaction with a Person not a Related Party and (y) salaries and other director or employee or other staff compensation, including expense reimbursements and employee benefits, of the Company Parties and their Subsidiaries.

(o) **Sarbanes-Oxley; Internal Accounting Controls**. The Company and its Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 and any and all related Regulations. The Company Parties and their Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and its Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and its Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed in the reports the Company is required to file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's Regulations. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and its Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "**Evaluation Date**"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(p) **Certain Fees**. No brokerage or finder's fees or commissions or similar fees are or will be payable by any Company Party or any Subsidiary of any Company Party to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. No Purchaser has or shall have any obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this **Section 3.1(p)** that may be due in connection with the transactions contemplated by the Transaction Documents.

(q) **Private Placement**. Assuming the accuracy of each Purchaser's representations and warranties set forth in **Section 3.2**, no registration under the Securities Act is required for the offer and sale of the Transaction Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Transaction

Securities under the Transaction Documents does not contravene the Regulations of any Trading Market of any Securities of any Company Party.

(r) **Registration Rights**. No Person (other than as part of the Transaction Documents) has any right to cause any Company Party or any Subsidiary of any Company Party to effect the registration under the Securities Act of any securities of any Company Party or any Subsidiary of any Company Party.

(s) **Listing and Maintenance Requirements**. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the twelve (12) months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Company has submitted (or will submit on or prior to the Initial Closing Date) the Listing of Additional Shares Notification Form with the Nasdaq Capital Market with respect to the offering of Transaction Securities. The issuance of all Transaction Securities would not exceed the maximum number of shares of Common Stock that may be issued under the Listing Rules of the Nasdaq Stock Market LLC without obtaining shareholder approval.

(t) **Application of Takeover Protections**. The Company and the Board of Directors (or equivalent body) have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Articles of Incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including as a result of the Company's issuance of the Transaction Securities and the ownership of the Transaction Securities by any Purchaser or any Affiliate of any Purchaser.

(u) **MNPI**. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, each Company Party confirms that none of the Company Parties, their Affiliates, or agents or counsel or any other Person acting on behalf of the foregoing has provided any Purchaser, any Purchaser Party or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that each Purchaser will rely on the foregoing representation in effecting transactions in securities of the Company. Each Company Party acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in **Section 3.2**.

(v) **No Integrated Offering**. Assuming the accuracy of each Purchaser's representations and warranties set forth in **Section 3.2**, no Company Party, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Purchased Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the Securities of the Company Parties are listed or designated.

(w) **No General Solicitation**. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Transaction Securities by any form of general solicitation or general advertising. The Company has offered the Transaction Securities for sale only to the Purchasers.

(x) **Foreign Corrupt Practices**. No Company Party and no Related Party of any Company Party, has done any of the following, directly or indirectly (including through agents, contractors, trustees, representatives and advisors): (i) made contributions or payments of, or reimbursement for, gifts, entertainment or other expenses, in each case that could reasonably be viewed as unlawful under U.S. or other Regulations related to foreign or domestic political activity or (ii) made payments to U.S. or other officials, judges, employees or other staff members of any Governmental Authority or other Persons viewed as government officials under any Regulation or to any foreign or

domestic political parties, elected or union officials or campaigns in order to obtain, retain or direct business or obtain any improper advantage, and no part of the proceeds of the Notes will be used, directly or indirectly, to fund any such payment; (iii) failed to disclose fully any contribution or other payment made by any Company Party or any Subsidiary of any Company Party (or made by any Person acting on the behalf of any of the foregoing) which could reasonably be viewed as in violation of U.S. or other Regulations; or (iv) any other activity in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or any other Regulation sanctioning or purporting to sanction bribery, corruption and other improper payments.

(y) **Accountants**. The Company's accounting firm is Haskell & White LLP. To the knowledge and belief of the Company, such accounting firm is a registered public accounting firm as required by the Exchange Act.

(z) **No Disagreements with Accountants and Lawyers**. There are no disagreements of any kind presently existing, or reasonably anticipated by any Company Party to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(aa) **Acknowledgment Regarding Purchasers' Acquisition of Transaction Securities**. The Company acknowledges and agrees that each Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser, the Collateral Agent, any Purchaser Party or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' acquisition of the Purchased Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(bb) **Regulation M Compliance**. The Company has not, and to its knowledge no Company Party, Subsidiary of any Company Party or no one acting on any of their behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Transaction Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Transaction Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company's placement agent in connection with the placement of the Transaction Securities.

(cc) **Stock Option Plans**. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(dd) **Sanctions**. No Company Party and no Related Party of any Company Party, directly or indirectly (including through agents, contractors, trustees, representatives or advisors) (a) is in violation of any Sanctions Law or engages in, or conspire or attempts to engage in, any transaction evading or avoiding any prohibition in any Sanction Law, (b) is a Sanctioned Person or derive revenues from investments in, or transactions with Sanctioned Persons, (c) has any assets located in Sanctioned Jurisdictions or (d) deals in, or otherwise engages in any transactions relating to, any property or interest in property blocked pursuant to any Regulation administered or enforced by the U.S. Office of Foreign Assets Control ("**OFAC**"). The Company will not use, directly or indirectly, any part of the proceeds of any Note hereunder to fund, and none of the Company or the Company Parties, either directly or indirectly (including through agents, contractors, trustees, representatives or advisors), are engaged in any operations involving, the financing of any investments or activities in, or any payments to, a Sanctioned Person.

(ee) **U.S. Real Property Holding Corporation**. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended.

(ff) **Regulated Entities**. No Company Party and no Affiliate of any Company Party is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). No Company Party and no Subsidiary or Affiliate of any Company Party owns or controls, directly or indirectly, individually or in the aggregate, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. No Company Party and no Subsidiary or Affiliate of any Company Party, either individually or in the aggregate, directly or indirectly, exercise or has the ability to exercise a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. The Company is not an "investment company" and is not a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940. The Company is not subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act, the Interstate Commerce Act or the Investment Company Act of 1940 or to any other Regulation or Permit limiting the Company's ability to incur indebtedness for borrowed money.

(gg) **Use of Proceeds.** The proceeds of the purchase of the Purchased Securities shall be used to provide working capital for the Company, as well as expenses of the Business Combination. No Company Party shall, nor shall any Subsidiary of any Company Party, use the proceeds of the purchase of the Purchased Securities (A) for the purpose of purchasing or carrying of "margin security" or "margin stock" within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224, (B) for the compensation of executive officer and management (except for payment of compensation in the ordinary course of business under compensation arrangements in effect prior to the date hereof) or to make distributions, or repay Indebtedness owing to, any holder of any Security of the Company or (C) in any manner that might cause the purchase of the Notes or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other Regulation.

(hh) **Promotional Stock Activities**. No Company Party, no Subsidiary of any Company Party and none of their officers, directors, managers, affiliates or agents have engaged in any stock promotional activity that could give rise to a complaint, inquiry, or trading suspension by the Securities and Exchange Commission alleging (i) a violation of the anti-fraud provisions of the federal securities laws, (ii) violations of the anti-touting provisions, (iii) improper "gun-jumping; or (iv) promotion without proper disclosure of compensation.

(ii) **Tax Status**. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company Parties (i) have made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) have paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) have set aside on their respective books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes of any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company Parties know of no basis for any such claim.

(jj) **Seniority**. Except for the Indebtedness set forth on the Disclosure Certificate on the date hereof, no Indebtedness or other claim against any Company Party is senior in right of payment to the Notes or the obligations due thereunder or their guaranties, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than Indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(kk) **AML/CTF Regulations**. The operations of the Company Parties and their Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 and other applicable money laundering and counter-terrorism financing Regulations (collectively, the "**AML/CTF Regulations**"), and no Proceeding by or before any Governmental Authority involving any Company Party or any Subsidiary of any Company Party with respect to any AML/CTF Regulation is pending or, to the knowledge of any Company Party or any such Subsidiary, threatened.

(ll) **Disqualification Events**. No Company Party, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of any Company Party, no beneficial owner of twenty percent (20%) or more

of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as such term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (as each such term is used and understood in Rule 506(d) of Regulation D under the Securities Act, each a "**Company Covered Person**") is (i) subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) of Regulation D under the Securities Act except for the events listed in Rule 506(d)(2) or (d)(3) of Regulation D under the Securities Act or (ii) is subject to any event that would result in a disciplinary disclosure under Item 11 of Form ADV if such Person was a "supervised person" (as defined for purposes of such Form ADV) of an investment adviser (a "**Disqualification Event**"). The Company has exercised reasonable care to determine whether any Company Covered Person is subject to a Disqualification Event.

(mm) **No Other Covered Persons.** There is no Person (other than a Company Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of the Purchaser in connection with the sale of any Transaction Securities.

(nn) **Subsidiary Rights**. Each Company Party has the unrestricted right to vote, and (subject to limitations imposed by applicable Regulation) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by any Company Party or any Subsidiary of any Company Party.

(oo) **Shell Company Status.** The Company has never been, and is not presently, an issuer identified as an entity that fits within the definition of "shell company" under Section 12b-2 and Rule 144 of the Exchange Act.

(pp) **No Last-Minute Issuances.** From and after September 5, 2024, no Company Party has engaged in any transaction which would constitute a violation of this Agreement or require the consent of, or grant a right of first refusal to, any Purchaser Party if done after the Initial Closing Date.

(qq) **Full Disclosure**. All of the disclosures furnished on behalf of, and all of the representations and warranties made by, any Company Party in any Transaction Document and all statements contained in the Disclosure Certificate or any certificate or other document furnished or to be furnished to any Purchaser or any Purchaser Party or their attorneys or advisors pursuant to any Transaction Document are true and correct and none contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. The Company Parties have responded to all questions in the due diligence questionnaire (and any amendment or additional questions or questionnaires) provided by the Collateral Agent prior to the date hereof completely and truthfully and have provided in response all of the information available to them that would reasonably be qualified as responsive thereto, except where such Company Parties have indicated to the Collateral Agent that specific information could not be provided and why. The press releases disseminated by the Company Parties during the twelve months preceding the date of this Agreement, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading.

3.2 Representations and Warranties of Each Purchaser. Each Purchaser, severally and not jointly, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of each Closing Date to the Company as follows (unless as of a specific date therein in which case they shall be accurate as of such date):

(a) **Organization; Authority**. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, subject only to the Standard Enforceability Exceptions.

(b) **Own Account**. Such Purchaser understands that the Purchased Securities and Commitment Shares are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law. Such Purchaser is acquiring such Securities as principal for its own account, in the ordinary course of business, and not with a view to or for distributing or reselling such securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any such Security in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of any such Securities in violation of the Securities Act or any applicable state securities law; **provided**, that nothing in this **clause (b)** shall be construed to limit such Purchaser's ability to sell such Securities or to require such Purchaser to hold any such Securities for any minimum or other specific term and such Purchaser reserves the right to dispose of any of such Securities at any time in accordance with an exemption from the registration requirements of the Securities Act and applicable state securities laws.

(c) **Purchaser Status**. At the time such Purchaser was offered or otherwise purchased or acquired the Purchased Securities and the Commitment Shares, it was, and as of the date hereof it is, and on each date on which it converts the Notes or otherwise acquires Issuable Securities it is and will be, a sophisticated investor accustomed to transactions like the purchase of the Notes hereunder and an "accredited investor" as defined under the Securities Act and the Regulations thereunder.

(d) **Experience of Such Purchaser**. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Purchased Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Purchased Securities and, at the present time, is able to afford a complete loss of such investment.

(e) **General Solicitation**. Such Purchaser is not acquiring the Purchased Securities and the Commitment Shares as a result of any advertisement, article, notice or other communication regarding the Purchased Securities or the Commitment Shares published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) **Certain Transactions and Confidentiality**. Other than consummating the transactions contemplated hereunder, such Purchaser has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Notwithstanding the foregoing, if such Purchaser is a multi-managed investment vehicle (whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets), the representation set forth above in this **clause (f)** shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to acquire the Purchased Securities and Commitment Shares covered by this Agreement. Other than to other Persons party to this Agreement, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

Each Company Party acknowledges and agrees that the representations and warranties of each Purchaser set forth in **Section 3.2** shall not modify, amend or affect any Purchaser's right to rely on the representations and warranties of any Company Party contained in this Agreement or in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transaction contemplated hereby.

ARTICLE IV OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Transaction Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Transaction Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in **Section 4.1(b)**, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, at the Company's sole expense in the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Transaction Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights and obligations of a Purchaser under this Agreement.

(b) Each Purchaser agrees, severally but not jointly, to the imprinting, for as long as is required by this **Section 4.1**, of a legend on all of the Purchased Securities in the following form:

> [THIS SECURITY HAS NOT] [NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY [CONVERTIBLE] HAVE] BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES REGULATIONS, AND, ACCORDINGLY, MAY NOT BE SOLD, OFFERED FOR SALE OR PLEDGED AS SECURITY IN THE ABSENCE OF SUCH REGISTRATION WITHOUT RELIANCE ON AN EXEMPTION UNDER THE SECURITIES ACT AND COMPLIANCE WITH APPLICABLE STATE SECURITIES REGULATIONS. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN FROM AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that each Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of its Transaction Securities to a financial institution that is a sophisticated investor and an "accredited investor" as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Transaction Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the Company's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Transaction Securities may reasonably request in connection with a pledge or transfer of the Transaction Securities.

(c) No certificate evidencing any Transaction Security shall contain any legend (including the legend set forth in **Section 4.1(b)**) in the following cases: (i) while a registration statement covering the resale of such Transaction Security is effective under the Securities Act; (ii) following any sale of such Transaction Security pursuant to Rule 144; (iii) if such Transaction Security is eligible for sale under Rule 144; or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall upon request of any Purchaser and at the Company's sole expense cause its counsel (or at such Purchaser's option, exercised in its sole discretion, counsel selected by such Purchaser) to issue a legal opinion to the Transfer Agent promptly after any of the events described in (i)-(iv) in the preceding sentence to effect the removal of any legend (including that described in **Section 4.1(b)**), with a copy to such Purchaser, its broker and the Collateral Agent. If all or any portion of any Purchased Security is converted or exercised, respectively, at a time when there is an effective registration statement to cover the resale of the Issuable Securities, or if any Transaction Security may be sold under Rule 144 or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Issuable Security or Transaction Security shall be issued free of all legends. The Company agrees that following such time as such legend is no longer required under this **Section 4.1(c)**, it will, no later than two (2) Trading Days following the delivery by any Purchaser to the Company or the Transfer Agent of a certificate representing a Transaction Security issued with a restrictive legend (such second (2^{nd}) Trading Day being referred to as the "**Legend Removal Date**" of such Transaction Securities of such Purchaser), instruct the Transfer Agent to deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent

that enlarge the restrictions on transfer set forth in this **Section 4.1**. Certificates for the Transaction Securities subject to legend removal hereunder shall be transmitted by the Transfer Agent to such Purchaser by crediting the account of such Purchaser's prime broker with the Depository Trust Company System as directed by such Purchaser.

(d) In addition to such Purchaser's other available remedies, the Company shall pay to such Purchaser, in cash, as partial liquidated damages and not as a penalty, $1,000 per Trading Day for each Trading Day after the Legend Removal Date for such Transaction Securities of such Purchaser until such certificate is delivered without a legend. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Company's failure to deliver certificates representing any Transaction Securities as required by the Transaction Documents, and each Purchaser shall have, severally and not jointly, the right to pursue all remedies available to it at law or in equity including a decree of specific performance and/or injunctive relief.

4.2 No Claims Under Stockholder's Rights Plan. No claim will be made or enforced by any Company Party or, with the consent of any Company Party, by any other Person, that Purchaser is an "acquiring person" (or similar or equivalent term) under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Transaction Securities under the Transaction Documents or under any other agreement between the Company and Purchaser.

4.3 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Transaction Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including its obligation to issue the Transaction Securities pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.4 Integration. The Company shall not engage in any Sale, offer for Sale or engage in any solicitation of offers to buy, any Security (or otherwise negotiate in respect of any of the foregoing) that would be integrated with (i) the offer or sale of the Transaction Securities in a manner that would require the registration under the Securities Act of the sale of the Transaction Securities or (ii) the offer or sale of the Transaction Securities for purposes of the Regulations of any Trading Market of any Securities of any Company Party in a manner that would require shareholder approval prior to the closing thereof, unless such shareholder approval is obtained before such closing.

4.5 Conversion Procedures. The form of "Notice of Conversion" (each a "**Notice of Conversion**") included in any Note of any Purchaser sets forth the totality of the procedures required of such Purchaser in order to convert such Note. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert any Note. No additional legal opinion, other information or instructions shall be required of any Purchaser to convert any Note. The Company shall honor conversions of any Note, and shall deliver Transaction Securities in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Reservation and Listing.

(a) The Company shall reserve for issuance of the Issuable Securities from its duly authorized Capital Stock a number of shares of Common Stock at least equal to the higher of the Reserve Amount or such amount as may then be required to fulfill its obligations in full under the Transaction Documents. Upon a reverse stock split or increase in the authorized Common Stock of the Company, the Company will immediately instruct the Transfer Agent to reserve at least the new Reserve Amount after giving effect to such stock split or increase. The Company shall update the Reserve Amount with the Transfer Agent at least monthly.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Reserve Amount on such date, then the Board of Directors shall amend the Company's Articles of Incorporation (or equivalent governing document) to increase the number of authorized but unissued shares

of Common Stock to the Reserve Amount at such time, as soon as possible and in any event not later than the 60th day after such date.

(c) The Company shall, if applicable: (i) in the time and manner required by the Principal Trading Market for the Common Stock, prepare and file with such Principal Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Reserve Amount on the date of such application; (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Principal Trading Market as soon as possible thereafter; (iii) provide to each Purchaser evidence of such listing or quotation; and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Reserve Amount on such date on such Principal Trading Market or any other Trading Market for such Common Stock.

4.7 Right of First Refusal.

(a) Prior to the consummation of the Business Combination, upon any Company Party entering into any Equity Line of Credit or the issuance of any Common Stock in connection with an Equity Line of Credit (a "**Subsequent Financing**"), each Purchaser shall have the right to participate up to its Pro Rata Portion (measured against all Purchasers) of 100% of such Equity Line of Credit or such issuance (the "**Participation Maximum**") on the same terms, conditions and price provided for in the Subsequent Financing.

(b) At least three (3) Trading Days prior to the closing of a Subsequent Financing, the Company shall deliver to each Purchaser a written notice of its intention to effect a Subsequent Financing ("**Pre-Notice**"), which Pre-Notice shall ask such Purchaser if it wants to review the details of such financing (each additional notice containing such details, a "**Subsequent Financing Notice**"). Upon the request of any Purchaser for a Subsequent Financing Notice, and only upon such a request, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to such Purchaser. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Persons through or with whom such Subsequent Financing is proposed to be effected, the Pro Rata Portion of the Participation Maximum of such Purchaser, an inquiry as to whether such Purchaser is willing to participate above their Pro Rata Portion (and what is the maximum amount such Purchaser is willing to commit), and shall include a term sheet or similar document relating thereto as an attachment.

(c) If any Purchaser desires to participate in such Subsequent Financing, such Purchaser must provide written notice to the Company within one (1) Trading Day of receipt of the Subsequent Financing Notice that such Purchaser is willing to participate in the Subsequent Financing, the maximum amount for which such Purchaser would be willing to participate if it is allocated to it (up to the Participation Maximum), and representing and warranting that the Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice.

(d) At first, each Purchaser shall first have the right to purchase its Pro Rata Portion (measured against all Purchasers) of the Participation Maximum. If some Purchasers have declined to participate in such Subsequent Financing, and some portion of the Participation Maximum remains unallocated, each Purchaser having agreed to participate above its current allocation shall be allocated its Pro Rata Portion (measured against all Purchaser having so agreed) of the next dollar – and so on and so forth until the Participation Maximum shall be fully allocated or all Purchasers shall have been given their desired allocation in full.

(e) The transaction documents related to any Subsequent Financing applicable to any Purchaser participating in such Subsequent Financing shall not include any term or provision whereby such Purchaser shall be required to agree to any restrictions on trading as to any of the Transaction Securities. In addition, the transaction documents related to the Subsequent Financing shall not include any requirement to consent to any amendment to or termination of, or grant any waiver, release or other modification or the like under or in connection with, this Agreement, without the prior written consent of the number of Purchasers required hereunder to consent to this amendment, termination, waiver, consent, release or other modification.

(f) Notwithstanding anything to the contrary in this **Section 4.7** and unless otherwise agreed to by the applicable Purchaser, the Company shall either confirm in writing to each Purchaser that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the

Subsequent Financing, in either case in such a manner such that each Purchaser will not be in possession of any material, non-public information, by the fifth (5^h) Trading Day following delivery of the Subsequent Financing Notice. If by such fifth (5^{th}) Trading Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by the Purchaser, such transaction shall be deemed to have been abandoned and the Purchaser shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(g) Notwithstanding the foregoing, this **Section 4.7** shall not apply in respect of an "Exempt Issuance" or to any issuance of "Permitted Debt" (each as defined under any of the Notes).

4.8 Furnishing of Information; Public Disclosure.

(a) The Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the six (6)-month anniversary of the date hereof and ending at such time that all of the Transaction Securities have been sold or may be sold by the Purchasers without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company shall fail for any reason to satisfy the current public information requirement under Rule 144(c) (a "**Public Information Failure**") then, in addition to any Purchaser's other available remedies, the Company shall pay to each Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell its Transaction Securities, an amount in cash equal to two percent (2.0%) of the aggregate Subscription Amount of such Purchaser's Purchased Securities on the day of a Public Information Failure and on every thirtieth (30^{th}) day (pro-rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for such Purchaser to transfer pursuant to Rule 144 any Transaction Securities. The payments to which such Purchaser shall be entitled pursuant to this **Section 4.8(b)** are referred to herein as "**Public Information Failure Payments**." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3^{rd}) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments when required by the preceding sentence, such Public Information Failure Payments shall bear interest at the rate of two percent (2.0%) per month (accruing and due daily and prorated for partial months) until paid in full. Nothing herein shall limit each Purchaser's right to pursue actual damages for the Public Information Failure, and each Purchaser shall have the right to pursue all remedies available to it at law or in equity including a decree of specific performance and/or injunctive relief and recovery of loss profits.

(c) The Company will immediately notify the Collateral Agent and each Purchaser in writing of (i) any Disqualification Event relating to any Company Covered Person and (ii) any event that, with the passage of time, would become such a Disqualification Event.

4.9 Securities Laws Disclosures.

(a) **Disclosure of Transaction Documents.** The Company shall file with the Commission a current report on Form 8-K that includes the Transaction Documents as exhibits thereto within the time required by the Exchange Act. The Company represents and warrants to, and agree with, each Purchaser Party that, from and after such disclosure, it shall have publicly disclosed all material, non-public information delivered to any Purchaser Party or their Related Parties (or their respective agents, contractors, trustees, representatives and advisors) by any Company Party (including through agents, contractors, trustees, representatives and advisors) in connection with the transactions contemplated by the Transaction Documents. From and after such disclosure, to the extent any Transaction Document (including any notice provided thereunder) could be argued to include any material non-public information, the Company shall within two (2) Trading Days disclose such Transaction Document on Form 8-K. From and after such disclosure, the Company represents and warrants to each Purchaser Party that it shall have publicly disclosed (and shall ensure that as part of such disclosure and thereafter it shall publicly disclose within two (2) Trading Days) all material, non-public information delivered to any Purchaser Party or any of their Related Parties (or their respective

agents, contractors, trustees, representatives and advisors) by any Company Party or any of their Affiliates or any of their respective Related Parties (or their respective agents, contractors, trustees, representatives and advisors), in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon such disclosure, any and all confidentiality or similar obligations under any Contractual Obligation, whether written or oral, between any Company Party, any of their Affiliates or any of their respective Related Parties (or their respective agents, contractors, trustees, representatives and advisors), on the one hand, and any Purchaser Party or any of their Related Parties (or their respective agents, contractors, trustees, representatives and advisors), on the other hand, shall immediately terminate and, from and after such disclosure, no such obligations shall be valid, even if entered into after the date of this Agreement (unless such obligation specifically mentions and refers to this **clause (a)** as inapplicable in a writing signed by such Purchaser Party), including "click through" agreements and confidentiality clauses incorporated in larger agreements.

(b) **Financing Statements and Other Periodic Filings.** The Company shall timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act and the Company shall meet the current public information requirements of Rule 144(c) under the Securities Act as of the end of the period in question.

(c) **Private Transaction.** This is a private transaction negotiated with, and tailored to, each Purchaser and no Securities were offered or sold to any Purchaser by means of any form of general solicitation or general advertising. This transaction does not rely on Regulation D (and, therefore, the Company does not intend or need to file a Form D).

4.10 Custodians; Freely Tradeable and Trading Markets Listing.

(a) **DWAC.** The Company shall ensure that its shares of Common Stock are and remain eligible for the "Deposit and Withdrawal at Custodian" (DWAC) service of the Deposit Trust Corporation and not subject to any restriction or limitation imposed by or on behalf of the Deposit Trust Corporation on any of its services or any other restriction or limitation on the use of the services provided by the Deposit Trust Corporation (DTC chill).

(b) **Freely Tradeable.** Subject to the terms and conditions of the Registration Rights Agreement, the Company shall ensure that all Transaction Securities are freely tradeable. For the purposes of this **Section 4.10(b)**, such shares shall be deemed "**freely tradeable**" if such shares are eligible for resale pursuant to (i) Rule 144 (provided the Company is compliant with its current public information requirements) promulgated by the Commission pursuant to the Securities Act or such shares are the subject of a then effective registration statement or (ii) an effective "shelf" or resale registration statement under the Securities Act, in customary form, is effective under the Securities Act, registering the resale of such Transaction Securities by such security holder and names such holder as a selling security holder thereunder, and such registration statement is reasonably acceptable such holder.

(c) **Trading Markets.** The shares of Common Stock are trading, and the Company believes in good faith that they shall continue to trade uninterrupted, on the Principal Trading Market and all other Trading Markets for such Common Stock (subject to any volume restrictions set forth in the Notes). All of the shares of Common Stock issued or issuable pursuant to the Transaction Documents (including the Commitment Shares and the Issuable Securities) are listed or quoted for trading, and the Company shall use its best efforts to ensure that such shares continue to be listed or quoted for trading interrupted, on the Principal Trading Market and each such other Trading Market.

4.11 Trading Activities of Purchasers.

(a) **Prohibited Short Sales.** Each Purchaser, severally and not jointly, covenants and agrees that neither it, nor any of its Affiliates acting on its behalf or pursuant to any understanding with it, will execute any of the following (a "**Prohibited Short Sale**"): (i) any Short Sales of the Common Stock or (ii) any hedging transaction that establishes a net short position with respect to the Company's Common Stock, in each case during the period commencing with the execution of this Agreement and ending on the earlier of the earliest "Maturity Date" of such Purchaser's Notes or the full repayment or conversion of all "Obligations" under such Purchaser's Notes (each under and as defined in such Notes); **provided**, that this provision shall not prohibit any sales made where a corresponding Notice of Conversion is tendered to the Company and the shares received upon such conversion are used to close out

such sale; **provided, further,** that this provision shall not operate to restrict any Purchaser's trading under any prior securities purchase agreement containing contractual rights that explicitly protects such trading in respect of the previously issued securities.

(b) **Acknowledgment Regarding Purchasers' Other Trading Activities**. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for this **Section 4.11**), it is understood and acknowledged by the Company that (i) no Purchaser has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling Transaction Securities of the Company or from entering into Short Sales or Derivatives based on securities issued by the Company or to hold the Transaction Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including Short Sales or Derivatives, before or after any Closing, as well as the closing of any future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) each Purchaser, and counter-parties in Derivatives to which any Purchaser is a party, directly or indirectly, may presently have a "short" position in the shares of Common Stock and (iv) no Purchaser shall be deemed to have any affiliation with or control over any arm's length counter-party in any Derivative. The Company further understands and acknowledges that (y) each Purchaser may engage in hedging activities at various times during the period that the Transaction Securities are outstanding, including, during the periods that the value of the Issuable Securities deliverable with respect to Transaction Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities and Derivatives do not constitute a breach of any of the Transaction Documents.

4.12 Material Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, each Company Party covenants and agrees that neither it, nor any of its Affiliates, nor any other Person acting on its behalf, will provide any Purchaser, any Purchaser Party or their respective agents or counsel with any information that any Company Party believes constitutes material non-public information, unless prior thereto such information is disclosed to the public, or such Purchaser shall have entered into a written agreement with the Company regarding the confidentiality and use of such information. Except for the Business Combination and the Asset Sale, there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control (as each such term is defined in the Notes) that has not been consummated. No Purchaser has been provided by any Company Party or any Related Party of any Company Party any information, that constitutes, or may constitute, material non-public information with respect to any Company Party. The Company understands and confirms that each Purchaser shall be relying on the foregoing representations, warranties and covenants in effecting transactions in securities of the Company.

4.13 Credit Reports and Inquiries.

(a) **Credit Reports.** Each Company Party authorizes the Purchaser Parties, their agents and representatives and any credit reporting agency engaged by any Purchaser Party, to (i) investigate any references given or any other statements or data obtained from or about the Company Parties for the purpose of the Transaction Documents, (ii) obtain consumer business credit reports on the Company Parties, (iii) contact personal and business references provided by any Company Parties, at any time now or for so long as any amounts remains unpaid under the Transaction Documents, and (iv) share information regarding the Company Parties' performance under this Agreement with affiliates and unaffiliated third parties.

(b) **Credit Inquiries.** Each Company Party hereby authorizes the Purchasers (but they shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Company Party.

4.14 Indemnification of Each Purchaser Party. Each Company Party shall, jointly and severally, indemnify against, and hold harmless from, each Purchaser, the Collateral Agent, their Related Parties, each Person who controls any of them (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and their agents, contractors, trustees, representatives and advisors (each, a "**Purchaser Party**") any and all Losses that any Purchaser Party may suffer or incur as a result of or relating to (a) the administration, performance or enforcement by the Purchasers of any of the Transaction Documents or consummation of any transaction described therein, (b) the existence of, perfection of, a Lien upon or the sale or collection of, or any other damage, Loss, failure to return or other realization upon any collateral, (c) the failure of any Company Party or any of their Related Parties (whether directly or through their agents, contractors, trustees, representatives and advisors) to observe, perform or discharge

any of the covenants or duties under any of the Transaction Documents, (d) any Proceeding, whether or not any Purchaser Party is a party thereto (including Proceedings instituted by any Governmental Authority or any holder of any equity interest in, or other direct or indirect investor in, the Company who is not an Affiliate of such Purchaser Party) with respect to any of the Transaction Documents or the transactions contemplated therein. Additionally, if any Taxes (excluding Taxes imposed upon or measured solely by the net income of the recipient of any payment made under any Transaction Document, but including any intangibles tax, stamp tax, recording tax or franchise tax) shall be imposed on any Company Party or Purchaser Party, whether or not lawfully payable, on account of the execution or delivery of this Agreement, or the execution, delivery, issuance or recording of any of the other Transaction Documents, or the creation or repayment of any of obligations hereunder, by reason of any applicable Regulations now or hereafter in effect, each Company Party shall, jointly and severally, pay (or shall promptly reimburse such Purchaser Party for the payment of) all such Taxes, including any interest, penalties, expenses and other Losses with respect thereto), and will indemnify and hold the Purchaser Parties harmless from and against all Losses arising therefrom or in connection therewith. **The foregoing indemnities shall not apply to Losses incurred by any Purchaser Party as a result of its own gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction.** Notwithstanding anything to the contrary in any Transaction Document, the obligations of the Company Parties with respect to each indemnity given by them in this Agreement or any of the other Transaction Documents in favor of the Purchaser Parties shall survive the payment in full of the Notes and the termination of this Agreement. The indemnification required by this **Section 4.14** shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnification contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against any Company Party or others and any liabilities any Company Party may be subject to pursuant to any Regulation.

ARTICLE V COLLATERAL AGENT

5.1 Appointment. Each Purchaser hereby irrevocably appoints _____, to act on its behalf as the Collateral Agent hereunder and under the other Transaction Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this ARTICLE V are solely for the benefit of the Collateral Agent and the Purchasers, and no Company Party will have any rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Transaction Documents (or any other similar term) with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Regulation. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

5.2 Rights as a Purchaser. The Person serving as the Collateral Agent hereunder has the same rights and powers in its capacity as an Initial Purchaser, Additional Purchaser and Purchaser as any other Initial Purchaser, Additional Purchaser and Purchaser and may exercise the same as though it were not the Collateral Agent, and the terms "Initial Purchaser", "Initial Purchasers," "Purchaser" or "Purchasers" will, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Collateral Agent hereunder in its individual capacity to the extent such Person is an Initial Purchaser or, as the case may be, Purchaser. Such Person and its Affiliates may accept payments from, lend money to, own securities of, and generally engage in any kind of business with, the Company, any Company Party or any other Subsidiaries or Affiliates of the Company as if such Person were not the Collateral Agent hereunder and without any duty to account therefor to the Purchasers.

5.3 Exculpatory Provisions.

(a) The Collateral Agent will not have any duties or obligations except those expressly set forth herein and in the other Transaction Documents, and its duties hereunder are administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent:

(i) will not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) will not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Transaction Documents that the Collateral Agent is required to exercise as directed in writing by the Required Purchasers (or such other number or percentage of the Purchasers as will be expressly provided for herein or in the other Transaction Documents); **provided,** that the Collateral Agent will not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Transaction Document or any applicable Regulations, including any action that may be in violation of the automatic stay under any bankruptcy or insolvency Proceeding; and

(iii) will not, except as expressly set forth herein and in the other Transaction Documents, have any duty to disclose, and will not be liable for the failure to disclose, any information relating to the Company Parties or any of their Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as the Collateral Agent or any of its Affiliates in any capacity.

(b) The Collateral Agent will not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Purchasers (or such other number or percentage of the Purchasers as will be necessary, or as the Collateral Agent believes in good faith will be necessary, under the circumstances), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Collateral Agent will be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by a Company Party or a Purchaser.

(c) The Collateral Agent will not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Transaction Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Transaction Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth herein, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent.

5.4 Reliance by Collateral Agent. The Collateral Agent will be entitled to rely upon, and will not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and will not incur any liability for relying thereon. In determining compliance with any condition hereunder that by its terms must be fulfilled to its satisfaction, the Collateral Agent may make such determination in its sole discretion, and in determining compliance with any condition hereunder that by its terms must be fulfilled to the satisfaction of a Purchaser, the Collateral Agent may presume that such condition is satisfactory to such Purchaser unless the Collateral Agent has received notice to the contrary from such Purchaser prior to the issuance of the Notes. The Collateral Agent may consult with legal counsel (who may be counsel for any Company Party), independent accountants and other experts selected by it, and will not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

5.5 Delegation of Duties. The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Transaction Document by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory provisions of this Section will apply to any such sub-agent and to the Affiliates of the Collateral Agent and any such sub-agent, and will apply to their respective activities in connection with the purchase of the Securities as well as other activities as Collateral Agent. The Collateral Agent will not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

5.6 Resignation of Collateral Agent.

(a) The Collateral Agent may at any time give notice of its resignation to the Purchasers and the Company, which notice shall set forth the effective date of such resignation (the "**Resignation Effective Date**"), such date not to be earlier than the thirtieth (30th) day following the date of such notice. The Required Purchasers and the Company shall mutually agree upon a successor to the Collateral Agent. If the Required Purchasers and the Company are unable to so mutually agree and no successor shall have been appointed within twenty-five (25) days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may (but will not be obligated to), on behalf of the Purchasers, appoint a successor Collateral Agent it shall designate (in its reasonable discretion after consultation with the Company and the Required Purchasers). Whether or not a successor has been appointed, such resignation will become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (i) the retiring Collateral Agent will be discharged from its duties and obligations hereunder and under the other Transaction Purchasers under any of the Transaction Documents, the retiring Collateral Agent will continue to hold such Collateral until such time as a successor Collateral Agent is appointed), and (ii) except for any indemnity payments owed to the retiring Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Collateral Agent will instead be made by or to each Purchaser directly, until such time, if any, as the Required Purchasers appoint a successor Collateral Agent as provided for above. Upon the acceptance of a successor's appointment as Collateral Agent hereunder, such successor will succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Collateral Agent (other than any rights to indemnity payments owed to the retiring Collateral Agent), and the retiring Collateral Agent will be discharged from all of its duties and obligations hereunder or under the other Transaction Documents. The fees payable by the Company to a successor Collateral Agent will be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring Collateral Agent's resignation hereunder and under the other Transaction Documents, the provisions of this Article VI will continue in effect for the benefit of such retiring Collateral Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while the retiring Collateral Agent was acting as Collateral Agent.

5.7 Non-Reliance on Collateral Agent and Other Purchasers. Each Purchaser acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Purchaser or any of their Affiliates and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Purchaser also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Purchaser or any of their Affiliates and based on such documents and information as it will from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Transaction Document or any related agreement or any document furnished hereunder or thereunder.

5.8 Collateral Agent May File Proofs of Claim. In case of the pendency of any bankruptcy or insolvency Proceeding or any other judicial Proceeding relative to any Company Party, the Collateral Agent (irrespective of whether the principal amount of the Notes will then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Collateral Agent has made any demand on the Company) will be entitled and empowered (but not obligated), by intervention in such judicial Proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes and all other obligations that are owing and unpaid hereunder or under any other Transaction Document and to file such other documents as may be necessary or advisable in order to have the claims of the Purchasers and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Purchasers and the Collateral Agent and their respective agents and counsel and all other amounts due the Purchasers and the Collateral Agent under this Agreement or any other Transaction Document) allowed in such judicial Proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial Proceeding is hereby authorized by each Purchaser to make any payments of the type described above in this **Section 5.8** to the Collateral Agent and, in the event that the Collateral Agent consents to the making of such payments directly to the Purchasers, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses,

disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent under this Agreement or any other Transaction Document.

5.9 Indemnification. Each Purchaser agrees to indemnify the Collateral Agent and each of its Related Parties (to the extent not reimbursed by the Company), from and against such Purchaser's aggregate ratable share (based on the principal amount of the Notes held by the Purchasers) of any and all Losses that may be imposed on, incurred by, or asserted against, the Collateral Agent or any of its Related Parties in any way relating to or arising out of this Agreement or the other Transaction Documents or any action taken or omitted by the Collateral Agent under this Agreement or the other Transaction Documents; **provided**, that no Purchaser shall be liable for any portion of such Losses resulting from the Collateral Agent's or such Related Party's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Without limiting the foregoing, each Purchaser agrees to reimburse the Collateral Agent and its Related Parties promptly upon demand for its ratable share of any out-of-pocket expenses (including fees, expenses and disbursements of financial and legal advisors) incurred by the Collateral Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, Proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement or the other Transaction Documents, to the extent that the Collateral Agent is not reimbursed for such expenses by the Company or another Company Party.

5.10 Collateral Matters; Appointment of Collateral Agent under other Transaction Documents.

(a) Without limiting the provisions of **Section 5.8**, the Purchasers irrevocably agree as follows:

(i) the Collateral Agent is authorized, at its option and in its discretion, to release any Lien on any property granted to or held by the Collateral Agent under any Transaction Document (A) on the date when all obligations have been satisfied in full in cash (other than contingent obligations as to which no claims have been asserted), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Transaction Documents, and

(ii) upon request by the Collateral Agent at any time, each Purchaser will confirm in writing the Collateral Agent's authority to release or subordinate its interest in particular types or items of Collateral.

(b) The Collateral Agent will not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's lien thereon, or any certificate prepared by any Company Party in connection therewith, nor will the Collateral Agent be responsible or liable to the Purchasers for any failure to monitor or maintain any portion of the Collateral.

(c) Each Purchaser hereby appoints the Collateral Agent as its collateral agent under each of the Transaction Documents and agrees that, in so acting, the Collateral Agent will have all of the rights, protections, exculpations, indemnities and other benefits provided to the Collateral Agent under this Agreement, and hereby authorizes and directs the Collateral Agent, on behalf of such Purchaser and all Purchasers, without the necessity of any notice to or further consent from any of the Purchaser, from time to time to (i) take any action with respect to any Collateral or any Transaction Document which may be necessary to perfect and maintain perfected the Liens on the Collateral granted pursuant to any such Transaction Document or protect and preserve the Collateral Agent's ability to enforce the liens or realize upon the Collateral, (ii) act as collateral agent for such Purchaser for purposes of acquiring, holding, enforcing and perfecting all Liens created by the Transaction Documents and all other purposes stated therein, (iii) enter into non-disturbance or similar agreements in connection with licensing agreements and arrangements permitted by this Agreement and the other Transaction Documents and (iv) otherwise to take or refrain from taking any and all action that the Collateral Agent shall deem necessary or advisable in fulfilling its role as Collateral Agent under any of the Transaction Documents.

ARTICLE VI MISCELLANEOUS

6.1 Termination and Survival. This Agreement may be terminated by each Purchaser, as to the Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other

Purchasers, by written notice to the Company and the other Purchasers, if the Initial Closing has not occurred on or before the tenth (10^{th}) Business Day following the date hereof. Termination of this Agreement will not affect the right of any party to sue for any breach by any other party (or parties) prior to such termination. The representations and warranties, covenants and other provisions hereof shall survive each Closing and the delivery of Purchased Securities. Notwithstanding any termination of any Transaction Document, the reimbursement and indemnities to which the Purchaser Parties are entitled under the provisions of any Transaction Document shall continue in full force and effect and shall protect the Purchaser Parties against events arising after such termination as well as before.

6.2 Fees and Expenses. Whether or not the transactions contemplated hereby shall be consummated or any Purchased Securities shall be purchased, the Company agrees to pay promptly to each Purchaser Party, or reimburse each Purchaser Party for, the following:

(a) all the actual and reasonable costs, fees and expenses of negotiation, preparation, execution and closing of the Transaction Documents and the purchase and sale of the Purchased Securities on the Initial Closing Date and the consummation of the other transactions contemplated hereby to be consummated on or about the Initial Closing Date, including the reasonable fees, expenses and disbursements of counsel to such Purchaser Party in connection therewith;

(b) all the actual and reasonable costs, fees and expenses of negotiation, preparation, execution and closing of the Transaction Documents and the purchase and sale of the Purchased Securities on the Additional Closing Date and the consummation of the other transactions contemplated hereby to be consummated on or about the Additional Closing Date, including the reasonable fees, expenses and disbursements of counsel to such Purchaser Party in connection therewith;

(c) all the costs, fees and expenses of preparation, printing and distribution of any registration statement for any Transaction Securities or of the Transfer Agent (including any fees required for same-day processing of any instruction letter delivered by the Company and any Notice of Conversion or exercise notice delivered by any Purchaser Party) and all other costs and expenses (including stamp taxes and other taxes and duties levied) incurred in connection with the delivery to, or exercise or conversion by, any Purchaser of any Transaction Securities;

(d) all the actual and reasonable costs, fees and expenses of creating and perfecting Liens in favor of such Purchaser Party, pursuant to any Transaction Document, including costs associated with any Intellectual Property Security Agreement or Control Agreement, UCC fees, other filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to such Purchaser Party;

(e) all the actual and reasonable costs, fees and expenses of administration of the Transaction Documents, including the transfer of the Transaction Securities to the Purchasers and the removal of any legend thereon, and preparation, execution and closing of any consents, amendments, waivers or other modifications thereto, including the reasonable fees, expenses and disbursements of counsel to such Purchaser Party in connection therewith and in connection with any other documents or matters requested by such Company Party (including through agents, contractors, trustees, representatives and advisors) or otherwise prepared or delivered in connection with any Transaction Document;

(f) all the actual and reasonable costs, fees, expenses and disbursements of any auditors, accountants, consultants or appraisers used in connection with the Transaction Documents;

(g) all the actual and reasonable costs, fees and expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by such Purchaser Party and its counsel) in connection with the inspection, verification, custody or preservation of any collateral, to the extent required or permitted under any Transaction Document; and

(h) all costs, fees and expenses (including the fees, expenses and disbursements of any appraisers, consultants, legal counsel, including allocated costs of internal counsel, advisors and agents employed or retained by such Purchaser Party) and costs of settlement, incurred by any Purchaser in enforcing any obligation owed hereunder

or under the other Transaction Documents. or in collecting any payments due from any Company Party hereunder or under the other Transaction Documents (including in connection with the sale of, collection from, or other realization upon any collateral or the enforcement of any guaranty) or in any other Proceeding hereunder or under any Transaction Document (including the costs, fees and expenses of any investment bank hired pursuant to any dispute resolution provision of any Note) or in connection with any negotiations, reviews, refinancing or restructuring of the credit arrangements provided hereunder, including in the nature of a "work out" or pursuant to any insolvency or bankruptcy Proceedings.

The foregoing shall be in addition to, and shall not be construed to limit, any other provisions of the Transaction Documents regarding indemnification and costs and expenses to be paid by the Company Parties.

6.3 Modifications and Signatures.

(a) **Entire Agreement.** This Agreement and the other Transaction Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior negotiations, agreements, and understandings, whether written or oral, of the parties hereto, which the parties acknowledge have been merged into such documents.

(b) **Amendments**. No amendment, modification or termination of any provision of this Agreement or any other Transaction Document shall be effective without the written consent of the Company and the Required Purchasers (or such other number of Purchasers as expressly stated in other provisions of the Transaction Documents); **provided**, that (i) if any such amendment, modification or termination disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of holders of a majority of the principal amount of the Notes held by such disproportionately impacted Purchaser (or group of Purchasers) shall also be required and (ii) this clause (b) may only be modified with the consent of all Purchasers. No waiver or consent shall be effective against any party unless given in writing by such party and then any such waiver shall then be effective only in the specific instance and for the specific purpose for which it was given. Where the consent or waiver of the Purchasers generally (and not each Purchaser) is required, it may be given by the Required Purchasers. Any modification effected in accordance with accordance with this **Section 6.3(b)** shall be binding upon each Purchaser and holder of Purchased Securities and the Company Parties.

(c) **Beneficiaries; Successors and Assigns.** Except as otherwise expressly provided in any other Transaction Document with respect to such Transaction Document, this Agreement and the other Transaction Documents shall bind and inure solely to the benefit of the Company Parties, the Collateral Agent, the other Purchaser Parties, and their respective successors and, if permitted, assigns; **provided**, that no Company Party may assign any part of this Agreement or any other Transaction Document, or any right, obligation, benefit, title or interest hereunder or thereunder, without the Collateral Agent and the Required Purchasers' prior written consents and any assignment done without such consents shall be void *ab initio*. Unless otherwise expressly provided in any Transaction Document, each Purchaser may sell, assign or transfer, or sell, issue, negotiate or grant participations in, all or any part of any right, obligation, benefit, title or interest under, including any remedy under, any Transaction Security or Transaction Document with the consent of the Collateral Agent and without the consent of any Company Party; **provided**, that any transferee of the Purchased Securities shall agree in a writing for the benefit of the Collateral Agent and the Company Parties to be bound, with respect to such transferred Purchased Securities, by the provisions of the Transaction Documents that apply to "Purchasers" (and any attempt to effect such transfer without securing such agreement shall be null and void but any such agreement shall be effective to make such transferee a party to this Agreement as a Purchaser and to be bound by, and benefit from, the provisions of this Agreement applying to a Purchaser).

(d) **No Implied Waivers or Notice Rights**. No notice to or demand on any Company Party, whether or not in any Proceeding, pursuant to any Transaction Document shall entitle any Company Party to any other or further notice (except as specifically required hereunder or under any other Transaction Document) or demand in similar or other circumstances. The failure by any Purchaser Party at any time or times to require strict performance by any Company Party of any provision of this Agreement or any of the other Transaction Documents or the granting of any waiver or indulgence shall not waive, affect or otherwise diminish any right of any Purchaser Party thereafter to demand strict compliance and performance with such provision, shall not affect, or operate a waiver under, any other provision of any Transaction Document (except as specifically mentioned) and shall not constitute a course of

dealing by such Purchaser Party at variance with the terms of this Agreement or any other Transaction Document (and therefore, among other things, shall not be construed to require any notice by such Purchaser Party of its intent to require strict adherence to the terms of such Transaction Document in the future). No waiver of any Default or Event of Default or any default under or breach of any provision, condition or requirement of this Agreement or any other Transaction Document shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. None of the foregoing actions shall in any way affect the ability of each Purchaser Party, in its discretion, to exercise any rights available to it under this Agreement, the other Transaction Documents or under applicable Regulations, except as specifically agreed in any written waiver or other modification made in accordance with accordance with this **Section 6.3**.

(e) **Counterparts**. This Agreement and each Transaction Document may be executed in counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and both of which, when taken together, shall constitute but one and the same Agreement. In proving this Agreement in any Proceedings, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom such enforcement is sought. Delivery of an executed signature page of this Agreement and each other Transaction Document by e-mail or other electronic transmission shall be as effective as delivery of a manually executed counterpart by hand.

(f) **Electronic Signatures**. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement or in any other Transaction Document are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures. The Company expressly agrees that this Agreement and all other Transaction Documents are "transferable records" as defined in applicable Regulations relating to electronic transaction and that it may be created, authenticated, stored, transmitted and transferred in a manner consistent with and permitted by such applicable Regulations.

6.4 Notices.

(a) All notices, requests, demands, and other communications to either party hereto given under this Agreement or any other Transaction Document shall be in writing (including electronic mail transmission or similar writing) and shall be given to such party at the physical address or send to the electronic mailing address set forth in the signature pages hereof or at such other physical address or electronic mailing address as such party may hereafter specify for the purpose of notice to the Purchasers and the Company in accordance with the provisions of this **Section 6.4**.

(b) Each such notice, request or other communication shall be effective (i) if given by mail, three (3) Business Days after such communication is deposited in the U.S. Mail with first class postage pre-paid, addressed to the noticed party at the address specified herein, (ii) if by nationally recognized overnight courier, when delivered with receipt acknowledged in writing by the noticed party, (iii) if given by personal delivery, when duly delivered with receipt acknowledged in writing by the noticed party or (iv) if given by electronic mail, when delivered (receipt by the sender of a receipt using the "return receipt" function or receipt of a reply email being presumptive evidence of receipt thereof); **provided**, that if such electronic mail is not sent prior to the last trading hour of the Principal Trading Market of the Transaction Securities on a Trading Day, such electronic mail shall be deemed to have been sent at the opening of trading on the next Trading Day for such Principal Trading Market. Any written notice, request or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice, request or demand is actually received by the individual to whose attention at the noticed party such notice, request or demand is required to be sent.

6.5 Set-Off. In addition to any rights now or hereafter granted under applicable Regulations and not by way of limitation of any such rights, each Purchaser Party is hereby authorized by the Company Parties at any time or from time to time, without notice or demand to any Company Party or to any other Person, any such notice or demand being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, including indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other indebtedness or other amounts at any time held or owing

by such Company Party to or for the credit or the account of any Company Party or any of their Related Parties against and on account of any amounts due by any Company Party or any of their Related Parties to any Purchaser Party under any Transaction Documents (including from the purchase price to be disbursed hereunder for the purchase of the Purchased Securities), irrespective of whether or not (a) such Purchaser Party shall have made any demand hereunder or (b) the principal of or the interest on the Notes or any other "Obligation" (as defined thereunder) shall have become due and payable and although such obligations and liabilities, or any of them, may be contingent or unmatured. If, as a result of such set off, appropriate or application, such Purchaser Party receives more than it is owed under any Transaction Document, it shall hold such amounts in trust for the other Purchaser Parties and transfer such amounts to the other Purchaser Parties ratably according to the amounts they are owed on the date of receipt.

6.6 Governing Law; Courts.

(a) **Except as otherwise expressly provided in any other Transaction Document, this Agreement, the other Transaction Documents and all claims, disputes, Proceedings, and matters related hereto or thereto or arising hereunder or thereunder or arising from or relating to the relationship among any of the parties hereto or thereto, are governed by, and shall be construed, interpreted and enforced exclusively in accordance with, the laws of the State of Delaware (without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware).**

(b) **Any such Proceeding shall be brought exclusively in the Delaware state courts sitting in Wilmington, DE or the federal courts of the United States of America for the District of Delaware sitting in Wilmington, DE; provided, that the Collateral Agent and any Purchaser may bring Proceedings in other jurisdictions to enforce any Transaction Document.** Each Company Party (i) accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such courts, (ii) irrevocably and unconditionally waives any objection, including any objection to the laying of venue, whether based on the grounds of *forum non conveniens* or on the fact that such jurisdiction is improper or otherwise, or any other objection that such party is not subject to the jurisdiction of such courts, that it may now or hereafter have to the bringing of any Proceeding in that jurisdiction, (iii) irrevocably and unconditionally consents to the service of process of any court referred to above in any Proceeding by the mailing of copies of the process to the parties hereto as provided in **Section 6.4** and (iv) irrevocably and unconditionally agrees that a final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service effected as provided in this manner will become effective ten (10) calendar days after the mailing of the process. Notwithstanding the foregoing, nothing contained in any Transaction Document shall affect the right of any Purchaser Party to serve process in any other manner permitted by applicable Regulations or commence Proceedings or otherwise proceed against any Company Party in any other jurisdiction.

6.7 Severability. Any provision of any Transaction Document being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of any Transaction Document or any part of such provision in any other jurisdiction, so long as the economic or legal substance of the transactions contemplated hereby or thereby is not affected in any manner adverse to any party. In addition, upon any determination that any such term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify the relevant Transaction Document so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

6.8 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; **provided**, that, in the case of a rescission by such Purchaser of a conversion or exercise of any Purchased Security, such Purchaser shall be required to return any shares of Common Stock subject to such rescinded conversion or exercise.

6.9 Replacement of Certificates. If any certificate or instrument evidencing any Transaction Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Transaction Securities.

6.10 Remedies.

(a) In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each Purchaser (severally and not jointly) and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

(b) If any Company Party shall fail to discharge any covenant, duty or obligation hereunder or under any of the other Transaction Documents, each Purchaser may, in its discretion at any time, for the account and at the expense of the Company Parties jointly and severally, pay any amount or do any act required of such Company Party hereunder or under any of the other Transaction Documents or otherwise lawfully requested by any Purchaser (including buying-in Transaction Securities in the Principal Trading Market of such Transaction Securities in case of failure by the Company to deliver Transaction Securities). All fees, costs and expenses incurred by any Purchaser in connection with the taking of any such action shall be reimbursed to such Purchaser by the Company Parties, jointly and severally, on demand, with interest at the highest interest rate that may be applicable, whether in the absence or during an Event of Default, to amounts due under the Notes of such Purchaser from the date such payment is made or such costs or expenses are incurred to the date of payment thereof. Any payment made or other action taken by any Purchaser under this **clause (b)** shall be without prejudice to any right to assert, and without waiver of, any breach of any Transaction Document and without prejudice to any Purchaser Party's right to proceed thereafter as provided herein or in any of the other Transaction Documents.

(c) The remedies provided in this Agreement and all other Transaction Documents shall be cumulative and in addition to all other remedies available under any Transaction Document, whether at law or in equity (including a decree of specific performance and/or other injunctive relief).

(d) Nothing in any Transaction Document shall limit the Purchaser Party's rights to pursue actual and consequential damages for any failure by any Company Party to comply with the terms of this Agreement or any other Transaction Document.

(e) Each Company Party acknowledges and agrees that any Event of Default will cause irreparable harm to the Purchasers and the remedy at law for any such breach may be inadequate. Therefore, in the event of any such Event of Default, the Purchasers shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required.

6.11 Marshaling; Payment Set Aside. No Purchaser Party shall be under any obligation to marshal any property in favor of any Company Party or any other party or against or in payment of any amount due under any Transaction Document. To the extent that any Company Party makes a payment or payments to any Purchaser pursuant to any Transaction Document or any Purchaser Party enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to any Company Party, a trustee, receiver or any other Person under any Regulation (including any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied, the Obligations repaid, the Transaction Documents and all Liens, rights and remedies thereunder, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

6.12 Usury. To the extent it may lawfully do so, each Company Party hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of each Company Party under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable Regulations (the "**Maximum Rate**") and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that any Company Party may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable Regulations. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by any Company Party to any Purchaser Party with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser Party to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

6.13 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

6.14 Further Assurances. The Company Parties agree to take such further actions as each Purchaser shall reasonably request from time to time in connection herewith to evidence, give effect to or carry out this Agreement and the other Transaction Documents and any of the transactions contemplated hereby or thereby.

6.15 Interpretation. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of any Transaction Document. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement. Except as otherwise expressly provided in any Transaction Document, if the last or appointed day for a payment, the taking of any action or the expiration of any right required or granted under any Transaction Document shall not be a Business Day, then such payment may be made, such action may be taken or such right may be exercised on the next succeeding Business Day. As used in any Transaction Document, references to the singular will include the plural and vice versa and references to the masculine gender will include the feminine and neuter genders and vice versa, as appropriate. When used in any Transaction Document, unless otherwise expressly provided in such Transaction Document, (a) the words "**hereof**," "**herein**" and "**hereunder**" and words of similar import refer to such Transaction Document as a whole and not to any particular provision of such Transaction Document, (b) recital, article, section, subsection, schedule and exhibit references are references with respect to such Transaction Document unless otherwise specified, (c) any reference to any agreement shall include a reference to all recitals, appendices, exhibits and schedules to such agreement and, unless the prior written consent of any party is required hereunder and is not obtained, shall be a reference to such agreement as waived, amended, restated, supplemented or otherwise modified and (d) any reference to a specific Regulation shall be to such Regulation, as modified from time to time, together with any successor or replacement Regulation, in each case as in effect at the time of determination. Unless the context otherwise requires, when used in any Transaction Document, the following terms have the following meaning: (t) "**asset**" and "**property**" have the same meaning and mean, "collectively, all rights and interests in tangible and intangible assets and properties, whether real, personal or mixed and including cash, capital stock, revenues, accounts, leasehold interests, contract rights and other rights under Permits and Contractual Obligations," (u) "**documents**" and "**documentation**" have the same meaning and mean "collectively, all documents, drafts, instruments, agreements, indentures, certificates, forms, opinions, powers of attorney, notices, summons, reports, financial statements and other writings, however evidenced, whether in physical or electronic form," (v) "**execution**," "**signed**," "**signature**" and words of like import shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the

same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Regulation, including the Federal Electronic Signatures in Global and National Commerce Act, the Delaware Uniform Electronic Transactions Act and any other similar state Regulation based on the Uniform Electronic Transactions Act, (w) "**incur**" means incur, create, make, issue, assume or otherwise become or remain directly or indirectly liable in respect of or responsible for, in each case whether directly or indirectly, as primary obligor or guarantor or endorser, and the terms "**incurrence**" and "**incurred**" and similar derivatives shall have correlative meanings, (x) "**including**" means "including, without limitation," (y) "**knowledge**" of the any Company Party means the best knowledge of any officer, director or employee of such Company Party after due inquiry and (z) "**ordinary course of business**" means in the ordinary course of business, as conducted on the date hereof, consistent with past practices reflected in written disclosures made on or prior to the date hereof in accordance with this Agreement, together with such changes thereto as may be approved by the Required Purchasers and the Collateral Agent, each in their sole discretion. The headings in this Agreement are included for convenience of reference only and will not affect in any way the meaning or interpretation of this Agreement. All references in this Agreement or any other Transaction Document to statutes and regulations shall include all amendments of same and implementing regulations and any successor statutes and regulations; to any instrument or agreement (including any of the Transaction Documents) shall include any and all modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms hereof and thereof. An Event of Default shall be deemed to exist at all times during the period commencing on the date that such Event of Default occurs to the date on which such Event of Default is waived in writing pursuant to the relevant Note. Whenever in any provision of any Transaction Document, any Purchaser is authorized to take or decline to take any action (including making any determination) in the exercise of its "**discretion**," such provision shall be understood to mean that such Purchaser may take or refrain to take such action in its sole discretion. References to times of the day in any Transaction Document shall refer to Eastern Time. In the computation of periods of time from a specified date to a later specified date, the word "**from**" means "from and including," the words "**to**" and "**until**" each mean "to but excluding" and the word "**through**" means "to and including." Time is of the essence of this Agreement and the other Transaction Documents. No provision of this Agreement or any of the other Transaction Documents shall be construed against or interpreted to the disadvantage of any party hereto by any Governmental Authority by reason of such party having or being deemed to have structured, drafted or dictated such provision. "**month**" (but not "calendar month") means each period from a date of determination to the day in the next calendar month numerically-corresponding to such date (**provided,** that, if such calendar month does not have any such numerically-corresponding day, such numerically-corresponding day shall be deemed to be the last day of such calendar month).

6.16 Waiver of Jury Trial and Certain Other Rights.

(a) **The parties hereto hereby irrevocably and unconditionally waive, to the fullest extent permitted by applicable Regulations, any right that they may have to trial by jury of any claim or cause of action or in any Proceeding, directly or indirectly based upon or arising out of, under or in connection with, this Agreement or any Transaction Document or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory). Each party hereto (a) certifies that no other party, no Purchaser Party and no Affiliate of any of them and no attorney, agent or other representative of any of the foregoing has represented, expressly or otherwise, that any Person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties have been induced to enter into this Agreement and the other Transaction Documents by, among other things, the mutual waivers and certifications in this section.**

(b) Each Company Party acknowledges and agrees that the foregoing waivers are a material inducement to the Purchasers to enter into and accept this Agreement. Each Company Party has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial rights following consultation with such legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court. This **Section 6.16** shall not restrict a party from exercising remedies under the UCC or from exercising pre-judgment remedies under applicable Regulations.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement as of the date first written above.

ReShape Lifesciences Inc.

By: _____

Name:

Title:

Address for Notices:

Fax: _____

Email: _____

[Signature Pages for Initial Purchaser and Collateral Agent Follow]

_____,
as Purchaser and Collateral Agent

By: _____

Name:
Title:

Address for Notices:

SCHEDULE I

PURCHASERS

Purchaser	Initial Notes (Principal Amount)	Initial Notes (Purchase Price)	Additional Notes (Principal Amount)	Additional Notes (Purchase Price)
	$833,333.34	$750,000.00	$555,555.56	$500,000.00

SECURITIES PURCHASE AGREEMENT

EXHIBIT A

FORM OF NOTE

SECURITIES PURCHASE AGREEMENT

EXHIBIT B

FORM OF GUARANTY

SECURITIES PURCHASE AGREEMENT

EXHIBIT C

FORM OF SECURITY AGREEMENT

SECURITIES PURCHASE AGREEMENT

EXHIBIT D

FORM OF REGISTRATION RIGHTS AGREEMENT

SECURITIES PURCHASE AGREEMENT

EXHIBIT E

FORM OF LOCK-UP AGREEMENT

SECURITIES PURCHASE AGREEMENT

EXHIBIT F

FORM OF LEAK-OUT AGREEMENT

SECURITIES PURCHASE AGREEMENT

EXHIBIT G

FORM OF TRANSFER AGENT INSTRUCTION LETTER

SECURITIES PURCHASE AGREEMENT

FORM OF JOINDER AGREEMENT

SECURITIES PURCHASE AGREEMENT

FORM OF JOINDER AGREEMENT

This **Joinder Agreement**, dated as of _____ __, 20__, is delivered pursuant to **Section 2.1(a)(ii)** of the Securities Purchase Agreement, dated as of _____ __, 20__, by and among _____ (the "**Company**"), _____, a _____, as and collateral agent for the Purchaser Parties referred to therein (as the same may be amended, restated or otherwise modified from time to time, the "**Purchase Agreement**"). Capitalized terms used but not defined herein are used as defined in the Purchase Agreement.

The undersigned wishes to purchase Additional Notes at the Additional Closing in an aggregate Initial Principal Amount not to exceed $_____ (the **"Allocated Notes**"). By executing and delivering this Joinder Agreement, the undersigned, as provided in **Section 2.1(a)(ii)** of the Purchase Agreement, hereby becomes a party to the Purchase Agreement as an Additional Purchaser thereunder with the same force and effect as if originally named as a Purchaser therein. The undersigned hereby agrees to be bound as a Purchaser and an Additional Purchaser for the purposes of the Security Agreement, subject to the terms and conditions of the Purchase Agreement, to purchase the Allocated Notes at the Additional Closing (if and when such Additional Closing shall occur).

The undersigned hereby represents and warrants that each of the representations and warranties contained in **Section 3.2** of the Purchase Agreement as it applies to the undersigned is true and correct on and as the date hereof as if made on and as of such date.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Joinder Agreement as of the date first written above.

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

SECURITIES PURCHASE AGREEMENT

ACKNOWLEDGED AND AGREED
as of the date first written above:

_____
as Company

By: _____
Name:
Title:

_____,
as Collateral Agent

By: _____
Name:
Title: Authorized Signatory

SECURITIES PURCHASE AGREEMENT

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES REGULATIONS AND, ACCORDINGLY, MAY NOT BE SOLD, OFFERED FOR SALE OR PLEDGED AS SECURITY IN THE ABSENCE OF SUCH REGISTRATION WITHOUT RELIANCE ON AN EXEMPTION UNDER THE SECURITIES ACT AND COMPLIANCE WITH APPLICABLE STATE SECURITIES REGULATIONS.

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID"). PURSUANT TO TREASURY REGULATION §1.1275-3(b)(1), PAUL F. HICKEY, A REPRESENTATIVE OF THE COMPANY WILL, BEGINNING TEN DAYS AFTER THE ISSUANCE DATE OF THIS NOTE, PROMPTLY MAKE AVAILABLE TO THE HOLDER UPON REQUEST THE INFORMATION DESCRIBED IN TREASURY REGULATION §1.1275-3(b)(1)(i). PAUL F. HICKEY MAY BE REACHED AT (949) 429-6680, phickey@reshapelifesci.com.

SENIOR SECURED CONVERTIBLE PROMISSORY NOTE

DUE JANUARY 16, 2025

Original Issue Date: October 16, 2024 **Principal Amount: $833,333.34**

Purchase Price: $750,000.00

This **Senior Secured Convertible Promissory Note** is one of a series of duly authorized and validly issued Senior Secured Convertible Promissory Notes of ReShape Lifesciences Inc., a Delaware corporation (the "**Company**"), designated as its Senior Secured Convertible Promissory Note due January 16, 2025 (this "**Note**" and, collectively with the other Notes of such series, the "**Notes**"), issued and sold by the Company pursuant to the Securities Purchase Agreement, dated as of October 16, 2024, by and among the Company, the other Company Parties and _____ (together with its successors and registered assigns, the "**Holder**"), a Delaware limited liability company (the "**Purchase Agreement**"; capitalized terms used but not otherwise defined herein are used as defined in the Purchase Agreement on the date hereof, with such amendments as may be acceptable to the Holder in its sole discretion). This Note is entered into pursuant to the Purchase Agreement and is subject to the terms and conditions thereof.

FOR VALUE RECEIVED, the Company promises to pay to the order of the Holder the principal amount of $833,333.34 on the earlier of (i) January 16, 2025 and (ii) the date of consummation or termination of the Business Combination (the "**Maturity Date**") in full in cash or on such earlier date as this Note is required or permitted to be repaid as provided hereunder, in each case together with all accrued but unpaid interest thereon and all other Obligations (as defined below), and otherwise to pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Note and such other Obligations in accordance with the provisions hereof. Amounts repaid will not be advanced again.

This Note is subject to the following additional provisions:

SECTION 1. DEFINITIONS

For the purposes hereof, in addition to terms defined elsewhere in this Note or not defined in this Note but defined in the Purchase Agreement, the following terms shall have the following meanings:

"**Alternate Consideration**" has the meaning specified in **Section 5(c)**.

"**Attribution Parties**" has the meaning specified in **Section 4(d)**.

"**Beneficial Ownership Limitation**" has the meaning specified in **Section 4(d)**.

"**Buy-In**" has the meaning specified in **Section 4(c)(viii)**.

"**Capital Lease**" means, as applied to any Person, any lease of, or other arrangement conveying the right to use, any property (whether real, personal or mixed) by that Person as lessee that, in conformity with U.S. generally accepted accounting principles (GAAP) consistently applied, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Capital Stock**" means any share, participation or other equivalent (however designated) of the capital stock of a corporation, any equivalent ownership interest in any other Person, including partnership interests and membership interests, and any warrant, right or option to purchase or other arrangement (including through a conversion or exchange of any other property) to acquire or subscribe for any item otherwise satisfying the definition of "Capital Stock," whether or not presently convertible, exchangeable or exercisable.

"Cash True-Up Amount" has the meaning specified in **Section 4(c)(i)**.

"**Change of Control**" means the occurrence of any of the following: (a) any Person or group of Persons (within the meaning of the Exchange Act) shall have acquired legal or beneficial ownership (within the meaning of Rule 13d-3 of the Commission under the Exchange Act) of 20% or more of the issued and outstanding Voting Stock of any Company Party (whether on an as converted, fully diluted basis or without taking into account any potential conversion or dilution of Stock Equivalents), other than by acquiring such Common Stock directly in an offering made to the general public, (b) during any period of twelve (12) consecutive calendar months, individuals who, at the beginning of such period, constituted the board of directors of the Company (together with any new directors whose election by the board of directors of the Company or whose nomination for election by the stockholders of the Company was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office or (c) the Company shall cease to own and control all of the economic and voting rights associated with all of the outstanding Stock of the other Company Parties.

"**Closing Bid Price**" and "**Closing Sale Price**" means, for any Security as of any date:

(i) the last closing bid price and last closing trade price, respectively, for such Security on the Principal Trading Market for such Security, as reported by Bloomberg; or

(ii) if such Principal Trading Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be), then the last bid price or last trade price, respectively, of such Security prior to 4:00:00 p.m., New York time, as reported by Bloomberg; or

(iii) if such Security no longer trades on its Principal Trading Market, then the last closing bid price or last trade price, respectively, of such Security on the principal Trading Market where such Security is listed or traded as reported by Bloomberg; or

(iv) if such Security no longer trades on a Trading Market, the last closing bid price or last trade price, respectively, of such Security in the over-the-counter market on the electronic bulletin board for such Security as reported by Bloomberg; or

(v) if no closing bid price or last trade price, respectively, is reported for such Security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such Security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC); or

(vi) if the **"Closing Bid Price"** or the **"Closing Sale Price"** cannot be calculated for a Security on a particular date based on the foregoing, the "**Closing Bid Price"** and the **"Closing Sale Price"** of such Security on such date shall be the fair market value as mutually determined by the Company and the Holder; or

(vii) if the Company and the Holder are unable to agree upon the fair market value of such Security, then such dispute shall be resolved, and such fair market value (and therefore the **"Closing Bid Price"** and **"Closing Sale Price"**) shall be determined, in accordance with the procedures set forth in **Section 8(d)**.

All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

"**Common Stock**" means the common stock of the Company, par value $0.001 per share, and any other Capital Stock into which such shares of common stock may hereafter be changed or any share capital resulting from a reclassification of such common stock.

"**Conversion**" has the meaning specified in **Section 4**.

"**Conversion Date**" has the meaning specified in **Section 4(a).**

"**Conversion Price**" has the meaning specified in **Section 4(b)**.

"**Conversion Schedule**" means the Conversion Schedule in the form of **Schedule 1**.

"**Conversion Shares**" means, collectively, the shares of Common Stock issuable upon conversion of this Note in accordance with the terms hereof, including shares of Common Stock issued upon conversion, redemption, or amortization of this Note, and shares of Common Stock issued and issuable in lieu of the cash payment of interest on this Note in accordance with the terms of this Note.

"**Customary Permitted Liens**" means all of the following, for any Person:

(i) Liens securing the payment of taxes, assessments or other charges or levies imposed by any Governmental Authority which are either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and with respect to which adequate reserves have been set aside on such Person's books;

(ii) non-consensual statutory Liens (other than Liens securing the payment of taxes) arising in the ordinary course of business to the extent (A) such Liens secure Indebtedness that is not overdue for a period of more than 30 days or (B) such Liens secure Indebtedness relating to claims or liabilities that are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on such Person's books;

(iii) zoning, building and land use restrictions, easements, servitudes, encumbrances, licenses, covenants and other restrictions affecting the use of real property or minor defects or irregularities in title thereto that do not interfere in any material respect with the use of such real property or the ordinary conduct of the business of the Company and its Subsidiaries as presently conducted thereon or materially impair the value of the real property that may be subject thereto;

(iv) pledges and deposits of cash in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits consistent with current practices as in effect on the date hereof;

(v) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with applicable Regulation or of which written notice has not been duly given in accordance with applicable Regulation or which although filed or registered, relate to obligations not due or delinquent, including without limitation statutory Liens

incurred, or pledges or deposits made, under worker's compensation, employment insurance and other social security legislation;

(vi) Liens or deposits to secure the performance of bids, tenders, expropriation proceedings, trade contracts, leases, statutory obligations, surety and performance bonds and other obligations of a like nature (other than for borrowed money), and deposits to secure equipment contracts, in each case incurred in the ordinary course of business;

(vii) appeal bonds;

(viii) landlord Liens for rent not yet due and payable;

(ix) Liens arising from operating leases and the precautionary UCC financing statement filings in respect thereof;

(x) judgments and other similar Liens arising in connection with court proceedings that do not constitute a Default or Event of Default; **provided**, that, (A) such Liens are being contested in good faith and by appropriate proceedings diligently pursued, (B) adequate reserves or other appropriate provision, if any, as are required by U.S. generally accepted accounting principles, consistently applied, have been made therefor and (C) a stay of enforcement of any such Liens is in effect; and

(xi) customary rights of set-off or combination of accounts in favor of a financial institution with respect to deposits maintained by such Person.

"Default" means any event which, with the passing of time or the giving of notice or both, would become an Event of Default.

"**Default Rate**" means twenty-four percent (24%) per annum.

"Default Stock Payment Amount" means, at any time, one hundred twenty-four percent (124%) of the aggregate principal amount of all Obligations outstanding at such time.

"**Derivative**" means (a) any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, (b) any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, (c) any futures or forward contract, spot transaction, commodity swap, purchase or option agreement, other commodity price hedging arrangement, cap, floor or collar transaction, any credit default or total return swap, and (d) any other derivative instrument, any other similar speculative transaction and any other similar agreement or arrangement designed to alter the risks of any Person arising from fluctuations in any underlying variable, including interest rates, currency values, insurance, catastrophic losses, climatic or geological conditions or the price or value of any other derivative instrument. For the purposes of this definition, "derivative instrument" means "any derivative instrument" as defined in Statement of Financial Accounting Standards No. 133 (Accounting for Derivative Instruments and Hedging Activities) of the United States Financial Accounting Standards Board, and any defined with a term similar effect in any successor statement or any supplement to, or replacement of, any such statement.

"Dispute Submission Deadline" has the meaning specified in **Section 8(d)(ii)**.

"**DTC**" means the Depository Trust Company.

"**DTC/FAST Program**" means the DTC's Fast Automated Securities Transfer Program.

"**DWAC Eligible**" means that (a) the Common Stock is eligible at DTC for full services pursuant to DTC's Operational Arrangements, including transfer through DTC's DWAC system, (b) the Company has been approved (without revocation) by the DTC's underwriting department, (c) the Transfer Agent is approved as an agent in the

DTC/FAST Program, (d) the Conversion Shares are otherwise eligible for delivery via DWAC, and (e) the Transfer Agent does not have a policy prohibiting or limiting delivery of the Conversion Shares via DWAC.

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

"**Exchange Cap**" has the meaning specified in **Section 4(e)**.

"**Exchange Cap Allocation**" has the meaning specified in **Section 4(e)**.

"**Exchange Cap Shares**" has the meaning specified in **Section 4(e)**.

"**Exempt Issuance**" means the issuance of (a) shares of Common Stock or options or other awards of Capital Stock or Stock Equivalents to employees, officers, directors, advisors or independent contractors of the Company Parties as compensation for services provided to the Company Parties; **provided**, that such issuance is approved by a majority of the board of directors of the Company; and **provided**, **further** that such issuance shall not exceed in the aggregate five percent (5%) of the outstanding shares of Common Stock without the prior approval of the Holder (excluding the issuance of shares of Common Stock to Paul F. Hickey, the Company's President and Chief Executive Officer, as contemplated by the Amendment to Employment Agreement, effective as of July 8, 2024, between the Company and Mr. Hickey), (b) shares of Common Stock, warrants or options to advisors or independent contractors of any Company Party for compensatory purposes, (c) Securities upon the exercise or exchange of or conversion of any Transaction Securities issued hereunder and/or other Securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date hereof, provided that such Securities have not been amended since the date hereof to increase the number of such Securities or to decrease the exercise price, exchange price or conversion price of such Securities, and (d) Securities issuable pursuant to any contractual anti-dilution obligations of the Company in effect as of the date hereof, provided that such obligations have not been materially amended since the date of hereof.

"**Event of Default**" has the meaning specified in **Section 7(a)**.

"Floor Price" means $1.05 (or such lower amount as permitted, from time to time, by the Principal Trading Market), subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events.

"**Fundamental Transaction**" means any of the following transactions, whether effected directly or indirectly or through on or a series of related transactions: (i) any merger or consolidation of the Company, (ii) any merger or consolidation of any other Company Party with or into another Person that is not a Company Party; (iii) any Sale, lease or license of any right, title or interest in the assets of any Company Party, other than to a Company Party and other than transactions in the ordinary course of business and transactions that, individually or in the aggregate, affect less than 10% of the market value of the consolidated assets of the Company Parties, (iv) the completion of any purchase offer, tender offer or exchange offer (whether by the Company or another Person) pursuant to which holders of Common Stock Sell, tender or exchange their shares for other Securities, cash or property (for the avoidance of doubt, this does not include direct, privately negotiated Sales among holders or sales in the market), and (v) any other corporate reorganization, Securities purchase or other business combination involving the Company or, if all surviving entities are not a Company Party, any other Company Party, including any spin-off or scheme of arrangement of any Company Party. any reorganization, recapitalization or reclassification of the Common Stock, any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other Securities, cash or other assets.

"**Late Fee**" has the meaning specified in **Section 2(f)**.

"**Mandatory Prepayment Amount**" has the meaning specified in **Section 2(b)**.

"**Mandatory Prepayment Triggering Event**" has the meaning specified in **Section 2(b)**.

"Minimum Interest Amount" means 2.5% of the Initial Principal Amount of this Note, which amounts represents three (3) months of interest payments hereunder; **provided**, that such amount shall be reduced by the amount of interest accrued hereunder on the principal amount of this Note.

"**Note Register**" has the meaning specified in **Section 3(c).**

"**Notice of Conversion**" has the meaning specified in **Section 4(a)**.

"**Obligations**" means all amounts, indebtedness, obligations, liabilities, covenants and duties of every type and description owing by any Company Party from time to time to the Holder, the Collateral Agent or any of their Purchaser Parties under this Note or any other Transaction Document, whether direct or indirect, joint or several, absolute or contingent, due or to become due, liquidated or unliquidated, secured or unsecured, now existing or hereafter arising and however acquired (regardless of whether acquired by assignment), whether or not evidenced by any note or other instrument or for the payment of money, including, without duplication, (i) the principal amount of the Note owing by the Company or any other Company Party (including any Mandatory Prepayment Amount, any Default Stock Payment Amount and any Minimum Interest Amount owing hereunder), (ii) all other amounts, fees (including all Late Fees), interest (including the Minimum Interest Amount and interest accruing at the Default Rate), liquidated damages, commissions, charges, costs, expenses, attorneys' fees and disbursements, indemnities (including Losses and other amounts for which any Company Party is required to indemnify the Collateral Agent, the Holder, or any of their Purchaser Parties under the Purchase Agreement), reimbursement of amounts paid and other sums chargeable to any Company Party under any Transaction Document or otherwise arising under any Transaction Document and (iii) all interest on any item otherwise qualifying as "Obligation" hereunder, whether or not accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or similar proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding.

"**Original Issue Date**" means the date of the first issuance of this Note, regardless of any transfers of any Note and regardless of the number of instruments which may be issued to evidence such Note.

"**Permitted Debt**" means all of the following: (i) Indebtedness owing to any Secured Party under any Transaction Document; (ii) unsecured intercompany Indebtedness between the Company and its Subsidiaries in the ordinary course of business; (iii) unsecured Indebtedness of the Company or any of its Subsidiaries to trade creditors (including overdue amounts on invoices) incurred on customary terms in the ordinary course of business; (vi) Indebtedness of the Company or any Subsidiary under Capital Leases for equipment or Indebtedness of the Company or any Subsidiary secured by a Purchase Money Lien, which Indebtedness shall not at any time exceed $50,000 in the aggregate for the Company and its Subsidiaries; (vii) Indebtedness of the Company or any of its Subsidiaries under leases for facilities that are treated as Capital Leases under GAAP; and (viii) Indebtedness of the Company or any of its Subsidiaries under an agreement, in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay), to be executed by and between the Company and Curiam Investments 2 LLC ("Curiam"), pursuant to a non-binding term sheet by and between the Company and Curiam dated as of July 1, 2024.

"**Permitted Liens**" means (i) the Liens of the Secured Parties as provided for in any Transaction Document; (ii) Customary Permitted Liens of the Company Parties; (iii) Purchase Money Liens granted to or held by Purchase Money Lien lenders in connection with the purchase, leasing or acquisition of capital equipment in the ordinary course of business and without resulting in a contravention of any applicable provisions of this Note; and (iv) the Liens granted to the funder of the financing of litigation(s) described in Schedule 13 of the Disclosure Certificate.

"Purchase Agreement Notes" means all "Notes" issued under, and as defined in, the Purchase Agreement.

"**Purchase Money Lien**" means any Lien securing Indebtedness (i) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment or (ii) existing on such equipment at the time of its acquisition, in each case provided, that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment.

"Required Dispute Documentation" has the meaning specified in **Section 8(d)(ii)**.

"**Secured Parties**" means the Holder, the Collateral Agent and each other holder of Purchased Securities, each beneficiary of any indemnification or reimbursement obligation by any Company Party under the Purchase Agreement or any other Transaction Document.

"**Share Delivery Date**" has the meaning specified in **Section 4(c)(ii)**.

"**Successor Entity**" has the meaning specified in **Section 5(c)**.

"**VWAP**" means, for or as of any date for any Security, the following:

(i) the Dollar volume-weighted average price for such Security on the Principal Trading Market for such Security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "HP" function (set to weighted average); or,

(ii) if Bloomberg does not report such a price, the Dollar volume-weighted average price of such Security in the over-the-counter market on the electronic bulletin board for such Security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg; or

(iii) if no Dollar volume-weighted average price is reported for such Security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such Security on such date as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC); or

(iv) if the VWAP cannot be calculated for such Security on such date on any of the foregoing bases, the VWAP of such Security on such date shall be the fair market value as mutually determined by the Company and the Holder.

All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

SECTION 2. REPAYMENT

a) **Repayment at Maturity**. The principal amount and all accrued interest hereon outstanding as of the Maturity Date (including any Minimum Interest Amount remaining outstanding on such principal amount as of such time) and all other amounts, costs, fees (including Late Fees), expenses, indemnification and liquidated and other damages and other amounts due to the Holder shall be due and payable on the Maturity Date.

b) **Mandatory Prepayments**. On the next Business Day following (i) the Company consummating any public or private offering or any other issuance of any Capital Stock or any other issuance of any Capital Stock (including any issuance of Common Stock to the general public), Stock Equivalents or of any other Securities or Indebtedness (including entering into any Equity Line of Credit) or any other debt or equity financing or capital-raising transaction of any kind or (ii) the Company receiving proceeds net of any litigation financing of litigation(s) described in Schedule 13 of the Disclosure Certificate (each a "**Mandatory Prepayment Triggering Event**") on any date other than the Maturity Date, the Company shall, subject to the Holder's conversion rights set forth herein, pay to the Holder in cash an amount equal to (X) 66% of the net proceeds of each Mandatory Prepayment Triggering Event described in preceding clause (i) and (Y) 100% of such net proceeds, after repayment of amounts owed to the funder of the financing of litigation(s) described in Schedule 13 of the Disclosure Certificate, of the Mandatory Prepayment Triggering Event described in preceding clause (ii) to repay the Obligations (each, a "**Mandatory Prepayment Amount**"). The Company shall provide notice to the Holder of the closing or payment, as applicable, of such Mandatory Prepayment Triggering Event, including the expected net proceeds thereof, not later than the 10^{th} day preceding the date of consummation or payment, as applicable, of such Mandatory Prepayment Triggering Event, which notice shall be irrevocable and constitute an agreement to pay applicable Mandatory Prepayment Amount on

the date of consummation or payment, as applicable, of such Mandatory Prepayment Triggering Event. The Holder may continue to convert the principal amounts to be prepaid under this Note until the date of consummation of such Mandatory Prepayment Triggering Event; **provided,** that, if the Company does not provide such notice, in addition to all other remedies provided under the Transaction Documents for failure to comply with this Note, the Holder may convert the Note in the amount of such payment and, in its sole discretion, either return such payment or apply such payment to other outstanding Obligations, if any. In the event that the terms of the Mandatory Prepayment Triggering Event do not provide for the repayment in cash in full of all outstanding Obligations, the Holder may choose, in its sole discretion, to adjust the Conversion Price to match the price of the Common Stock issued or implied by such Mandatory Prepayment Triggering Event. This **Section 2(b)** is merely a requirement to redeem this Note and not an authorization to consummate any Mandatory Prepayment Triggering Event otherwise prohibited by the Transaction Documents.

c) **Voluntary Prepayments**. So long as no Default or Event of Default exists, at any time upon ten (10) Business Days' prior written notice to the Holder (which notice shall be a Transaction Document and constitute an irrevocable agreement to pay such principal amount on the date set forth on such notice) stating the proposed date and proposed principal amount of such prepayment, but subject to the Holder's conversion rights set forth herein, the Company may prepay any portion of the principal amount of this Note, any accrued and unpaid interest, and any other amounts due under this Note without any prepayment penalty.

d) **Interest**. The Company shall pay interest to the Holder on the aggregate then-outstanding principal amount of this Note (and the then-outstanding principal amount of any other Obligation owing that does not expressly provide for any other rate of interest), which shall accrue daily at the rate of ten percent (10%) per annum from the date this Note is issued (or in the case of any other Obligation, from the date such obligation becomes due and payable) through the date such principal amount or other Obligation is paid in full; **provided**, that the Minimum Interest Amount shall be fully earned and accrued on the Original Issue Date. Accrued interest shall replace and not add to the Minimum Interest Amount and all payments of such accrued interest shall cause a corresponding reduction in any remaining Minimum Interest Amount. Accrued and unpaid interest shall be due and payable on each Conversion Date and on the Maturity Date, or as otherwise set forth herein. Any interest accrued and unpaid on any principal amount, and any remaining Minimum Interest Amount on such principal amount, shall be due and payable upon any repayment of such principal amount under this Note. Upon an Event of Default, the interest rate set forth hereunder shall increase as provided in **Section 6(b)** of this Note. The Minimum Interest Amount is intended to compensate the Holder for a lesser profit in case of early repayment and for the internal and external work and expenditure of time and money involved in the evaluation and preparation of the Transaction Documents and the Closing thereunder. The Minimum Interest Amount is not to be construed to cover or be applied against any indemnity or any out-of-pocket fees, costs or expenses incurred in any action to collect any Obligation or to foreclose any Lien securing the same. This provision shall not affect or limit the Holder's rights or remedies with respect to any Event of Default.

e) **Default Rate**. Immediately on and after the occurrence of any Event of Default, without need for notice or demand all of which are waived, interest on this Note shall, in whole, automatically and without the need for any notice, demand or any other action by the Collateral Agent or the Holder all of which are hereby waived, accrue and be owed daily at an increased interest rate equal to the lower of the Default Rate or the maximum rate permitted under applicable Regulations. If an Event of Default (after giving effect to notice periods and grace periods) occurs, the Default Rate shall become effective as of the date the Default that because such Event of Default first occurred, without consideration for any notice provision or grace period.

f) **Late Fee**. The Company shall pay a late fee (each a "**Late Fee**") on any Obligation that is not paid when due, in an amount equal to ten percent (10%) of such payment, to the Person owed such Obligation. This Late Fee shall be due and payable immediately upon such failure. It is intended to cover the inconvenience and additional internal, administrative and other fees, costs and expenses involved in processing delinquent payments and is not to be construed to cover or be applied against any indemnity or any out-of-pocket fees, costs or expenses incurred in any action to collect any Obligation or to foreclose any Lien securing the same. This provision shall not affect or limit the Holder's rights or remedies with respect to any Event of Default. This obligation to pay a Late Fee is a separate obligation and, once it has arisen hereunder, a failure to pay such Late Fee will not be cured implicitly by any waiver of any Event of Default or similar event that may have caused the payment that gave rise to such Late Fee.

g) **Calculations and Payment Provisions**. All payments made to the Holder, the Collateral Agent and their Purchaser Parties under any Transaction Document, except as otherwise expressly provided in any Transaction Document, shall be made in cash, which shall mean in immediately available Dollars and without set off or counterclaim. Interest and fees owing to any of them shall be calculated on the basis of a 360-day year consisting of twelve thirty (30)-day periods, for the actual number of days occurring, in whole or in part, in the applicable period. The Holder (or, for payments owing to it, the Collateral Agent) shall have the option to refuse or accept, in their sole discretion, any payment to the Collateral Agent, the Holder or their Purchaser Parties attempted to be made without a required notice, without a required Minimum Interest Amount or a required fee. The Holder (or, for payments owing to the Collateral Agent, the Collateral Agent) may, in its sole discretion, apply or recharacterize any payment made under any Transaction Document to the payment of any outstanding Obligation, regardless of the intended characterization thereof by any Company Party, including by recharacterizing a payment of principal made to a payment of a Minimum Interest Amount or a required fee, even if this characterization results in a smaller payment of principal. The Company hereby irrevocably waives the right to direct the application of any payment (or, after any Event of Default, any proceeds of Collateral) to any Obligation. Whenever any payment under any Transaction Document shall be stated to be due on a day other than a Business Day, such payment shall be due on the next succeeding Business Day, including for purposes of the calculation of interest and fees. Any payment of any Obligation received by the Holder, the Collateral Agent or any Purchaser Party after 3 p.m. on any day shall be deemed received on the next Business Day. Each determination by the Holder (or, for payments owing to it, the Collateral Agent) of an amount of interest or fee due hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 3. REGISTRATION OF TRANSFERS AND EXCHANGES

a) **Different Denominations.** This Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) **Investment Representations.** This Note has been issued subject to certain investment representations of the original Holder and may be transferred or exchanged only in compliance with applicable federal and state securities Regulations.

c) **Reliance on Note Register.** The Company shall maintain in its records a list of the Holders and of registration and transfers of the Note (the "**Note Register**"). The initial Holder is listed herein. Any Holder may later notify in writing the Company of an assignment or transfer and the Company shall notify such transfer in the Note Register. Failure by the Company to duly notify such transfer in the Note Register shall not affect the validity of such assignment or transfer. Nevertheless, if the Company has not received notice of any transfer of this Note, the Company and any agent of the Company may treat the Person in whose name this Note is duly registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue. Upon request by the Holder, the Company shall immediately execute and deliver to such Holder replacement Note or Notes, which may involve executing multiple Notes with split amounts to reflect partial assignments. Promptly upon receipt of such replacement Note or Notes, such Holder shall deliver the original Note back to the Company or, if the original Note is lost or stolen, provide an affidavit to the Company to that effect.

SECTION 4. CONVERSION

a) **Voluntary Conversion**. At any time after the Original Issue Date until this Note is no longer outstanding, this Note shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, in its sole discretion, at any time and from time to time (subject to the conversion limitations set forth in **Section 4(d)**). The Holder shall effect conversions by delivering to the Company a Notice of Conversion, the form of which is attached hereto as **Annex A** (each, a "**Notice of Conversion**"), specifying therein the principal amount of this Note to be converted and the date on which such conversion shall be effected (such date, the "**Conversion Date**"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions hereunder, the Holder shall not be required to physically surrender this Note to the Company unless

the entire principal amount of this Note, plus all accrued and unpaid interest thereon, has been so converted. Conversions hereunder shall have the effect of lowering the outstanding principal amount of this Note in an amount equal to the applicable conversion. The Holder and the Company shall maintain a Conversion Schedule, containing at a minimum the information shown on **Schedule 1,** and showing historically, among other things, the principal amounts converted and the date of such conversions. The Company may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error.

b) **Conversion Price**. The conversion price in effect on any Conversion Date shall be equal to $5.22 (the "**Conversion Price**"). All such foregoing determinations will be proportionately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that decreases or increases the number of shares of Common Stock issued to ensure that the percentage of shares of Common Stock held by the Holder upon full conversion at the Conversion Price and the percentage of the value of the Company allocated to such Common Stock remains unchanged by any such transaction. The Conversion Price shall be rounded down to the nearest $0.01 and in no event lower than the Floor Price. Nothing herein shall limit a Purchaser's right to pursue actual damages or declare an Event of Default pursuant to **Section 7** and the Purchaser shall have the right to pursue all remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Purchaser from seeking to enforce damages pursuant to any other Section hereof or under applicable Regulation.

c) **Mechanics of Conversion**.

i. **Conversion Shares Issuable Upon Conversion of Principal Amount**. The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the outstanding principal amount and interest of this Note to be converted by (y) the Conversion Price. If the Conversion Price is less than the Floor Price, then in addition to the Conversion Shares (which issuance shall be at the Floor Price), the Company shall pay to the Holder cash as a true-up (the "**Cash True-Up Amount**"). The Cash True-Up Amount shall be determined by the product of (i) the difference between (y) the Floor Price less (z) 90% of the average of the lowest VWAPs during the five (5) consecutive Trading Days ending on the Trading Day that is immediately prior to the Conversion Date (subject to adjustment for any stock dividend, stock split, stock combination or other similar event affecting the Common Stock during such five (5) Trading Day period), multiplied by (ii) the outstanding principal amount and interest of this Note that is being paid in Conversion Shares. The Company and Holder agrees to adjust the foregoing formula, in good-faith, in the event that the formula does not represent the intent of the Cash True-Up Amount. The intent of the Cash True-Up Amount is to compensate the Holder for its loss in value due to the condition that the outstanding principal amount and interest of this Note cannot be converted into shares of Common Stock at the Conversion Price less than the Floor Price. Any such adjustment must be approved by the Holder.

ii. **Delivery of Certificate Upon Conversion**. Not later than one (1) Trading Day after each Conversion Date (the "**Share Delivery Date**"), the Company shall deliver, or cause to be delivered, to the Holder a certificate or certificates representing the Conversion Shares which, on or after the date on which such Conversion Shares are eligible to be sold under Rule 144 without the need for current public information and the Company has received an opinion of counsel to such effect, which such opinion must be acceptable to the Holder in its sole and absolute discretion (which opinion the Company shall be responsible for obtaining at its sole cost and expense) shall be free of restrictive legends and trading restrictions, representing the number of Conversion Shares being acquired upon the conversion of this Note. Each certificate required to be delivered by the Company under this **Section 4(c)** shall be delivered electronically through the Depository Trust Company or another established clearing corporation performing similar functions. If the Conversion Date is prior to the date on which such Conversion Shares are eligible to be sold under Rule 144 without the need for current public information, or there is no registration statement in effect covering the Conversion Shares, the Conversion Shares shall bear a restrictive legend in the following form, as appropriate:

"THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR

APPLICABLE STATE SECURITIES REGULATIONS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL (WHICH COUNSEL SHALL BE SELECTED BY THE HOLDER), IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES."

Notwithstanding the foregoing, commencing on such date that the Conversion Shares are eligible for sale under Rule 144 subject to current public information requirements, the Company, upon request and at the sole cost and expense of the Company, shall obtain a legal opinion that is acceptable to the Holder in its sole and absolute discretion, to allow for such sales under Rule 144.

iii. **Reservation of Conversion Shares**. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock a number of shares of Common Stock at least equal the Reserve Amount for the sole purpose of issuance upon conversion of this Note and payment of interest on this Note, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Purchase Agreement Notes). The Company covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable. The Company shall calculate and readjust the Reserve Amount on the first Business Day of each month so long as any Purchased Security remains outstanding.

iv. **Fractional Shares**. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Note. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

v. **Transfer Taxes and Expenses**. The issuance of certificates for shares of the Common Stock on conversion of this Note shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, **provided,** that, the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of this Note so converted and the Company shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion

vi. **Failure to Deliver Certificates**. If, in the case of any Notice of Conversion, such certificate or certificates are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such certificate or certificates, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Note delivered to the Company and the Holder shall promptly return to the Company the Common Stock certificates issued to the Holder pursuant to the rescinded Conversion Notice.

vii. **Obligation Absolute; Partial Liquidated Damages**. The Company's obligations to issue and deliver the Conversion Shares upon conversion of this Note in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of Regulations by the Holder or any other Person, and irrespective of any other

circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such Conversion Shares; **provided**, that such delivery shall not operate as a waiver by the Company of any such action the Company may have against the Holder. In the event the Holder of this Note shall elect to convert any or all of the outstanding principal or interest amount hereof, the Company may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of Regulation, Contractual Obligation or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Note shall have been sought. If the injunction is not granted, the Company shall promptly comply with all conversion obligations herein. If the injunction is obtained, the Company must post a surety bond for the benefit of the Holder in the amount of one hundred fifty percent (150%) of the outstanding principal amount of this Note, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Holder to the extent it obtains judgment. In the absence of seeking such injunction, the Company shall issue Conversion Shares (or, where applicable and required hereunder, cash), upon a properly noticed conversion. If the Company fails for any reason to deliver to the Holder such certificate or certificates pursuant to **Section 4(c)(ii)** by the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, $1,000 per Trading Day for each Trading Day after such Share Delivery Date until such certificates are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to **Section 7** for the Company's failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable Regulation.

viii. **Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion**. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to the Holder such certificate or certificates by the Share Delivery Date pursuant to **Section 4(c)(ii)**, and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "**Buy-In**"), then the Company shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, in its sole discretion, either reissue (if surrendered) this Note in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under **Section 4(c)(ii)**. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of this Note with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon conversion of this Note as required pursuant to the terms hereof.

ix. **No Limitation on Damages.** More generally, nothing in this **Section 4,** including the availability of the option to convert the Note, shall limit the Holder's right to pursue actual damages or declare an Event of Default pursuant to **Section 7** and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief. The

exercise of any rights under this **Section 4** shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable Regulation.

d) **Holder's Conversion Limitations**. The Company shall not effect any conversion of principal or interest of this Note, and the Holder shall not have the right to convert any principal or interest of this Note, to the extent that after giving effect to the conversion set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any Persons acting as a group together with the Holder or any of the Holder's Affiliates, the "**Attribution Parties**") would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Attribution Parties shall include the number of Conversion Shares issuable upon conversion of this Note with respect to which such determination is being made, but shall exclude the number of Conversion Shares issuable upon (i) conversion of the remaining, unconverted principal amount of this Note beneficially owned by the Holder or any of its Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other Securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including any other Notes) beneficially owned by the Holder or any of its Attribution Parties. Except as set forth in the preceding sentence, for purposes of this **Section 4(d)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this **Section 4(d)** applies, the determination of whether this Note is convertible (in relation to other Securities owned by the Holder together with any Attribution Parties) and of which principal amount of this Note is convertible shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Note may be converted (in relation to other Securities owned by the Holder together with any Attribution Parties) and which principal amount of this Note is convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, the Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this **Section 4(d)**, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company, or (iii) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of the Holder, the Company shall within two (2) Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of Securities of the Company, including this Note, by the Holder or its Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of all Conversion Shares to be held by the Holder. The Holder, upon not less than sixty-one (61) days' prior notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this **Section 4(d)**; **provided**, that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Note held by the Holder and the Beneficial Ownership Limitation provisions of this **Section 4(d)** shall continue to apply. Any such increase or decrease will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company. The Beneficial Ownership Limitation provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 4(d)** to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor Holder of this Note.

e) **Regulatory Conversion Cap.** The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of this Note or otherwise pursuant to the terms of this Note without breaching the Company's obligations under the rules or regulations of the Principal Trading Market for the Common Stock (the number of shares which may be issued without violating such rules and regulations, the "**Exchange Cap**"), except that such limitation shall not apply in the

event that the Company (i) obtains the approval of its stockholders as required by the applicable rules of such Principal Trading Market for issuances of shares of Common Stock in excess of such amount or (ii) obtains a written opinion from outside counsel to the Company that such approval is not required, which opinion shall be in form and substance reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, the Holder shall not be issued in the aggregate, upon conversion of this Note or otherwise pursuant to the terms of this Note, shares of Common Stock in an amount greater than the product of (A) the Exchange Cap as of the proposed date of issuance for such shares multiplied by (B) the quotient of (1) the aggregate original Principal Amount of this Note issued to the applicable Purchaser pursuant to the Purchase Agreement on such Closing Date divided by (2) the aggregate original Principal Amount of all Purchase Agreement Notes on such Closing Date (the "**Exchange Cap Allocation**"). In the event that the Holder Sells or otherwise transfer any portion of this Note, the transferee shall be allocated a pro rata portion of the Holder's Exchange Cap Allocation with respect to such portion of this Note so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion in full of any holder of any Purchase Agreement Note, the difference (if any) between such holder's "exchange cap allocation" (under and as defined in such Purchase Agreement Note) and the number of shares of Common Stock actually issued to such holder upon such holder's conversion in full of any Purchase Agreement Note shall be allocated to the respective Exchange Cap Allocations of the remaining holders of such Purchase Agreement Notes (including the Holder) on a pro rata basis in proportion to the shares of Common Stock underlying such Purchase Agreement Notes then held by each such holder. In the event that the Company is prohibited from issuing any shares of Common Stock pursuant to this **Section 4(e)**(the "**Exchange Cap Shares**") to the Holder, the Company shall pay cash to the Holder in exchange for the redemption of such portions of this Note that are not convertible into such Exchange Cap Shares at a price equal to the sum of (A) the product of (1) such number of Exchange Cap Shares and (2) the Closing Sale Price on the Trading Day immediately preceding the date the Holder delivers the applicable Conversion Notice with respect to such Exchange Cap Shares to the Company, and (B) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Exchange Cap Shares, brokerage commissions, if any, of the Holder incurred in connection therewith.

SECTION 5. CERTAIN ADJUSTMENTS

a) **Stock Dividends and Stock Splits**. If the Company, at any time while this Note is outstanding: (i) pays a stock dividend or otherwise makes a Restricted Payment payable in shares of Common Stock on shares of Common Stock or any Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of, or payment of interest on, this Note), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this **Section 5(a)** shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) **Pro Rata Distributions**. While this Note is outstanding, the Company shall not declare or make any Restricted Payment (or rights to receive Restricted Payments). In the event that the Note is repaid at the time of such Restricted Payment, the Holder shall not be entitled to participate in such Restricted Payment. If the Holder and the Company mutually agree, and the Note is not repaid at the time of such Restricted Payment, then the Holder shall be entitled to participate in such Restricted Payment to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Note (without regard to any limitations on exercise hereof, including the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Restricted Payment, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Restricted Payment (**provided**, that to the extent that the Holder's right to participate in any such Restricted Payment would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Restricted Payment to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such

Restricted Payment to such extent) and the portion of such Restricted Payment shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

c) **Effect of Fundamental Transactions**. Upon the occurrence of any Fundamental Transaction, the Holder, upon any subsequent conversion of this Note, shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in **Section 4(c)** on the conversion of this Note), any consideration receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Note is convertible (or holder of any equity Securities of any Company Party) immediately prior to such Fundamental Transaction (without regard to any limitation in **Section 4(c)** on the conversion of this Note) (the "**Alternate Consideration**"), including shares of Common Stock of any successor or acquiring corporation or of the Company, in the case of a merger where it is the surviving entity. To the extent such Alternate Consideration includes Securities, the Holder shall have the option to either treat the Note as converted on the date of consummation of such Fundamental Transaction and obtain such Securities outright or adjust the Conversion Shares to include such additional Securities. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company Parties shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. In a Fundamental Transaction where holders of Common Stock (or, as the case may be, Securities of any Company Party) are given any choice as to the Alternate Consideration to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Transaction. The Company shall cause any acquiring, successor, surviving or replacement entities in any Fundamental Transaction (the "**Successor Entity**") to become a Company Party effective immediately upon the consummation of such Fundamental Transaction and shall become a party to all Transaction Documents in the same capacity and to the same extent as the Company Party involved in such Fundamental Transaction and, if such Fundamental Transaction involves the Company, from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall, without any further action, refer instead to the Successor Entity or to both Companies, as appropriate. In the case of a Fundamental Transaction resulting in the Company no longer be in existence, the Successor Entity shall succeed to all obligations of the Company and may exercise every right and power of the Company and shall assume all of the Obligations of the Company with the same effect as if such Successor Entity had been named as the Company herein. The parties hereto shall amend all Transaction Documents (or execute new Transaction Documents, including replacement Notes and an assumption of the Company's Obligations) to reflect such change; **provided** that the failure to amend or execute any such Transaction Document shall not render this **clause (g)** ineffective. For the avoidance of doubt, this **clause (g)** is not intended to permit any Fundamental Transaction. The Company shall ensure that the Holder approves all drafts of such amendments and new Transaction Documents prior to the consummation of, and as a condition to the consummation of, such Fundamental Transaction. Without limitation, if the Fundamental Transaction involves the Company, the definition of Conversion Shares and Conversion Price hereunder shall be adjusted to include Securities of the Successor Entity and to ensure the new Notes of the Holder convert into Securities so as to protect the economic value of this Note, taking into account the relative values of the existing and replacement Conversion Shares, and give the Holder upon conversion of this Note the Conversion Shares equivalent to the Conversion Shares it would have received upon conversion of this Note prior to such Fundamental Transaction at an equivalent Conversion Price.

d) **Calculations**. All calculations under this **Section 5** shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this **Section 5**, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

e) **Notices to the Holder**.

i. **Adjustment to Conversion Price**. Whenever the Conversion Price is adjusted pursuant to any provision of this **Section 5**, the Company shall not later than one (1) Trading Day following such adjustment deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a statement of all of the facts requiring such adjustment and the calculation thereof. Notwithstanding

anything in this **Section 5** to the contrary, no adjustment pursuant to this **Section 5** shall increase the Conversion Price other than proportional increases upon the occurrence of a reverse stock split in accordance with **Section 5(a)**. For the avoidance of doubt, the Holder will be entitled to each such adjustment on the terms set forth in this Agreement whether or not the Company provides such notice, and the calculation set forth in such notice shall not be binding on the Holder.

ii. **Notice to Allow Conversion by Holder**. If (A) the Company shall declare a dividend (or any other distribution or other Restricted Payment in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of Capital Stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other Securities, cash or property or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Note, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Note Register, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distribution, Restricted Payment, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for Securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; **provided,** that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to convert this Note during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

SECTION 6. NEGATIVE COVENANTS

a) As long as any portion of this Note or any other Obligation is not paid in full in cash, no Company Party shall, and no Company Party shall permit any of its Subsidiaries to, directly or indirectly, do, or enter into any agreement to do, any of the following:

i. create, enter into, create, incur, assume, enter into or suffer to exist, any Indebtedness (other than Permitted Debt) or any Guaranty Obligations with respect thereto, or repay the principal amount of, redeem, purchase or otherwise acquire or offer to repay the principal amount of, redeem, repurchase or otherwise acquire, any Indebtedness (other than Permitted Debt) or any Guaranty Obligation with respect thereto, whether or not existing on the Original Issue Date (other than the Purchase Agreement Notes on a pro rata basis based on the principal amounts outstanding);

ii. create, permit, incur or suffer to exist any Lien of any kind, on or with respect to any of its assets now owned or hereafter acquired or any interest therein or any income or profits therefrom, other than the Liens securing the Obligations created pursuant to the Transactions Documents and Permitted Liens;

iii. other than the Asset Sale, Sell any of its assets other than disposition of assets in the ordinary course of business;

iv. make, approve, or offer to make any Restricted Payment with respect to any shares of Capital Stock (other than the issuance and distribution of the Transaction Securities, and then only as otherwise required under the Transaction Documents);

v. issue any Capital Stock to any Related Party that is not a Company Party or a Subsidiary of any Company Party;

vi. other than the Business Combination and the Asset Sale, consummate a Fundamental Transaction, amend its charter documents in any manner that materially and adversely affects any rights of the Holder or change the nature of its business from the business conducted by it on the date hereof (and, after the Business Combination, the business conducted by any party to the Business Combination on the date hereof);

vii. enter into any other transaction with, or make any other payment (other than payments with respect to Permitted Debt permitted pursuant to clause Section 6a)(i) above) to, any Related Party of the Company that is not a Company Party or Subsidiary of any Company Party, including (A) investments by any Company Party or any Subsidiary thereof in such other Related Party, whether in Capital Stock, Stock Equivalents, other Securities, Indebtedness owing by such Related Party or otherwise, or Indebtedness owing to any such other Related Party and (B) transfers, sales, leases, assignments or other acquisitions or dispositions of any asset), except for (x) Exempt Issuances, (y) transactions in the ordinary course of business on a basis no less favorable to the Company Parties and their Subsidiaries as would be obtained in a comparable arm's length transaction with a Person not a Related Party and that are expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval) and (z) salaries and other director or employee or other staff or agent compensation, including expense reimbursements and employee benefits, of the Company Parties and their Subsidiaries that, in the case of officers, directors and employees, staff and agents that are also Related Parties even if their employee, staff or agent relationship is not taken into account, does not include any increase from the compensation in effect on, and disclosed to the Collateral Agent and the Holder on the Closing Date;

viii. fail to use the proceeds of the Note as provided for in the Transaction Documents (including by being engaged in operations involving the financing of any investments or activities in, or any payments to, any Sanctioned Person) or conduct its business in a manner that causes it to become an "investment company" subject to registration under the Investment Company Act of 1940, as amended, or a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended) or fail to provide a certification thereof to the Holder to that effect when requested; or

ix. directly or indirectly (including through agents, contractors, trustees, representatives or advisors) (a) be in violation of any Sanctions Law or engage in, or conspire or attempt to engage in, any transaction evading or avoiding any prohibition in any Sanctions Law, (b) be a Sanctioned Person or derive revenues from investments in, or transactions with Sanctioned Persons, (c) have any assets located in Sanctioned Jurisdictions, (d) deal in, or otherwise engage in any transactions relating to, any property or interest in property blocked pursuant to any Regulation administered or enforced by OFAC or (e) fail to comply with any material Regulations or Contractual Obligations applicable to it or fail to obtain or comply with any material Permits;

provided, that the Company Parties may consummate the Business Combination to the extent, as part of such Business Combination, all outstanding Obligations are irrevocably repaid in full in cash.

SECTION 7. EVENTS OF DEFAULT

a) "**Event of Default**" means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by Regulation or pursuant to any judgment, decree or order of any court, or any order, rule or Regulation of any Governmental Authority):

i. any default in the payment of (A) the principal amount of this Note or (B) any interest, fees, liquidated damages or any other Obligation owing to the Holder, the Collateral Agent or any of their Purchaser Parties under any Transaction Document, as and when the same shall become due and payable (whether on a Conversion Date or the Maturity Date or by acceleration or otherwise);

ii. any Company Party shall fail for any reason to comply with **Section 2.3(a) (Deliveries to Initial Purchasers), Section 2.4 (Post-Closing Deliveries)** or **Section 4.8 (Trading Activities of Purchasers)** of the Purchase Agreement or **Section 2(b)**, **Section 2(e)**, **Section 4(c)** (including **Section 4(c)(iii)**), **Section 6** or **Section 8(j)** of this Note or any other Section of this Note or any Transaction Document that provides for an action after a notice period or that provides a specific period of time for the Company Parties to comply with;

iii. any representation or warranty made by any Company Party in this Note, any other Transaction Document, any other Contractual Obligation with, or any other report, financial statement, document, written statement or certificate made or delivered to, the Holder or any other Holder Party shall be untrue or incorrect in any material respect as of the date when made or deemed made;

iv. any Company Party shall provide at any time notice to the Holder, including by way of public announcement, of such Company Party's intention to not honor any provision of this Note or any other Transaction Document (including requests for conversions of this Note in accordance with the terms hereof);

v. any Company Party shall fail to observe or perform any other covenant, provision, or agreement contained in this Note or any other Transaction Document which failure is not cured, if possible to cure, within the earlier to occur of (A) five (5) Trading Days after notice of such failure sent by the Holder or by any other Holder Party to the Company and (B) ten (10) Trading Days after any Company Party has become or should have become aware of such failure;

vi. (a) a breach, default or event of default (without regard for any cure period therefor provided therein) shall have occurred under any Indebtedness of any Company Party (a) having (individually or in the aggregate for all such Indebtedness) an aggregate maximum principal amount or commitment greater than One Hundred Fifty Thousand Dollars ($150,000), or (b) any such Indebtedness shall become or be declared due and payable prior to the date on which it would otherwise become due and payable;

vii. A breach, default or event of default (without regard to any grace or cure period provided in the applicable agreement, document or instrument or any subsequent waiver or other modification thereto) shall have occurred under any other Contractual Obligation to which any Company Party is obligated;

viii. (A) any Company Party or any Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) of any Company Party shall commence a case or other Proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, winding up, reorganization, arrangement, adjustment, protection, relief or composition of debts or liquidation or similar Regulation of any jurisdiction relating to the Company or any such Subsidiary or any Proceeding seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, liquidator or other similar official for it or for any of its assets, (B) any such case or other Proceeding shall be commenced against any Company Party or any such Subsidiary by any other Person and such case or other Proceeding is not dismissed within forty-five (45) days after commencement, (C) any Company Party or any such Subsidiary shall be adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or other Proceeding is entered, (D) any Company Party or any such Subsidiary shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts as they mature or shall make a general assignment for the benefit of creditors, (E) any Company Party or any such Subsidiary thereof shall call a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts or (F) any Company Party or any such Subsidiary, by any act or failure to act, shall expressly indicate its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action (including convening a meeting of the board) to authorize or otherwise for the purpose of effecting any of the foregoing;

ix. any monetary judgment, writ or similar final process shall be entered or filed against any Company Party, any Subsidiary of any Company Party or any of their assets for more than Two Hundred Fifty Thousand Dollars ($250,000), and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of forty-five (45) calendar days;

x. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any asset of any Company Party or any Subsidiary of any Company Party having an aggregate fair value or repair cost (as the case may be) in excess of Two Hundred Fifty Thousand Dollars ($250,000) individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within thirty (30) days after the date thereof;

xi. other than the Business Combination, the occurrence of any Change of Control Transaction;

xii. the Company's failure to consummate the Business Combination by March 31, 2025;

xiii. (A) the Common Stock shall become "penny stock" as defined in Regulations for purposes of 3(a)(51) of the Exchange Act, (B) there shall be no Trading Market for the Common Stock and the Common Stock shall not be eligible for listing or quotation for trading thereon and shall not be eligible to resume listing or quotation for trading thereon within five (5) Trading Days or (C) the transfer of shares of Common Stock through the Depository Trust Company System is no longer available or "chilled";

xiv. the Company shall not meet the current public information requirements under Rule 144, and such failure is not cured, if it is possible to cure it, within two (2) Trading Days after the expiration of the applicable grace period permitted under Rule 12b-25 of the Exchange Act; **unless** the Company files a Form 12b-25 for the relevant report required to meet the current public information requirements under Rule 144; or

xv. the Company shall fail to deliver Common Stock by the Share Delivery Date upon conversion of any portion of this Note.

The clauses in the definition of **"Event of Default"** above operate independently, so that any action or event that falls within any such clause shall constitute an Event of Default regardless of, whether because of a grace period or threshold or otherwise, it falls outside the language of any other clause.

b) **Remedies Upon Event of Default**. If any Event of Default occurs, then the outstanding principal amount of this Note and all other Obligations shall become, at the Holder's election in its sole discretion, in whole or in part (or, in the case of and Event of Default described in **Section 7(a)(viii)**(A) through (C), in whole, automatically and without the need for any notice, demand or any other action by the Collateral Agent or the Holder all of which are hereby waived), immediately due and payable, in cash or (at the Holder's option in its sole discretion but subject to the Beneficial Ownership Limitation as and to the extent set forth in **Section 4(d)**) in shares of Common Stock. To the extent the Holder choose to receive Common Stock, the number of shares due shall be (x) the greater of (1) the Default Stock Payment Amount and (2) the outstanding principal amount of any Obligations, including any accrued and unpaid interest thereon and any accrued Minimum Interest Amount remaining as of such time, (y) divided by 90% of the lowest VWAPs in the five (5) consecutive Trading Days immediately prior to the date of first occurrence of the Event of Default. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind (other than the Holder's election to declare such acceleration), and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable Regulations. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Note until such time, if any, as the Holder receives full payment pursuant to this **Section 7(b)**. No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note and the other Transaction Documents and to enforce its rights hereunder and thereunder.

SECTION 8. MISCELLANEOUS

a) **Notices**. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, including any Notice of Conversion, shall be in writing and delivered as set forth in **Section 6.4 (Notices)**

of the Purchase Agreement. All notices and other communications delivered hereunder shall be effective as provided in the Purchase Agreement.

b) **Absolute Obligation**. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Note, without set off or counterclaim, at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of the Company. This Note ranks **pari passu** with all other Purchase Agreement Notes now or hereafter issued under the terms set forth in the Transaction Documents and is at least **pari passu** with all Indebtedness and other obligations of the Company, and is not subordinated to any such Indebtedness or other obligation.

c) **Lost or Mutilated Note**. If this Note shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership hereof, reasonably satisfactory to the Company.

d) **Dispute Resolution**.

i. In the case of a dispute relating to, or, when an agreement between the Company and the Holder is required hereunder, an inability to agree on, a Conversion Price, a Closing Bid Price, a Closing Sale Price, a VWAP or a fair market value (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic transmission (A) if by the Company, within two (2) Trading Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute, at any time after the second (2^{nd}) Trading Day following such initial notice, then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

ii. The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with **clause i** and (B) written documentation (together with such copy of such submission, the **"Required Dispute Documentation**") supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5^{th}) Trading Day immediately following the date on which the Holder selected such investment bank (the "**Dispute Submission Deadline**") .. If either party fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then such party shall no longer be entitled to (and hereby waives its right to) deliver or submit any document or other supporting evidence to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline. Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute other than the Required Dispute Documentation.

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

e) **Governing Law; Courts**. **As provided in Section 6.6 (Governing Law; Courts) of the Purchase Agreement, this Note, and all claims, disputes, Proceedings (other than as set forth in clause (d) above) and matters related hereto or arising hereunder or arising from or relating to the relationship among any of the parties hereto, are governed by, and shall be construed, interpreted and enforced exclusively in accordance with, the laws of the State of Delaware (without giving effect to the conflict of laws provisions thereof to the**

extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware). Any such Proceeding shall be brought exclusively in the Delaware state courts sitting in Wilmington, DE or the federal courts of the United States of America for the District of Delaware sitting in Wilmington, DE; provided, that the Collateral Agent, the Holder and the other Purchaser Parties may bring Proceedings in other jurisdictions to enforce this Note. The parties hereto have accepted such jurisdiction and waived venue and other objections and have agreed to the means for service of process in such **Section 6.6**.

f) **Characterizations.** The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof).

g) **Payments on Next Business Day**. Whenever any payment Obligation shall be due on a day other than a Business Day, such payment shall be due instead on the next succeeding Business Day.

h) **Payment of Collection, Enforcement and Other Costs**. In addition to, and not in substitution for and not to limit (but without duplication), any other right to reimbursement under this Note or any other Transaction Document, (i) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any Proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (ii) there occurs any bankruptcy, reorganization, receivership of the Company or other Proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay all out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other Proceeding, including, but not limited to, attorneys' fees and disbursements.

i) **Security Interest**. The Obligations of the Company Parties under this Note and the other Transaction Documents are secured by the Security Agreement and the Intellectual Property Security Agreement, as well as other Transaction Documents.

j) **Use of Proceeds**. All proceeds of the purchase of this Note and the other Purchased Securities shall be used as provided in the Purchase Agreement.

k) **Non-Public Information**. Except with respect to the Transaction Documents and the transactions contemplated thereunder, which shall be disclosed as provided in the Purchase Agreement**,** each Company Party covenants and agrees that neither it, nor any other Person acting on its behalf has provided nor will provide the Holder or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto the Holder shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. Any non-disclosure agreement entered into with the Holder and any Company Party are terminated as provided in **Section 4.9 (Securities Laws Disclosures)** of the Purchase Agreement. The Holder does not have any duty of confidentiality (or a duty not to trade on the basis of material non-public information) to any Company Party or any of their Affiliates, or any of their respective officers, directors, agents, members, stockholders, managers, employees and is governed only by application Regulations. Each Company Party understands and confirms that the Holder shall be relying on all of the foregoing covenants in trading Securities of the Company.

l) **Public Disclosures.** The Company Parties and the Holder shall consult with each other in issuing any other public disclosure with respect to the transactions contemplated hereby, and no Company Party or the Holder shall issue any such public disclosure nor otherwise make any such public statement without the prior consent of the Company and the Holder, each of which consent shall not unreasonably be withheld or delayed, except if such disclosure is reasonably viewed as required by any Regulation, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, no Company Party shall, and each Company Party shall ensure that their Subsidiaries do not, publicly disclose the name, trademark, service mark, symbol, logo (or any abbreviation, contraction or simulation thereof) of, or otherwise refer to, the Holder or any other Purchaser Party (including in any filing with the Commission, regulatory agency or

Trading Market for any Securities of any Company Party or their Subsidiaries, including the 8-K filing referenced above) without the prior consent of the Holder and the Collateral Agent (including in any press release, letterhead, public announcement or marketing material), except, and then only after consulting with such Holder and the Collateral Agent, to the extent required to do so under applicable Regulations (including as required in any registration statement filed with the Commission). None of the Company Parties and their Affiliates shall represent that any Company Party or any of its Affiliates, any product or service of the Company Parties or their Affiliates, or any know how or policy or practice of the Company Parties or their Affiliates has been approved or endorsed by any Purchaser Party.

m) **Interpretation.** This Note is a Transaction Document and as such is subject to various interpretative, amendment and third party beneficiary and other miscellaneous provisions set forth in the Purchase Agreement that expressly apply to Transaction Documents, located principally in **Article VI (Miscellaneous)** thereof (including **Section 6.15 (Interpretation)** that provides, among other things, that payments due on a day that is not a Business Day may be made on the next Business Day), as well as, without limitation, set off provisions in **Section 6.5 (Set Off)** thereof whereby amounts owing hereunder may be set off against amounts owed by the Holder and certain related entities, indemnification and expense reimbursement provisions in **Sections 4.14 (Indemnification of Each Purchaser Party)** and **6.2 (Fees and Expenses)** thereof that benefit the Holder, among others. In particular, without limitation, (i) none of the terms or provisions of this Note may be waived, amended, supplemented or otherwise modified except in accordance with **Section 6.3(b) (Amendments)** of the Purchase Agreement and (ii) as described in **Section 6.3(a) (Entire Agreement)** of the Purchase Agreement, this Note and the other Transaction Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof. Any Holder also benefits from various provisions of the Purchase Agreement applicable to "Purchasers" (whether by virtue of being an "Initial Purchaser" or successor in interest thereto) and agrees to be bound by the provisions of the Purchase Agreement applicable to it in such capacity, including **Article V (Collateral Agent)** thereof that describes its relationship with the Collateral Agent and contains an indemnification provision in **Section 5.9 (Indemnification)** thereof. Finally, in addition to these provisions, unless otherwise expressly provided in any Transaction Document, "**outstanding**" when referring in any Transaction Document to the principal amount owing under this Note shall mean "**outstanding and unconverted**."

n) **Beneficiaries; Successors and Assigns**. As provided in **Section 6.3(c) (Beneficiaries; Successors and Assigns)** of the Purchase Agreement, this Note shall be binding upon the successors and assigns of the Company and shall inure solely to the benefit of the Holder, each Company Party, the Collateral Agent, each of their Purchaser Parties and their respective successors and, if permitted, assigns; **provided**, that no Company Party may assign any part of this Note, or any right, obligation, benefit, title or interest hereunder except as authorized in the Purchase Agreement.

o) **Counterparts**. As provided in **clauses (e) (Counterparts)** and **(f) (Electronic Signatures) of Section 6.3** of the Purchase Agreement, this Note may be executed in any number of counterparts, which may be signed and transmitted electronically.

p) **Severability**. As provided in **Section 6.7 (Severability)** of the Purchase Agreement, any provision of this Note being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Note or any part of such provision in any other jurisdiction, so long as the economic or legal substance of the transaction contemplated hereby is not affected in any manner adverse to any party.

q) **Waiver of Jury Trial. As provided in Section 6.16 (Waiver of Jury Trial and Certain Other Rights), each party hereto has irrevocably and unconditionally waived, to the fullest extent permitted by applicable Regulations, trial by jury of any claim or cause of action or in any Proceeding, directly or indirectly with respect to, or directly or indirectly based upon or arising out of, under or in connection with this Note or any other Transaction Document or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory).** Each party hereto (A) certifies that no other party, no Purchaser Party and no Affiliate of any of them and no attorney, agent or other representative of any of the foregoing has represented, expressly or otherwise, that any Person would not, in the event of litigation, seek to enforce the foregoing waiver and (B) acknowledges that it and the other parties hereto have been induced to enter into this Note by, among other things, the mutual waivers and certifications in this **Section 8(q)**.

r) **Issuance of Conversion Shares Below Floor Price**. For the avoidance of doubt, subject to Section 4(c)(i), the Company shall not issue any shares of Common Stock to the Holder in connection with this Note if the applicable conversion price is less than the Floor Price.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Note as of the date first written above.

RESHAPE LIFESCIENCES INC.

By: _____
Name: Paul F. Hickey
Title: President and Chief Executive Officer
Address: 18 Technology Drive, Suite 110, Irvine, CA 92618

Email Address for delivery of Notices: phickey@reshapelifesci.com

Accepted and Agreed:

_____

By: _____
Name:
Title:
Address:

Email address for delivery of notices:

ANNEX A

NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the Senior Secured Convertible Promissory Note (the "**Note")**, due January 16, 2025 and issued by ReShape Lifesciences Inc., a Delaware corporation (the "**Company**"), into shares of common stock (the "**Common Stock**"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the Holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that its ownership of the Common Stock does not exceed the amounts specified under Section 4 of the Note, as determined in accordance with Section 13(d) of the Exchange Act.

The undersigned agrees to comply with the prospectus delivery requirements under the applicable securities laws in connection with any transfer of the aforesaid shares of Common Stock.

Conversion calculations:

Date to Effect Conversion:

Principal Amount of Note to be Converted:

Payment of Interest in Common Stock __ yes __ no

If yes, $_____ of Interest Accrued on Account of Conversion at Issue.

Number of shares of Common Stock to be issued:

Signature:

Name:

Delivery Instructions:

SCHEDULE 1

CONVERSION SCHEDULE

This Conversion Schedule is part of, and reflects conversions made under Section 4 of, the Senior Secured Convertible Promissory Note, due on January 16, 2025 and issued by ReShape Lifesciences Inc., a Delaware corporation, in the original principal amount of $833,333.34.

Dated:

Date of Conversion (or for first entry, Original Issue Date)	Amount of Conversion	Aggregate Principal Amount Remaining Subsequent to Conversion (or original Principal Amount)	Company Attest

Exhibit 10.3

REGISTRATION RIGHTS AGREEMENT

This **Registration Rights Agreement** (this "**Agreement**"), dated as of October 16, 2024, is entered into by and among ReShape Lifesciences Inc., a Delaware corporation (together with its successors and, if permitted, assigns, the "**Company**"), and the holders identified on the signature pages hereto (each, together with its successors and, if permitted, assigns, a "**Holder**").

WHEREAS, pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and each of the Holders (the "**Purchase Agreement**"), the Holders shall acquire certain Transaction Securities (as defined therein), which may result in the Holders holding Registrable Securities (as defined below); and

WHEREAS, the Company has agreed to register the Registrable Securities;

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

(a) Capitalized terms used but not defined herein are used as defined in the Purchase Agreement or, if not defined therein, encompass all items covered by the definition of such term in any Note.

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

"**Advice**" has the meaning specified in **Section 6(d)**.

'**Discontinuation Event"** has the meaning specified in **Section 3(c)**.

"**Effectiveness Deadline**" means, with respect to the Initial Registration Statements required to be filed hereunder, the thirtieth (30th) calendar day following the applicable Filing Date; **provided,** that, in the event the Company is notified by the Commission that the Registration Statement will not be reviewed or is no longer subject to further review and comments, the Effectiveness Deadline as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, **provided, further**, that, if such Effectiveness Deadline falls on a day that is not a Trading Day, then the Effectiveness Deadline shall be the next succeeding Trading Day.

"**Effectiveness Period**" has the meaning specified in **Section 2(c)**.

"**Event**" has the meaning specified in **Section 2(e)**.

"**Event Date**" has the meaning specified in **Section 2(e)**.

"**Filing Date**" means, (i) with respect to the First Initial Registration Statement, the thirtieth (30th) calendar day after the date hereof, (ii) with respect to the Second Initial Registration Statement, thirtieth (30th) calendar day after the Additional Closing Date, (iii) with respect to any additional Registration Statements which may be required pursuant to **Sections 2(a)(ii)(1), 2(a)(ii)(2)** or **2(a)(iii)**, the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities and (iv) with respect to any Registration Statement to be filed pursuant to **Section 2(a)(iv),** the later of (A) the **"Filing Date"** for the applicable Initial Registration Statement and (B) if applicable, the earlier of (1) thirty (30) days after the filing of a registration statement covered by **Section 2(a)(ii)** that relates to an underwritten primary offering of Securities of the Company or (2) the date such offering has been withdrawn.

"**Holder**" or "**Holders**" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" has the meaning specified in **Section 5(c)**.

"**Indemnifying Party**" has the meaning specified in **Section 5(c)**.

"**Initial Registration Statements**" has the meaning specified in **Section 2(a)(i)**.

"**Losses**" has the meaning specified in **Section 5(a)**.

"**Prospectus**" means the prospectus included in a Registration Statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Required Holders" means Holders of a majority of the Registrable Securities, assuming, for purposes of this definition, that all Stock Equivalents convertible or exchangeable into Registrable Securities shall have been so converted or exchanged.

"**Registrable Securities**" means, as of any date of determination, all Commitment Shares and Issuable Securities, including (a) all of the shares of Common Stock then issued and issuable upon conversion in full of the Notes (assuming on such date the Notes are converted in full without regard to any conversion limitations therein), (b) all shares of Common Stock issued and issuable as interest or principal on the Notes assuming all permissible interest and principal payments are made in shares of Common Stock and the Notes are held until maturity, (c) all of the shares of Common Stock then issued and issuable in connection with any anti-dilution or any remedies provisions in the Notes (without giving effect to any limitations on conversion therein), (d) any Securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing, (e) any Securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing, and (f) the Commitment Shares; **provided,** that **"Registrable Securities"** shall cease to include (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) any Securities with respect to which, and for so long as, the following is true: (x) a Registration Statement with respect to the sale of such Securities is declared effective by the Commission under the Securities Act and such Securities have been disposed of by the Holders in accordance with such effective Registration Statement, (y) such Securities have been previously sold in accordance with Rule 144, or (z) such Securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such Securities and any Securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such Securities were issued or are issuable, were at no time held by any Affiliate of the Company), as reasonably determined by the Company, upon the advice of counsel to the Company.

"**Registration Statement**" means any registration statement required to be filed hereunder pursuant to **Section 2(a)**, including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"**Rule 415**" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"**Rule 424**" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"**Selling Stockholder Questionnaire**" has the meaning specified in **Section 3(a)**.

"**SEC Guidance**" means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

2. Registration.

(a) **Registration Statements.**

(i) **Initial.**

(1) No later than the thirtieth (30th) calendar day after the date hereof, the Company shall file with the Commission an initial Registration Statement (the "**First Initial Registration Statement**") relating to the resale by the Holders of all (or such other number as the Commission will permit) of the Registrable Securities issued in connection with the First Closing, including the Commitment Shares.

(2) No later than the thirtieth (30th) calendar day after the Additional Closing Date, the Company shall file with the Commission an initial Registration Statement (the "**Second Initial Registration Statement**" and together with the First Initial Registration Statement, the "**Initial Registration Statements**") relating to the resale by the Holders of all (or such other number as the Commission will permit) of the Registrable Securities issued in connection with the Additional Closing.

(ii) **Additional.**

(1) If the Company has filed a Registration Statement and the Commission informs the Company that all of the Registrable Securities listed in such Registration Statement cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders and shall, as soon as practicable but not later than the applicable Filing Date, use its best efforts to file amendments to such Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission (on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering), (x) with respect to filing on Form S-3 or other appropriate form, subject to the provisions of **Section 2(e)** and (y) with respect to the payment of liquidated damages, subject to the provisions of **Section 2(d)**; **provided**, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including Compliance and Disclosure Interpretation 612.09.

(2) Otherwise, if, at any time during the Effectiveness Period, the number of Registrable Securities exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file, as soon as practicable but not later than the

applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(iii) **Piggy-Back Registrations**. If, at any time during the Effectiveness Period, no effective Registration Statement covers all of the applicable Registrable Securities and the Company intends to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity Securities (other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity Securities to be issued solely in connection with any acquisition of any entity or business or equity Securities issuable in connection with the Company's stock option or other employee benefit plans), then the Company shall deliver to the Holder a written notice of such determination and, if within fifteen (15) days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall, as soon as practicable but not later than the applicable Filing Date, include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered; **provided**, that the Company shall not be required to register any Registrable Securities pursuant to this **clause (iii)** that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement.

(iv) **Demand.** As soon as practicable but nevertheless on or prior to the applicable Filing Date, the Company shall, upon written demand of the Holder, register, on at most two (2) occasions, all or any portion of the Registrable Securities; **provided,** that the Company shall not be required to file such a Registration Statement with respect to Registrable Securities already covered under another previously-filed Registration Statement or that the Holder has requested to be included in another registration statement pursuant to **clause (iii)** above. Within thirty (30) days after effective delivery of such written demand by the Holder, the Company shall file a registration statement with the Commission covering the portion of the Registrable Securities identified in such Demand Notice.

(b) **Form Used.** The Company shall use its best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities. If Form S-3 is not available for the registration of the resale of Registrable Securities pursuant to **clauses (a)(i),** (**a)(ii)** or **(a)(iv)** of **Section** 2, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available; **provided,** that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(c) **Effectiveness Period.** Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including under **Section** (**a)(ii)**) to be declared effective under the Securities Act no later than the applicable Effectiveness Deadline, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until all Registrable Securities covered by such Registration Statement (x) have been sold, thereunder or pursuant to Rule 144, or (y) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holder (the period between (A) the earlier of the date the Registration Statement is effective and the Effectiveness Deadline and (B) the earlier of (x) or (y) above, being the "**Effectiveness Period**"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. Eastern Time on a Trading Day. The Company shall immediately notify the Holder via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. Eastern Time on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holders within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under **Section 2(e)**.

(d) **Reduced Coverage.** Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to **Section 2(d)** if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

(i) **first,** the Company shall reduce or eliminate any Securities to be included by any Person other than a Holder;

(ii) [reserved]; and

(iii) **second,** the Company shall reduce Registrable Securities represented by Conversion Shares (applied, in the case that some Conversion Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Conversion Shares held by such Holders)**; provided**, that each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement and shall have the option to transfer its pro rata share to another Holder.

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends an Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of Securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on such Initial Registration Statement, as amended.

(e) **Partial Liquidated Damages.** Provided that no Default or Event of Default exists, if (i) a Registration Statement required to be filed hereunder is not filed on or prior to its Filing Date or if the Company files such Registration Statement without providing the Holders the opportunity to review and comment on the same as required by **Section 3(a)** or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five (5) Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Deadline, or (v) during the Effectiveness Period of a Registration Statement, after such Registration Statement has become effective, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach, an "**Event**" and the expiration of the grace period for such Event specified above, the "**Event Date**"), then, in addition to any other rights the Holders may have hereunder or under applicable Regulation, on each such Event Date and on each monthly anniversary of each such Event Date thereafter (if the applicable Event shall not have been cured by such date) or any pro rata portion thereof, until the applicable Event is cured or sixty (60) calendar days after the applicable Event Date, whichever occurs first, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of two percent (2.0%) multiplied by the Subscription Amount paid by such Holder for the Notes pursuant to the Purchase Agreement; **provided,** that the maximum amount payable thereunder shall not exceed 4% of such Subscription Amount paid by such Holder. If the Company fails to pay any partial liquidated damages pursuant to this **Section 2(e)** in full within seven (7) days after

the date payable, the Company will pay interest thereon at a rate of eighteen percent (18%) per annum (or such lesser maximum amount that is permitted to be paid by applicable Regulation) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full.

(f) **No Holder Underwriter.** Notwithstanding anything to the contrary contained herein but subject to comments by the Commission, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as an underwriter without the prior written consent of such Holder.

3. Registration Procedures.

(a) **Review of Document.** Not less than three (3) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to the Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of the Holders, and (ii) cause its officers, directors, managers, staff, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to the Holder, to conduct a reasonable investigation within the meaning of the Securities Act. Notwithstanding the above, the Company shall not be obligated to provide the Holders advance copies of any universal registration statement registering Securities in addition to those required hereunder, or any Prospectus prepared thereto. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Required Holders shall reasonably object, **provided,** that, the Company is notified of such objection in writing no later than five (5) Trading Days after all Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after all Holders have been furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex A (a "**Selling Stockholder Questionnaire**") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4^{th}) Trading Day following the date on which such Holder receives draft materials in accordance with this **Section 3(a)**.

(b) **Compliance with Regulations and Commission Requests.** (i) The Company shall prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any Prospectus supplement, as may be required by Regulations and the Commission (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably practicable to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably practicable to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (**provided**, that the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), (iv) use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (A) any order stopping or suspending the effectiveness of a Registration Statement, or (B) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment, (v) comply with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented and (vi) comply with all applicable Regulations of the Commission and other applicable Regulations.

(c) **Notices to Holders.** The Company shall notify the Holders of Registrable Securities to be sold as promptly as possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing and, if requested by any Holder, confirm such notice in writing no later than one (1) Trading Day following the day of such

filing) of all of the following: (i)(A) any proposal to file any Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement, (B) any notice by the Commission to the Company on whether there will be a "review" of such Registration Statement and any written comment on such Registration Statement received by the Company from the Commission, and (C) the effectiveness of any Registration Statement or any post-effective amendment, (ii) any request by the Commission or any other Governmental Authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) the issuance by the Commission or any other Governmental Authority of any stop order or other Regulation suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) the occurrence of any event (including the passage of time) that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other document to ensure that such Registration Statement, Prospectus or other document will not contain any untrue statement of a material fact and will not omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus (any event described in **clauses (iii)** through **(vi)** above a "**Discontinuation Event"** and any notice given hereunder pursuant to any such clauses a **"Discontinuation Notice**"**)**, **provided,** that any Discontinuation Notice shall be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made; and, **provided, further,** that, in no event shall any notice sent pursuant to this **clause (c)** contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(d) **Amendments and Discontinuation Events.** Promptly upon the occurrence of any event contemplated pursuant to **clause (c)(ii)** above or a Discontinuation Event contemplated by **clause (c)** above, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company sends a Discontinuation Notice under **clause (c)** above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this **clause (d)** to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to **Section 2(e)**, for a period not to exceed sixty (60) calendar days (which need not be consecutive days) in any 12-month period.

(e) **Confirmed Copy.** The Company shall furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; **provided,** that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form. Subject to the terms of this Agreement, the Company hereby consents to the use of each Registration Statement, Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any Discontinuation Notice pursuant to **clause (c)** above.

(f) **Resales.** The Company shall cooperate with any broker-dealer through which a Holder proposes to resell its Registrable Securities in effecting a filing with the FINRA Corporate Financing Department pursuant to FINRA Rule 5110, as requested by any such Holder, and the Company shall pay the filing fee required by such filing within two (2) Business Days of receipt of a request therefor. Prior to any resale of Registrable Securities by a Holder, the Company shall use its best efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky Regulations of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement; **provided,** that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction. If requested by a Holder, the Company shall cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request. The Company may require from each selling Holder a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and the name(s) of the natural persons thereof that have voting and dispositive control over the Common Stock underlying the Note(s). During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three (3) Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to all Holders until such information is delivered to the Company.

4. Registration Expenses. All costs, fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement, including (i) all registration and filing fees, costs and expenses (including fees, costs and expenses of counsel to the Company and of the independent registered public accountants of the Company) with respect to this Agreement, including (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, (C) with respect to compliance with applicable state or other securities Regulations, including Blue Sky Regulations and (D) with respect to any filing that may be required to be made by any broker through which a Holder intends to make sales of Registrable Securities with FINRA pursuant to FINRA Rule 5110, so long as the broker is receiving no more than a customary brokerage commission in connection with such sale, (ii) printing expenses (including expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees, costs and expenses of counsel for the Company, including in connection with Blue Sky qualifications or exemptions of the Registrable Securities, (v) Securities Act and similar liability insurance for the Company, and (vi) fees, costs and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including all salaries and expenses of its officers, managers, directors and staff performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any Trading Market or other securities exchange. In no event shall the Company be responsible for any broker or similar commissions of any Holder, except as otherwise provided in any other Transaction Document.

5. Indemnification.

(a) **Indemnification by the Company.** The Company shall, notwithstanding any termination of this Agreement, in addition to and not in substitution or limitation for, any other indemnification provision by the Company, indemnify and hold harmless each Holder, the officers, directors, managers, managing members, members, partners, advisors, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), staff members (whether or not classified

as employees or independent contractors), investment advisors and (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, managers, managing members, members, stockholders, staff members (whether or not classified as employees or independent contractors), partners, advisors, agents (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable Regulation, from and against any and all losses, claims, damages, liabilities, costs (including attorneys' fees) and expenses (collectively, "**Losses**"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any other securities Regulation, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (x) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto or (y) in the case of an occurrence of a Discontinuation Event, the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in **Section 6(d)**, but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with **Section 6(f)**.

(b) **Indemnification by Holders.** Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, managers, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable Regulation, from and against all Losses, as incurred, to the extent arising out of or based solely upon: (x) such Holder's failure to comply with any applicable prospectus delivery requirements of the Securities Act through no fault of the Company or (y) any untrue or alleged untrue statement of a material fact with respect to such Holder contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact with respect to such Holder required to be stated therein or necessary to make statements therein with respect to such Holder (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus, (ii) to the extent, but only to the extent, that such information relates to such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of a Discontinuation Event, to the extent, but only to the extent, related to the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in **Section 6(d)**, but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. In no event shall the liability of any selling Holder under this **Section 5(b)** be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) **Conduct of Indemnification Proceedings.**

(i) If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an **"Indemnified Party"**), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "**Indemnifying Party**") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; **provided**, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

(ii) An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

(iii) Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this **Section 5(c)**) shall be paid to the Indemnified Party, as incurred, within ten (10) Trading Days of written notice thereof to the Indemnifying Party; **provided**, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) **Contribution.**

(i) If indemnification under **Section 5(a)** or **Section 5(b)** is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any attorneys' or other fees or expenses incurred by such party in

connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this **Section 5** was available to such party in accordance with its terms.

(ii) The parties hereto agree that it would not be just and equitable if contribution pursuant to this **Section 5(d)** were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this **Section 5(d)**, no Holder shall be required to contribute pursuant to this **Section 5(d)**, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

(e) The indemnity and contribution agreements contained in this **Section 5** are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) **Remedies.** In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by Regulation and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) **No Other Registration Statements.** Neither the Company nor any of its holders of its Securities (other than the Holders in such capacity pursuant hereto) may include Securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this **Section 6(b)**, (i) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement and (ii) shall not prohibit the Company from filing a registration statement on Form S-3 for a primary offering by the Company, **provided**, that the Company makes no offering of Securities pursuant to such shelf registration statement prior to the effective date of the Registration Statement required hereunder that includes all of the Registrable Securities.

(c) **Compliance.** Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Securities pursuant to a Registration Statement.

(d) **Discontinued Disposition.** By its acquisition of Registrable Securities, the Holder agrees that, upon receipt of any Discontinuation Notice, such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "**Advice**") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of **Section 2(d)**.

(e) **Notices.** All notices, requests and demands to or upon the Holder or the Company hereunder shall be effected in the manner provided for in **Section 6.4 (Notices)** of the Purchase Agreement.

(f) **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Company, the Holders and their successors and assigns; **provided**, that the Company may not assign, transfer or

delegate any of its rights or obligations under this Agreement without the prior written consent of the Required Holders (and any attempt to effect such assignment, transfer or delegation without such consent shall be null and void at the outset). Each Holder may assign this Agreement in whole or in part to the extent permitted by **Section 6.3(c) (Beneficiaries, Successors and Assigns)** of the Purchase Agreement, as well as applicable securities Regulations and in connection with the assignment of any Registrable Securities.

(g) **Amendments**. No amendment, modification or termination of any provision of this Agreement shall be effective without the written consent of the Company and the Required Holders; **provided**, that (i) if any such amendment, modification or termination disproportionately and adversely impacts a Holder (or group of Holders), the consent of holders of a majority of the Registrable Shares held by such disproportionately impacted Holder (or group of Holders) shall also be required and (ii) this sentence in this **Section 6(g)** may only be modified with the consent of all Holders. In addition, as provided by **Section 6.3(b)** of the Purchase Agreement, no waiver or consent shall be effective against any party unless given in writing by such party and then any such waiver shall then be effective only in the specific instance and for the specific purpose for which it was given. Where the consent or waiver of the Holders generally (and not each Holder) is required, it may be given by the Required Holders. Any modification effected in accordance with accordance with this **clause (g)** shall be binding upon each Holder and the Company. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(h) **Entire Agreement; Counterparts; Electronic Signatures**. As described in **Section 6.3(a) (Entire Agreement)** of the Purchase Agreement, this Agreement and the other Transaction Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof. This Agreement may be executed in counterparts as provided in **Section 6.3(e) (Counterparts)** of the Purchase Agreement and, as provided in **Section 6.3(f) (Electronic Signatures)** of the Purchase Agreement, electronic signatures have the same force and effect as manual signatures.

(i) **No Inconsistent Agreements.** Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its Securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(j) **Further Assurances.** The Company hereby agrees to take, promptly after the Holder's request, such further actions, including executing or causing to be executed and delivering to the Holder such further documents, as the Holder shall reasonably request from time to time in connection herewith to evidence, give effect to or carry out the intent of this Agreement and the transactions contemplated hereby.

(k) **Cumulative Remedies; Several Obligations of Holders.** The remedies provided herein are cumulative and not exclusive of any other remedies provided by Regulation. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other Transaction Document, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

(l) **Governing Law**. Each party hereto hereby agrees to the provisions of **Section 6.6 (Governing Law; Courts)** of the Purchase Agreement, including that (a) this Agreement and all claims, disputes, Proceedings, and matters related hereto or thereto or arising hereunder or thereunder or arising from or relating to the relationship among any of the parties hereto or thereto, are governed by, and shall be construed, interpreted and enforced exclusively in accordance with, the laws of the State of Delaware **(**without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware) and (b) any such Proceeding shall be brought exclusively in the Delaware state courts sitting in Wilmington, DE or the federal courts of the United States of America for the District of Delaware sitting in Wilmington, DE; **provided**, that the Holder may bring Proceedings in other jurisdictions to enforce any Transaction Document. **Each such party hereby accepts such jurisdiction, waives any objections to venue, and agrees that a final judgment in any such Proceeding shall be conclusive and enforceable in other jurisdictions, all as provided in the Purchase Agreement and accepts that service of process may be made in the way set forth in the Purchase Agreement.**

(m) **Waiver of Jury Trial**. **Each party hereto hereby agree to Section 6.16 (Waiver of Jury Trial and Certain Other Rights) of the Purchase Agreement whereby, among other things, it irrevocably waives trial by jury in any Proceeding with respect to, or directly or indirectly arising out of, relating to or in connection with, this Agreement or any other Transaction Document or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party or beneficiary hereof has represented, expressly or otherwise, that such other parties would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties have been induced to enter into this Agreement and the other Transaction Documents by, among other things, the mutual waivers and certifications in this section.**

(n) **Interpretation.** This Agreement is a Transaction Document and as such is subject to various interpretative, amendment and third party beneficiary and other miscellaneous provisions set forth in the Purchase Agreement that expressly apply to Transaction Documents, located principally in **Article VI** thereof, including **Sections 6.3(d) (No Implied Waivers or Notice Rights), 6.5 (Set off), 6.7 (Severability)** and **6.11 (Marshaling, Payments Set Aside)** but also **Sections 3.1 (Representations and Warranties of the Company Parties (including clause (kk) (AML/CTF Regulations) and clause (gg) (Use of Proceeds), 4.15 (Indemnification of Each Purchaser Party**) and **6.2 (Fees and Expenses)** thereof**,** which the Company, in the case of representations and warranties, expressly makes herein for the benefit of the Holder whenever those are made under the Purchase Agreement, and, for other provisions, agrees to comply therewith.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement as of the date first written above.

RESHAPE LIFESCIENCES INC.

By: _____
Name: Paul F. Hickey
Title: President and CEO
Date signed: October 16, 2024

_____,
as Holder

By: _____
Name:
Title: Authorized Signatory
Date signed: October 16, 2024

ANNEX A

RESHAPE LIFESCIENCES INC.

SELLING STOCKHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial owner of shares of Common Stock (the "**Registrable Securities**") of RESHAPE LIFESCIENCES INC. (the "**Company**") understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "**Commission**") a registration statement (the "**Registration Statement**") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "**Securities Act**"), of the Registrable Securities in accordance with the terms of the Registration Rights Agreement (the "**Registration Rights Agreement**") by and among the Company, the undersigned and the other Holders of Registrable Securities, dated as of October 16, 2024. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein has the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "**Selling Stockholder**") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

QUESTIONNAIRE

1. Name.

(a) Full Legal Name of Selling Stockholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the Securities covered by this Questionnaire):

_____

2. Address for Notices to Selling Stockholder:

_____

_____

_____

Telephone:_____

Email:__

Contact Person:__

3. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If "no" to Section 3(d), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any Securities of the Company other than the Registrable Securities and the Transaction Securities pursuant to the Purchase Agreement.

(a) Type and Amount of other Securities beneficially owned by the Selling Stockholder:

_____

_____

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity Securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

_____

_____

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; **provided,** that the undersigned shall not be required to notify the Company of any changes to the number of Securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: _____ Beneficial Owner:

_____

By: _____

Name:

Title:

PLEASE EMAIL A .PDF COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:

[_____]

Exhibit 10.4

SECURITY AGREEMENT

This **Security Agreement** (this "**Agreement**"), dated as of October 16, 2024, is entered into by and among ReShape Lifesciences Inc. (the "**Company**") and each of the other entities listed on the signature pages hereof or that becomes a party hereto pursuant to **Section 7.5** (together with the Company, the "**Grantors**") in favor of _____, a Delaware limited liability company, for itself and as collateral agent (in such capacity and together with any successor and any replacement named in accordance with the Purchase Agreement, the "**Collateral Agent**") for the Purchaser Parties, including the holders (the "**Holders**" or the "**Purchasers**") of the Notes issued and sold by the Company pursuant to the Securities Purchase Agreement, dated as of October 16, 2024, by and among the Company, the Collateral Agent and the Holders (the "**Purchase Agreement**").

RECITALS

WHEREAS, pursuant to the Purchase Agreement, the initial Purchasers are purchasing the Notes from the Company upon the terms and subject to the conditions set forth therein;

WHEREAS, each Grantor has, among other things, guaranteed the Obligations of the Company under the Notes pursuant to a Guaranty of even date herewith and will derive substantial direct and indirect benefits from the purchase of the Notes under the Purchase Agreement; and

WHEREAS, it is a condition precedent to the obligation of each Initial Holder to purchase the Notes from the Company under the Purchase Agreement and for the Collateral Agent to sign the Purchase Agreement that the Grantors shall have executed this Agreement and delivered it to the Collateral Agent and the initial Purchasers;

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions.

(a) Capitalized terms used but not defined herein are used as defined in the Purchase Agreement or, if not defined therein, encompass all items covered by the definition of such term in any Note.

(b) The following terms shall have the following meanings:

"**Applicable IP Office**" means the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency within or outside the United States.

"**Collateral**" has the meaning specified in **Section 2.1**.

"**Control Agreement**" means, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance satisfactory to the Collateral Agent, among the Collateral Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the party maintaining such account, to the extent (a) such financial institution or other Person is acceptable to the Collateral Agent in its sole discretion and (b) such agreement is effective to grant "control" (as defined under each applicable UCC) over such account, entitlement or contract to the Collateral Agent.

"**Copyrights**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Regulation in or relating to copyrights and all mask work, database and design rights, whether or not

registered or published, together with all registrations, recordations and applications relating to any of the foregoing, all rights to obtain any renewal of any of the foregoing and all rights, title and interests to any of the foregoing throughout the world.

"**Excluded Property**" means, collectively, (i) any Permit or similar Contractual Obligation listed on the Disclosure Certificate as "**Excluded Property**" and entered into by any Grantor prior to the date hereof or entered into by any Grantor with the consent of the Collateral Agent after the date hereof (A) that prohibits or requires the consent of any Person other than the Company, any other Company Party or any of their respective Affiliates as a condition to the creation by such Grantor of a Lien on any right, title or interest in such Permit or other agreement or any Capital Stock or Stock Equivalent related thereto, or (B) to the extent that any Regulation applicable thereto prohibits the creation of a Lien thereon, but only, with respect to the prohibition in (A) and (B), and for as long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Regulation, (ii) fixed or capital assets owned by any Grantor that is subject to a purchase money security interest or a Capital Lease if the documentation pursuant to which such Lien is granted (or in the documentation providing for such Capital Lease) prohibits or requires the consent of any Person (other than the Company, any other Company Party and their respective Affiliates) as a condition to the creation of any other Lien on such equipment and (iii) any "intent to use" Trademark applications for which a statement of use has not been filed (but only until such statement is filed); **provided**, that "**Excluded Property**" shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property), all of which shall therefore be included in Collateral as provided hereunder.

"**Intellectual Property**" means any "Intellectual Property Rights" as defined in the Purchase Agreement, including all applicable Copyrights, Trademarks, Patents, Internet Domain Names, Trade Secrets and IP Licenses.

"**Internet Domain Names**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Regulation in or relating to Internet domain names.

"**IP Ancillary Rights**" means, with respect to any Intellectual Property, as applicable, all rights, title and interests in foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and Losses at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights, title and interests to obtain any other IP Ancillary Right.

"**IP License**" means all rights, title and interests under any Contractual Obligation, including licenses, and other documentation (and all related IP Ancillary Rights), whether written or oral, granting or receiving any right title or interest in or relating to any Intellectual Property.

"**Patents**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Regulation in or relating to any and all patents, together with all registrations, recordations and applications relating to the foregoing, all inventions and improvements described and claimed in any of the foregoing, all rights to obtain any renewal of any of the foregoing and all rights, title and interests to any of the foregoing throughout the world.

"**Pledged Certificated Stock**" means all certificated securities and any other Capital Stock or Stock Equivalent of any Person evidenced by a certificate, instrument or other similar documentation (as defined in the UCC), in each case owned by any Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Capital Stock and Stock Equivalents set forth on the Disclosure Certificate. "**Pledged Certificated Stock**" excludes any Excluded Property.

"**Pledged Collateral**" means, collectively, the Pledged Stock and the Pledged Debt Instruments.

"**Pledged Debt Instruments**" means all right, title and interests of any Grantor in instruments evidencing any Indebtedness owed to such Grantor or other obligations, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Indebtedness set forth on the Disclosure Certificate, issued by the obligors named therein.

"**Pledged Investment Property**" means any investment property of any Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, other than any Pledged Collateral.

"**Pledged Stock**" means all Pledged Certificated Stock and all Pledged Uncertificated Stock.

"**Pledged Uncertificated Stock**" means any Capital Stock or Stock Equivalent of any Person that is not Pledged Certificated Stock, including all rights, title and interests of any Grantor as a limited or general partner in any partnership not constituting Pledged Certificated Stock or as a member of any limited liability company, all rights, title and interests of any Grantor in, to and under any constituent documentation of any partnership or limited liability company to which it is a party, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including in each case those interests set forth on the Disclosure Certificate, to the extent such interests are not certificated. "**Pledged Uncertificated Stock**" excludes any Excluded Property.

"**Software**" means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

"**Trademarks**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any Regulation in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, together with all applications, registrations and recordations relating to the foregoing, including registrations and registration applications in the Applicable IP Office, all common law trademarks and the goodwill of the business symbolized by any of the foregoing, all rights to obtain any renewal of any of the foregoing, and all rights, title and interests to any of the foregoing throughout the world.

"**Trade Secrets**" means all right, title and interests (and all related IP Ancillary Rights) arising under any Regulation in or relating to trade secrets, together with all rights, title and interests to any of the foregoing throughout the world (including, where applicable, any registrations, recordations and applications relating to any of the foregoing and all rights to obtain any renewal of any of the foregoing).

"**UCC**" means the Uniform Commercial Code as from time to time in effect in the State of Delaware; **provided**, **however**, that, in the event that, by reason of mandatory provisions of any applicable Regulation, any of the attachment, perfection or priority of any other Purchaser Party's security interest in any Collateral is governed by the Uniform Commercial Code or comparable Regulation of a jurisdiction other than the State of Delaware, "**UCC**" shall mean the Uniform Commercial Code or comparable Regulation as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

"**Vehicles**" means all vehicles covered by a certificate of title law of any state.

(c) The following terms have the meanings given to them in the UCC and terms used herein without definition that are defined in the UCC have the meanings given to them in the UCC (such meanings to be equally applicable to both the singular and plural forms of the terms defined), including the following: "account," "account

debtor," "as-extracted collateral," "certificated security," "chattel paper," "commercial tort claim," "commodity contract," "deposit account," "documents," "electronic chattel paper," "equipment," "farm products," "fixture," "general intangible," "goods," "health-care-insurance receivable," "instruments," "inventory," "investment property," "letter-of-credit right," "payment intangible," "proceeds," "record," "securities account," "security," "supporting obligation" and "tangible chattel paper."

1.2 Certain Other Terms.

(a) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The terms "**herein**," "**hereof**" and similar terms refer to this Agreement as a whole and not to any particular Article, Section or clause in this Agreement. References herein to an Annex, Article, Section or clause refer to the appropriate Annex to, or Article, Section or clause in this Agreement. Where the context requires, provisions relating to any Collateral when used in relation to a Grantor shall refer to such Grantor's Collateral or any relevant part thereof.

(b) **Section 6.15** (**Interpretation**) of the Purchase Agreement is applicable to this Agreement in accordance with its terms, as well as several other provisions of **Article VI (Miscellaneous)** of the Purchase Agreement. In addition, whenever used in this Agreement, "**in the ordinary course of business of a Person**" shall mean "in the ordinary course of business in all material respects consistent with past custom and practice of such Person as in effect on the date hereof with such changes as may be agreed to in writing by the Collateral Agent".

ARTICLE II GRANT OF SECURITY INTEREST

2.1 Collateral. For the purposes of this Agreement, all of the following property now owned or at any time hereafter acquired by a Grantor or in which a Grantor now has or at any time in the future may acquire any right, title or interest is collectively referred to as the "**Collateral**":

(a) all accounts, as-extracted collateral, chattel paper, deposit accounts, documents, equipment, general intangibles (including all payment intangibles, Intellectual Property, rights to tax refunds, intercompany notes, rights arising out of leases, licenses, and contracts which are not accounts, computer software, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, options, warranties, service contracts, program services, rights to refund, reimbursement, indemnification, and subrogation, goodwill, licenses, royalties, franchises, customer lists, reversions from any retirement plan or arrangement, money, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code), instruments (including dividends and rights to payment arising out of partnership agreements and management contracts), inventory, investment property (including any Pledged Collateral and Pledged Investment Property) and any supporting obligations related thereto;

(b) any commercial tort claims set forth on the Disclosure Certificate;

(c) all books, records, ledgers, files, writings, data bases, plans, drawings, and information relating to any of the foregoing, pertaining to the other property described in this **Section 2.1**;

(d) all property of such Grantor held by any Purchaser Party, including all property of every description, in the custody of or in transit to such Purchaser Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power, including cash;

(e) all other goods, fixtures, improvements (not constituting real property), and other personal property of such Grantor, whether tangible or intangible and wherever located; and

(f) to the extent not otherwise included, all cryptocurrency and other blockchain assets; and

(g) to the extent not otherwise included, all proceeds of the foregoing, including insurance proceeds (including any surrender value therefor, any right to return, or unearned premiums), causes and rights of action, remedies, privileges, settlements, judicial and arbitration judgments and awards, indemnities, Liens, warranties, or guaranties payable from time to time with respect to, or Lien or other security for, any of the foregoing;

provided, that "**Collateral**" shall not include any Excluded Property; and **provided**, **further**, that if and when any property shall cease to be Excluded Property, such property shall be deemed at all times from and after the date hereof to constitute Collateral.

2.2 Grant of Security Interest in Collateral. Each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations of such Grantor (the "**Secured Obligations**"), hereby mortgages, pledges and hypothecates to the Collateral Agent, as agent for the Purchaser Parties, and grants to the Collateral Agent, as agent for the Purchaser Parties, a Lien on and security interest in, all of its rights, title and interests in, to and under the Collateral of such Grantor.

ARTICLE III REPRESENTATIONS AND WARRANTIES

To induce the initial Holders and the Collateral Agent to enter into the Transaction Documents, each Grantor hereby jointly and severally represents and warrants each of the following to the Collateral Agent, as agent for the other Purchaser Parties:

3.1 Title; No Other Liens. Except for the Lien granted to the Purchaser Parties pursuant to this Agreement and other Permitted Liens under any Transaction Document (including **Section 3.2**), such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others. Such Grantor (a) is the record and beneficial owner of the Collateral pledged by it hereunder constituting instruments or certificates and (b) has rights in or the power to transfer each other item of Collateral in which a Lien is granted by it hereunder, free and clear of any other Lien.

3.2 Perfection and Priority. The security interest granted pursuant to this Agreement constitutes a valid and continuing perfected security interest in favor of the Collateral Agent, as agent for the Purchaser Parties, in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of such filings set forth on the Disclosure Certificate (which have been delivered to the Collateral Agent in completed and duly authorized form), (ii) with respect to any deposit account, the execution of Control Agreements, (iii) in the case of all Copyrights, Trademarks, Patents and other Intellectual Property for which UCC filings are insufficient, the making of all appropriate filings with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, (iv) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of an agreement granting control to the Collateral Agent over such letter-of-credit rights, (v) in the case of electronic chattel paper, the completion of all steps necessary to grant control to the Collateral Agent over such electronic chattel paper and (vi) in the case of Vehicles, the actions required under **Section 4.1(e)**. Such security interest shall be prior to all other Liens on the Collateral except as permitted by any Transaction Document upon (i) in the case of all Pledged Investment Property having instruments or certificates, Pledged Certificated Stock and Pledged Debt Instruments, the delivery thereof to the Collateral Agent of such Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property, in each case properly endorsed for transfer to the Collateral Agent or in blank, (ii) in the case of all Pledged Investment Property not having instruments or certificates and Pledged Uncertificated Stock, the execution of Control Agreements with respect to such investment property and (iii) in the case of all other instruments and tangible chattel paper that are not Pledged Collateral or Pledged Investment Property, the delivery thereof to the Collateral Agent of such instruments and tangible chattel paper. Except as set forth in this **Section 3.2**, all actions by each Grantor necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

3.3 Jurisdiction of Organization; Chief Executive Office. The following is set forth on the Disclosure Certificate for such Grantor, in each case as of the date hereof and for the last five years, (i) in the case of an individual, such Grantor's tax identification number, full legal name and address of legal residence and (ii) in the case of an entity,

such Grantor's jurisdiction of organization, legal name and organizational identification number, if any, and the location of such Grantor's chief executive office or sole place of business.

3.4 Locations of Inventory, Equipment and Books and Records. On the date hereof and for the last five years, the location of such Grantor's inventory and equipment (other than inventory or equipment in transit) and the location of all books and records concerning the Collateral are all listed in the Disclosure Certificates.

3.5 Pledged Collateral.

(a) The Pledged Stock pledged by such Grantor hereunder (i) is set forth on the Disclosure Certificate and constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on the Disclosure Certificate, (ii) has been duly authorized, validly issued and is fully paid and nonassessable (other than Pledged Stock in limited liability companies and partnerships) and (iii) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms.

(b) As of the date hereof, all Pledged Collateral (other than Pledged Uncertificated Stock) and all Pledged Investment Property consisting of instruments and certificates has been delivered to the Collateral Agent in accordance with **Section 4.3(a)**.

(c) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall be entitled to exercise all of the rights of the Grantor granting the security interest in any Pledged Stock, and a transferee or assignee of such Pledged Stock shall, to the same extent as such Grantor, become a holder of such Pledged Stock and be entitled to participate in the management of the issuer of such Pledged Stock and, upon the transfer of the entire interest of such Grantor, such Grantor shall, by operation of law, cease to be a holder of such Pledged Stock.

3.6 Instruments and Tangible Chattel Paper Formerly Accounts. No amount payable to such Grantor under or in connection with any account is evidenced by any instrument or tangible chattel paper that has not been delivered to the Collateral Agent, properly endorsed for transfer, to the extent delivery is required by **Section 4.6(a)**.

3.7 Intellectual Property.

(a) The Disclosure Certificate sets forth a true and complete list of the following Intellectual Property such Grantor owns, licenses or otherwise has the right to use: (i) Intellectual Property that is registered or subject to applications for registration, (ii) Internet Domain Names and (iii) Intellectual Property and Software, separately identifying that owned and licensed to such Grantor and including for each of the foregoing items (1) the owner, (2) the title, (3) the jurisdiction in which such item has been registered or otherwise arises or in which an application for registration has been filed, (4) as applicable, the registration or application number and registration or application date and (5) any IP Licenses or other rights (including franchises) granted by the Grantor with respect thereto.

(b) On the date hereof, all Intellectual Property owned by such Grantor is valid, in full force and effect, subsisting, unexpired and enforceable, and no Intellectual Property has been abandoned. No breach or default of any material IP License shall be caused by any of the following, and none of the following shall limit or impair the ownership, use, validity or enforceability of, or any rights of such Grantor in, any Intellectual Property: (i) the consummation of the transactions contemplated by any Transaction Document or (ii) any holding, decision, judgment or order rendered by any Governmental Authority. There are no pending (or, to the knowledge of such Grantor, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes challenging the ownership, use, validity, enforceability of, or such Grantor's rights in, any Intellectual Property of such Grantor. To such Grantor's knowledge, no Person has been or is infringing, misappropriating, diluting, violating or otherwise impairing any Intellectual Property of such Grantor. Such Grantor, and to such Grantor's knowledge each other party thereto, is not in material breach or default of any material IP License.

3.8 Commercial Tort Claims. The only commercial tort claims of any Grantor existing on the date hereof (regardless of whether the amount, defendant or other material facts can be determined and regardless of whether such

commercial tort claim has been asserted, threatened or has otherwise been made known to the obligee thereof or whether litigation has been commenced for such claims) are those listed on the Disclosure Certificate, which sets forth such information separately for each Grantor.

3.9 Specific Collateral. None of the Collateral is, or constitutes proceeds or products of, farm products, as-extracted collateral, health-care-insurance receivables or timber to be cut.

3.10 Enforcement. No Permit, notice to or filing with any Governmental Authority or any other Person or any consent from any Person is required for the exercise by the Collateral Agent of its rights (including voting rights) provided for in this Agreement or the other Transaction Documents the enforcement of remedies in respect of the Collateral pursuant to this Agreement or any other Transactions Documents, including the transfer of any Collateral, except as may be required in connection with the disposition of any portion of the Pledged Collateral by laws affecting the offering and sale of securities generally or any approvals that may be required to be obtained from any bailees or landlords to collect the Collateral.

3.11 Representations and Warranties under the Purchase Agreement. The representations and warranties as to such Grantor and its Subsidiaries made in **Article III** (**Representations and Warranties**) of the Purchase Agreement are true and correct on each date when made.

ARTICLE IV COVENANTS

Each Grantor agrees with the Collateral Agent and the other Purchaser Parties to the following, as long as any Obligation remains outstanding and, in each case, unless the Collateral Agent and the Required Purchasers otherwise consent in writing:

4.1 Maintenance of Perfected Security Interest; Further Documentation and Consents.

(a) Such Grantor shall (i) not use or permit any Collateral to be used unlawfully or in violation of any provision of any Transaction Document, any Regulation or any policy of insurance covering the Collateral and (ii) not enter into any agreement, obligation or undertaking restricting the right or ability of such Grantor or the Collateral Agent to enter into an Asset Sale, if such restriction would have a Material Adverse Effect.

(b) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in **Section 3.2** and shall defend such security interest and such priority against the claims and demands of all Persons (other than the Purchaser Parties).

(c) Such Grantor shall furnish to the Collateral Agent from time to time updates to the Disclosure Certificate and other lists, schedules and other documentation as may be requested by the Collateral Agent further identifying and describing the Collateral and such other documentation in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail and in form and substance satisfactory to the Collateral Agent.

(d) At any time and from time to time, upon the written request of the Collateral Agent, such Grantor shall, for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, (i) promptly and duly execute and deliver, and have recorded, such further documentation, including an authorization to file (or, as applicable, the filing) of any financing statement or amendment under the UCC (or other filings under similar Regulations) in effect in any jurisdiction with respect to the security interest created hereby and (ii) take such further action as the Collateral Agent may reasonably request, including (A) using its best efforts to secure all approvals necessary or appropriate for the assignment to or for the benefit of the Collateral Agent of any Permit or other agreement, including any IP License, held by such Grantor and to enforce the security interests granted hereunder and (B) executing and delivering any Control Agreements with respect to deposit accounts and securities accounts.

(e) If requested by the Collateral Agent, the Grantor shall arrange for the Collateral Agent's first priority security interest to be noted on the certificate of title of each Vehicle and shall file any other necessary documentation in each jurisdiction that the Collateral Agent shall deem advisable to perfect its security interests in any Vehicle.

(f) To ensure that any of the Excluded Property set forth in **clause (ii)** of the definition of "Excluded Property" becomes part of the Collateral, such Grantor shall use its best efforts to obtain any required consents from any Person (other than the Company, any Company Party and their respective Affiliates) with respect to any Permit or Contractual Obligation with such Person entered into by such Grantor that requires such consent as a condition to the creation by such Grantor of a Lien on all or part of such Excluded Property.

4.2 Changes in Locations, Name, Etc.

(a) Except upon 30 days' prior written notice to the Collateral Agent and delivery to the Collateral Agent of all documentation reasonably requested by the Collateral Agent to maintain the validity, perfection and priority of the security interests granted in the Transaction Documents, such Grantor shall not do any of the following:

(i) change its jurisdiction of organization or its location, in each case from that referred to in **Section 3.3**; or

(ii) change its legal name or organizational identification number, if any, or corporation, limited liability company, partnership or other organizational structure to such an extent that any financing statement filed in connection with this Agreement would become misleading.

(b) Such Grantor shall not permit any inventory or equipment to be kept at a location other than those listed on the Disclosure Certificate, except for inventory or equipment in transit.

4.3 Pledged Collateral

(a) **Delivery.** Such Grantor shall (i) deliver to the Collateral Agent, in suitable form for transfer and in form and substance satisfactory to the Collateral Agent, (A) all Pledged Certificated Stock, (B) all Pledged Debt Instruments and (C) all certificates and instruments evidencing Pledged Investment Property and (ii) maintain all Pledged Uncertificated Stock of a type that can be maintained in a securities account and all other Pledged Investment Property in a securities account subject to a Control Agreement.

(b) **Event of Default**. During the continuance of an Event of Default, the Collateral Agent shall have the right, at any time in its discretion and without notice to the Grantor, to (i) transfer to or to register in its name or in the name of its nominees any Pledged Collateral or any Pledged Investment Property and (ii) exchange any certificate or instrument representing or evidencing any Pledged Collateral or any Pledged Investment Property for certificates or instruments of smaller or larger denominations.

(c) **Cash Distributions with respect to Pledged Collateral**. Except as provided in **Article V**, such Grantor shall be entitled to receive all cash distributions paid in respect of the Pledged Collateral.

(d) **Voting Rights**. Except as provided in **Article V**, such Grantor shall be entitled to exercise all voting, consent and corporate, partnership, limited liability company and similar rights with respect to the Pledged Collateral; **provided**, that no vote shall be cast, consent given or right exercised or other action taken by such Grantor that would impair the Collateral or be inconsistent with or result in any violation of any provision of any Transaction Document.

4.4 Accounts.

(a) Such Grantor shall not, other than in the ordinary course of business, (i) grant any extension of the time of payment of any account, (ii) compromise or settle any account for less than the full amount thereof, (iii) release,

wholly or partially, any Person liable for the payment of any account, (iv) allow any credit or discount on any account or (v) amend, supplement or modify any account in any manner that could adversely affect the value thereof.

(b) The Collateral Agent shall have the right to make test verifications of the Accounts in any manner and through any medium that it reasonably considers advisable, and, subject to the requirements set forth in **Sections 8(k) (Non-Public Information)** of each Note and other provisions of the Transaction Documents restricting the disclosure of material non-public information, such Grantor shall furnish all such assistance and information as the Collateral Agent may reasonably require in connection therewith. At any time and from time to time, upon the Collateral Agent's request, subject to the requirements set forth in **Sections 8(k) (Non-Public Information)** of each Note and other provisions of the Transaction Documents restricting the disclosure of material non-public information, such Grantor shall cause independent public accountants or others satisfactory to the Collateral Agent to furnish to the Collateral Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the accounts.

4.5 Equipment and Commodity Contracts.

(a) Such Grantor will use all equipment constituting Collateral solely in the ordinary course of business, will keep all tangible Collateral in good order and repair, and will not waste or destroy any part of the Collateral. Grantors will not use any of the Collateral in violation of any Regulation in any material respect.

(b) Except in the ordinary course of business (to the extent disclosed to the Purchasers and the Collateral Agent prior to the date hereof) and except as expressly permitted by this Agreement or the Purchase Agreement, the Collateral Agent does not authorize such Grantor to, and such Grantor will not, without the Collateral Agent's prior written consent, sell, lease, assign, license, transfer, or otherwise dispose of or in any manner alter, modify, manufacture, process, or assemble the Collateral or any part thereof.

(c) Such Grantor may dispose of any equipment constituting Collateral which is worn out, destroyed, or damaged beyond repair; **provided,** that such Grantor (i) promptly replaces such disposed of equipment with new equipment, free of any Lien except for Permitted Liens, which has a value or utility at least equal as of the date of replacement to the value or utility of the replaced equipment as of the date hereof and (ii) provides the Collateral Agent with at least five (5) Business Days' prior written notice of any such disposition of Equipment.

(d) Such Grantor shall not have any commodity contract other than with a Person approved by the Collateral Agent and subject to a Control Agreement.

4.6 Delivery of Instruments and Tangible Chattel Paper and Control of Investment Property, Letter-of-Credit Rights and Electronic Chattel Paper.

(a) If any amount payable under or in connection with any Collateral owned by such Grantor shall be or become evidenced by an instrument or tangible chattel paper other than such instrument delivered in accordance with **Section 4.3(a)** and in the possession of the Collateral Agent, such Grantor shall mark all such instruments and tangible chattel paper with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest _____, as Collateral Agent" and, at the request of the Collateral Agent, shall immediately deliver such instrument or tangible chattel paper to the Collateral Agent, duly indorsed in a manner satisfactory to the Collateral Agent.

(b) Such Grantor shall not grant "control" (within the meaning of such term under Article 9-106 of the UCC) over any investment property to any Person other than the Collateral Agent.

(c) If such Grantor is or becomes the beneficiary of a letter of credit that is not a supporting obligation of any Collateral, such Grantor shall promptly, and in any event within two (2) Business Days after becoming a beneficiary, notify the Collateral Agent thereof and enter into an agreement with the Collateral Agent, the issuer of such letter of credit or any nominated person with respect to the letter-of-credit rights under such letter of credit. Such agreement shall assign such letter-of-credit rights to the Collateral Agent and such assignment shall be sufficient to

grant control for the purposes of Section 9-107 of the UCC (or any similar section under any equivalent UCC). Such agreement shall also direct all payments thereunder to an account controlled (as defined in the UCC) by the Collateral Agent. The provisions of such agreement shall be in form and substance reasonably satisfactory to the Collateral Agent.

(d) If any amount payable under or in connection with any Collateral owned by such Grantor shall be or become evidenced by electronic chattel paper, such Grantor shall take all steps necessary to grant the Collateral Agent control of all such electronic chattel paper for the purposes of Section 9-105 of the UCC (or any similar section under any equivalent UCC) and all "transferable records" as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

4.7 Intellectual Property.

(a) Within 60 days after acquisition of any new Intellectual Property (whether by creation, acquisition, transfer or otherwise), such Grantor shall provide the Collateral Agent notification thereof and the short-form intellectual property agreements and assignments as described in this **Section 4.7** and other documentation that the Collateral Agent reasonably requests with respect thereto.

(b) Such Grantor shall (and shall cause all its licensees to) (i) (1) continue to use each Trademark included in the Intellectual Property in order to maintain such Trademark in full force and effect with respect to each class of goods for which such Trademark is currently used, free from any claim of abandonment for non-use, (2) maintain at least the same standards of quality of products and services offered under such Trademark as are currently maintained, (3) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Regulations, (4) not adopt or use any other Trademark that is confusingly similar or a colorable imitation of such Trademark unless the Collateral Agent shall obtain a perfected security interest in such other Trademark pursuant to this Agreement and (ii) not do any act or omit to do any act whereby (w) such Trademark (or any goodwill associated therewith) may become destroyed, invalidated, impaired or harmed in any way, (x) any Patent included in the Intellectual Property may become forfeited, misused, unenforceable, abandoned or dedicated to the public, (y) any portion of the Copyrights included in the Intellectual Property may become invalidated, otherwise impaired or fall into the public domain or (z) any Trade Secret that is Intellectual Property may become publicly available or otherwise unprotectable.

(c) Such Grantor shall notify the Collateral Agent immediately if it knows, or has reason to know, that any application or registration relating to any Intellectual Property may become forfeited, misused, unenforceable, abandoned or dedicated to the public, or of any adverse determination or development regarding the validity or enforceability or such Grantor's ownership of, interest in, right to use, register, own or maintain any Intellectual Property (including the institution of, or any such determination or development in, any proceeding relating to the foregoing in any Applicable IP Office). Such Grantor shall take all actions that are necessary or reasonably requested by the Collateral Agent to maintain and pursue each application (and to obtain the relevant registration or recordation) and to maintain each registration and recordation included in the Intellectual Property.

(d) Such Grantor shall not knowingly do any act or omit to do any act to infringe, misappropriate, dilute, violate or otherwise impair the Intellectual Property of any other Person. In the event that any Intellectual Property of such Grantor is or has been infringed, misappropriated, violated, diluted or otherwise impaired by a third party, such Grantor shall take such action as it reasonably deems appropriate under the circumstances in response thereto, including promptly bringing suit and recovering all damages therefor.

(e) Such Grantor shall execute and deliver to the Collateral Agent in form and substance reasonably acceptable to the Collateral Agent and suitable for (i) filing in the Applicable IP Office the short-form intellectual property security agreements in the form attached hereto as **Annex 3** for all Copyrights, Trademarks, Patents and IP Licenses of such Grantor and (ii) recording with the appropriate Internet domain name registrar, a duly executed form of assignment for all Internet Domain Names of such Grantor (together with appropriate supporting documentation as may be requested by the Collateral Agent).

4.8 Landlord Waivers. If any Collateral is at any time not in transit and located on any real property not owned and possessed by a Grantor, such Grantor shall provide prompt written notice to the Collateral Agent and notify any owner, lessor, licensor of any part of, or any other Person having any right to enter on any part of, such real property of the Collateral Agent's security interest in such Collateral. Upon the Collateral Agent's request and option, such Grantor shall (i) instruct each such owner, lessor, licensor and other Person to hold all such Collateral for the Collateral Agent's account subject to such Grantor's instructions, or, if an Event of Default shall have occurred, subject to the Collateral Agent's instructions and (ii) cause each such owner, lessor, licensor and other Person to enter into a landlord waiver in form and substance satisfactory to the Collateral Agent.

4.9 Third-Party Possession or Control. If any Collateral is at any time in the possession or control of any warehouseman, bailee, agent or independent contractor, such Grantor shall provide prompt written notice to the Collateral Agent and notify such warehouseman, bailee, agent or independent contractor of the Collateral Agent's security interest in such Collateral. Upon the Collateral Agent's request and option, such Grantor shall (i) instruct any such warehouseman, bailee, agent or independent contractor to hold all such Collateral for the Collateral Agent's account subject to such Grantor's instructions, or, if an Event of Default shall have occurred, subject to the Collateral Agent's instructions and (ii) cause any such warehouseman, bailee, agent or independent contractor to enter into a collateral access agreement in form and substance satisfactory to the Collateral Agent.

4.10 Acquired Real Property. In the event any Grantor hereafter acquires any interest in any real property, such Grantor shall promptly: (a) provide the Collateral Agent with a description of the location of the applicable real property; (b) provide the Collateral Agent with a legal description of such real property sufficient to enable the Collateral Agent to record the financing statements in the appropriate real property records and the name of the record owner of the real estate if other than the Grantor and real estate descriptions; and (c) pay to the Collateral Agent the related filing fee and any recording or stamp taxes due in connection with such filings.

4.11 Notices. Such Grantor shall promptly notify the Collateral Agent in writing of its acquisition of any interest hereafter in property that is of a type where a security interest or lien must be or may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation. In addition, such Grantor shall promptly notify the Collateral Agent of each of the following: (a) any material adverse change in such Grantor's financial condition or any change that materially affects any of the Collateral or the related security interest, (b) any claim, action, or proceeding which could materially and adversely affect the value of, or any such Grantor's title to, any of the Collateral, or the effectiveness of the security interest, and (c) the occurrence of any Event of Default.

4.12 Notice of Commercial Tort Claims. Such Grantor agrees that, if it shall acquire any interest in any commercial tort claim (whether from another Person or because such commercial tort claim shall have come into existence), (i) such Grantor shall deliver to the Collateral Agent within fifteen (15) calendar days of such acquisition, an update to the Disclosure Certificate that shall include a specific description of such commercial tort claim and such Grantor shall deliver any information about such commercial tort claim as the Collateral Agent shall reasonable request, (ii) **Section 2.1** shall apply to such commercial tort claim and (iii) within fifteen (15) calendar days of such acquisition, such Grantor shall execute and deliver to the Collateral Agent, in each case in form and substance satisfactory to the Collateral Agent, any documentation, and take all other action, deemed by the Collateral Agent to be reasonably necessary or appropriate for the Collateral Agent to obtain, a perfected security interest having at least the priority set forth in **Section 3.2** in all such commercial tort claims.

4.13 Compliance with Purchase Agreement. Such Grantor hereby makes all representations and warranties, and agrees to comply with all covenants and other provisions, applicable to it or any of its Subsidiaries under the Purchase Agreement, including **Section 3.1 (Representations and Warranties of the Company Parties), 4.14 (Indemnification of Each Purchaser Party**), **5.8 (Collateral Agent May File Proof of Claims)** and **6.2 (Fees and Expenses)** thereof, the Notes, including **Section 6 (Negative Covenants)** thereof, and the other Transaction Documents and agrees to the same submission to jurisdiction as that agreed to by the Company in the Purchase Agreement. Any update to the Disclosure Certificate delivered in accordance with the Transaction Documents shall, after the receipt thereof by the Collateral Agent, become part of the Disclosure Certificate for all purposes hereunder other than in respect of representations and warranties made prior to the date of such receipt.

ARTICLE V REMEDIES

5.1 Code and Other Remedies.

(a) **UCC Remedies**. During the continuance of an Event of Default, the Collateral Agent may exercise, in addition to all other rights and remedies granted to it in this Agreement or any other Transaction Document and in any other instrument or agreement securing, evidencing or relating to any Secured Obligation, all rights and remedies of a secured party under the UCC or any other applicable law.

(b) **Disposition of Collateral.** Without limiting the generality of the foregoing, the Collateral Agent may, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), during the continuance of any Event of Default (personally or through its agents or attorneys), (i) enter upon the premises where any Collateral is located, without any obligation to pay rent, through self-help, without judicial process, without first obtaining a final judgment or giving any Grantor or any other Person notice or opportunity for a hearing on the Collateral Agent's claim or action, (ii) collect, receive, appropriate and realize upon any Collateral and (iii) as further set forth herein, enter into transfers, sales, or other dispositions of, grant option or options to purchase and deliver, any Collateral (enter into any Contractual Obligation to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Purchaser Party or elsewhere upon such terms and conditions and times and locations as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk.

(c) **Regulated Sales**. To the extent, and only to the extent, required by Regulation and prohibited by Regulation to be waived by the applicable Grantors (which the Grantors hereby expressly waive to the fullest extent permitted by Regulation), the Grantors agree that ten (10) days' written notice is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions of the Collateral Agent's intention to make any transfer, sale or other dispositions of any Collateral. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may determine in its sole and absolute discretion. The Collateral Agent shall not be obligated to sell any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but none of the Collateral Agent or the other Purchaser Parties shall incur any Loss in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by Regulations, private) sale made in accordance with the Transaction Documents, the Collateral Agent and any other Purchaser Party may bid for or purchase, free (to the extent permitted by Regulation) from any right or equity of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any Obligation then due and payable to the Purchaser Parties (in the case of the Collateral Agent) or, as the case may be, such Purchaser Party from any Grantor as a credit against the purchase price, and the Collateral Agent (or, as the case may be, such Purchaser Party) may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement, all Events of Default shall have been remedied and no Obligation shall remain outstanding. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement

and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this **Section 5.1** shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

(d) **Management of the Collateral.** Each Grantor further agrees, that, during the continuance of any Event of Default, (i) at the Collateral Agent's request, it shall assemble the Collateral and make it available to the Collateral Agent at places that the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere, (ii) without limiting the foregoing, the Collateral Agent also has the right to require that each Grantor store and keep any Collateral pending further action by the Collateral Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain such Collateral in good condition, (iii) until the Collateral Agent is able to enter into an asset sale with respect to any Collateral, the Collateral Agent shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent and (iv) the Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Purchaser Parties), with respect to such appointment without prior notice or hearing as to such appointment. The Collateral Agent shall not have any obligation to any Grantor to maintain or preserve the rights of any Grantor as against third parties with respect to any Collateral while such Collateral is in the possession of the Collateral Agent.

(e) **Application of Proceeds.** The Collateral Agent shall apply the cash proceeds of any action taken by it pursuant to this **Section 5.1**, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any Collateral or in any way relating to the Collateral or the rights of the Collateral Agent and any other Purchaser Party hereunder, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, as set forth in the Purchase Agreement, and only after such application and after the payment by the Collateral Agent of any other amount required by any Regulation, need the Collateral Agent account for the surplus, if any, to any Grantor.

(f) **Direct Obligation**. Neither the Collateral Agent nor any other Purchaser Party shall be required to make any demand upon, or pursue or exhaust any right or remedy against, any Grantor, any other Purchaser Party or any other Person with respect to the payment of the Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of the Collateral Agent and any other Purchaser Party under any Transaction Document shall be cumulative, may be exercised individually or concurrently and not exclusive of any other rights or remedies provided by any Regulation. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any Collateral Agent, any valuation, stay, appraisement, extension, redemption or similar laws and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(g) **Commercially Reasonable**. To the extent that applicable Regulations impose duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent to do any of the following:

(i) fail to incur significant costs, expenses or other Losses reasonably deemed as such by the Collateral Agent to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

(ii) fail to obtain Permits, or other consents, for access to any Collateral to dispose of, or for the collection of, any Collateral, or, if not required by other Regulations, fail to obtain Permits or other consents for the collection or disposition of any Collateral;

(iii) fail to exercise remedies against account debtors or other Persons obligated on any Collateral or to remove Liens on any Collateral or to remove any adverse claims against any Collateral;

(iv) advertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature or to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring any such Collateral;

(v) exercise collection remedies against account debtors and other Persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such Collateral is of a specialized nature or, to the extent deemed appropriate by the Collateral Agent, obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any Collateral, or utilize Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

(vi) dispose of assets in private sales instead of, or through exchange or wholesale rather than, retail markets;

(vii) disclaim disposition warranties, such as title, possession or quiet enjoyment; or

(viii) purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of any Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of any Collateral.

Each Grantor acknowledges that the purpose of this **Section 5.1** is to provide a non-exhaustive list of actions or omissions that are commercially reasonable when exercising remedies against any Collateral and that other actions or omissions by the Purchaser Parties shall not be deemed commercially unreasonable solely on account of not being indicated in this **Section 5.1**. Without limitation upon the foregoing, nothing contained in this **Section 5.1** shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable Regulations in the absence of this **Section 5.1**.

(h) **IP Licenses**. For the purpose of enabling the Collateral Agent to exercise rights and remedies under this **Section 5.1** (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, enter into an asset sale with respect to, or grant options to purchase any Collateral) at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, for the benefit of the Purchaser Parties, (i) an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), including in such license the right to sublicense, use and practice any Intellectual Property now owned or hereafter acquired by such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all real property owned, operated, leased, subleased or otherwise occupied by such Grantor.

(i) **Performance by the Collateral Agent or any other Purchaser Party**. The Collateral Agent may, but is not obligated to, perform or attempt to perform any Contractual Obligation of any Grantor contained herein with or without prior written notice to such Grantor. If any material part of the Collateral becomes the subject of any Proceeding and any such Grantor fails to defend fully such Proceeding and to protect such Grantor's and Purchaser Parties' rights in such Collateral in good faith, the Collateral Agent may, at its option but at Grantors' cost, elect to defend and control the defense of such litigation or other proceeding, and may (i) select and retain counsel, (ii) determine whether settlement shall be offered or accepted, and (iii) determine and negotiate all settlement terms.

5.2 Accounts and Payments in Respect of General Intangibles

(a) In addition to, and not in substitution for, any similar requirement in the Purchase Agreement, if required by the Collateral Agent at any time during the continuance of an Event of Default, any payment of accounts or payment in respect of general intangibles, when collected by any Grantor, shall be promptly (and, in any event, within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent, in a Collection Account, subject to withdrawal by the Collateral Agent as provided in **Section 5.4**. Until so turned over, such payment shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor. Each such deposit of proceeds of accounts and payments in respect of general intangibles shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(b) At any time during the continuance of an Event of Default:

(i) each Grantor shall, upon the Collateral Agent's request, deliver to the Collateral Agent all original and other documentation evidencing, and relating to, the agreements, arrangements and transactions that gave rise to any account or any payment in respect of general intangibles, including all original orders, invoices and shipping receipts and notify account debtors that the accounts or general intangibles have been collaterally assigned to the Collateral Agent and that payments in respect thereof shall be made directly to the Collateral Agent;

(ii) the Collateral Agent may, without notice, at any time during the continuance of an Event of Default, limit or terminate the authority of a Grantor to collect its accounts or amounts due under general intangibles or any thereof and, in its own name or in the name of others, communicate with account debtors to verify with them to the Collateral Agent's satisfaction the existence, amount and terms of any account or amounts due under any general intangible. In addition, the Collateral Agent may at any time enforce such Grantor's rights against such account debtors and obligors of general intangibles; and

(iii) each Grantor shall take all actions, deliver all documentation and provide all information necessary or reasonably requested by the Collateral Agent to ensure any Internet Domain Name is registered.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each account and each payment in respect of general intangibles to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Purchaser Party shall have any obligation or liability under any agreement giving rise to an account or a payment in respect of a general intangible by reason of or arising out of any Transaction Document or the receipt by any Purchaser Party of any payment relating thereto, nor shall any Purchaser Party be obligated in any manner to perform any obligation of any Grantor under or pursuant to any agreement giving rise to an account or a payment in respect of a general intangible, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

5.3 Pledged Collateral.

(a) **Voting Rights**. During the continuance of an Event of Default, upon notice by the Collateral Agent to the relevant Grantor or Grantors, the Collateral Agent or its nominee may exercise (A) any voting, consent, corporate and other right pertaining to the Pledged Collateral at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Collateral or otherwise and (B) any right of conversion, exchange and subscription and any other right, privilege or option pertaining to the Pledged Collateral as if it were the absolute owner thereof (including the right to exchange at its discretion any Pledged Collateral upon the merger, amalgamation, consolidation, reorganization, recapitalization or other fundamental change in the corporate or equivalent structure of any issuer of Pledged Stock, the right to deposit and deliver any Pledged Collateral with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent may determine), all without liability except to account for property actually received by it; **provided**,

however, that the Collateral Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(b) **Proxies**. In order to permit the Collateral Agent to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions that it may be entitled to receive hereunder, (i) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (ii) without limiting the effect of **clause (i)** above, such Grantor hereby grants to the Collateral Agent an irrevocable proxy to vote all or any part of the Pledged Collateral and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Collateral would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Collateral on the record books of the issuer thereof) by any other person (including the issuer of such Pledged Collateral or any officer or agent thereof) during the continuance of an Event of Default and which proxy shall remain in place as long as any Obligation shall remain outstanding.

(c) **Authorization of Issuers**. Each Grantor hereby expressly irrevocably authorizes and instructs, without any further instructions from such Grantor, each issuer of any Pledged Collateral pledged hereunder by such Grantor to (i) comply with any instruction received by it from the Collateral Agent in writing that states that an Event of Default is continuing and is otherwise in accordance with the terms of this Agreement and each Grantor agrees that such issuer shall be fully protected from Losses to such Grantor in so complying and (ii) unless otherwise expressly permitted hereby, pay any dividend or make any other payment with respect to the Pledged Collateral directly to the Collateral Agent.

5.4 Proceeds to be Turned over to and Held by Collateral Agent. Unless otherwise expressly provided in the Purchase Agreement or this Agreement, after (i) acceleration of any part of the Secured Obligations of any Grantor or (ii) upon notice by the Collateral Agent to any Grantor during the continuation of an Event of Default, all proceeds of any Collateral received by such Grantor hereunder in Cash, certificates of deposit, bankers' acceptances, time and demand deposits and other similar cash equivalents shall be held by such Grantor in trust for the Collateral Agent and the other Purchaser Parties, segregated from other funds of such Grantor, and shall, promptly upon receipt by any Grantor, be turned over to the Collateral Agent in the exact form received (with any necessary endorsement). All such proceeds and other proceeds being held by the Collateral Agent (or by such Grantor in trust for the Collateral Agent) shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in the Purchase Agreement.

5.5 Registration Rights.

(a) If, in the opinion of the Collateral Agent, it is necessary or advisable to transfer any portion of the Pledged Collateral by registering such Pledged Collateral under the provisions of the Securities Act of 1933 (the "**Securities Act**") and such Pledged Collateral is not otherwise covered by more specific registration rights obligations of a relevant Grantor in any other Transaction Document, each such relevant Grantor shall cause the issuer thereof to do or cause to be done all acts as may be, in the opinion of the Collateral Agent, necessary or advisable to register such Pledged Collateral or that portion thereof to be transferred under the provisions of the Securities Act, all as directed by the Collateral Agent in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto and in compliance with the securities or "**Blue Sky**" laws of any jurisdiction that the Collateral Agent shall designate.

(b) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any Pledged Collateral by reason of certain prohibitions contained in the Securities Act and applicable state or foreign securities laws or otherwise or may determine that a public sale is impracticable, not desirable or not commercially reasonable and, accordingly, may resort to one or more private sales thereof to a restricted group of purchasers that shall be obliged to agree, among other things, to acquire such securities for their own account for investment and not

with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any Pledged Collateral for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act or under applicable state securities laws even if such issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of any portion of the Pledged Collateral pursuant to this **Section 5.5** valid and binding and in compliance with all applicable Regulations. Each Grantor further agrees that a breach of any covenant contained in this **Section 5.5** will cause irreparable injury to the Collateral Agent and other Purchaser Parties, that the Collateral Agent and the other Purchaser Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this **Section 5.5** shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Purchase Agreement.

5.6 Deficiency. Each Grantor shall remain jointly and severally liable for any deficiency if the proceeds of any sale or other disposition of any Collateral are insufficient to pay the Secured Obligations and the fees and disbursements of any attorney or agent employed by the Collateral Agent or any other Purchaser Party to collect such deficiency.

ARTICLE VI ADDITIONAL RIGHTS OF COLLATERAL AGENT

6.1 Collateral Agent's Appointment as Attorney-in-Fact.

(a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of the Transaction Documents, to take any appropriate action and to execute any documentation or instrument that may be necessary or desirable to accomplish the purposes of the Transaction Documents, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any of the following when an Event of Default shall be continuing:

(i) in the name of such Grantor, in its own name or otherwise, take possession of and indorse and collect any check, draft, note, acceptance or other instrument for the payment of moneys due under any account or general intangible or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any such moneys due under any account or general intangible or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property owned by or licensed to the Grantors, execute, deliver and have recorded any documentation that the Collateral Agent may request to evidence, effect, publicize or record the Collateral Agent's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against any Collateral, effect any repair or pay any insurance called for by the terms of the Purchase Agreement (including all or any part of the premiums therefor and the costs thereof);

(iv) execute, in connection with any sale provided for in this Agreement or any other Transfer Document, any documentation to effect or otherwise necessary or appropriate in relation to evidence the transfer of any Collateral; or

(v) (A) direct any party liable for any payment under any Collateral to make payment of any moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct, (B) ask or demand for, and collect and receive payment of and receipt for, any moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral, (C) sign and indorse any invoice, freight or express bill, bill of lading, storage or warehouse receipt, draft against debtors, assignment, verification, notice and other documentation in connection with any Collateral, (D) commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect any Collateral and to enforce any other right in respect of any Collateral, (E) defend any actions, suits, proceedings, audits, claims, demands, orders or disputes brought against such Grantor with respect to any Collateral, (F) settle, compromise or adjust any such actions, suits, proceedings, audits, claims, demands, orders or disputes and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate, (G) assign any Intellectual Property owned by the Grantors or any IP Licenses of the Grantors throughout the world on such terms and conditions and in such manner as the Collateral Agent shall in its sole discretion determine, including the execution and filing of any documentation necessary to effectuate or record such assignment and (H) generally, enter into an Asset Sale with respect to, grant a Lien on, enter into any agreement or other obligation with respect to and otherwise deal with, any Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes and do, at the Collateral Agent's option, at any time or from time to time, all acts and things that the Collateral Agent deems necessary to protect, preserve or realize upon any Collateral and the Purchaser Parties' security interests therein and to effect the intent of the Transaction Documents, all as fully and effectively as such Grantor might do.

(b) If any Grantor fails to perform or comply with any obligation contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such obligation.

(c) The expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this **Section 6.1**, together with interest thereon at the highest interest rate applicable to the principal amount of any Note, as set forth in any **Section 2(d)** (**Interest**) of any such Note, from the date of payment by the Collateral Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Collateral Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue of this **Section 6.1**. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

6.2 Authorization to File Financing Statements. Each Grantor authorizes the Collateral Agent, its Affiliates and their Related Parties, contractors and agents, at any time and from time to time, to file or record financing statements, amendments thereto, and other filing or recording documentation or instruments with respect to any Collateral in such form and in such offices as the Collateral Agent reasonably determines appropriate to perfect the security interests of the Collateral Agent under this Agreement, and such financing statements and amendments may describe the Collateral covered thereby as "all assets of the debtor" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the applicable UCC, and contain any other information required pursuant to the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including, in the case of financing statements filed as fixture filings or indicating Collateral as as-extracted collateral or as otherwise required by applicable Regulation, a sufficient description of the real property related to the applicable Collateral. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording documentation or instrument for filing or recording in any jurisdiction. Such Grantor also hereby ratifies its authorization for the Collateral Agent to have filed any initial financing statement

or amendment thereto under the UCC (or other similar laws) in effect in any jurisdiction if filed prior to the date hereof.

6.3 Authority of Collateral Agent. Each Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Purchaser Parties, be governed by the Purchase Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Purchaser Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation or entitlement to make any inquiry respecting such authority.

6.4 Duty; Obligations and Losses. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account. The powers conferred on the Collateral Agent hereunder are solely to protect the Collateral Agent's interest in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither it nor any of its Affiliates shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. In addition, the Collateral Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, and shall not suffer any other Loss by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee if such Person has been selected by the Collateral Agent in good faith.

6.5 Obligations and Losses with respect to Collateral. No Purchaser Party and no Affiliate thereof shall be liable or otherwise incur any Loss for failure to demand, collect or realize upon any Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to any Collateral. The powers conferred on the Collateral Agent hereunder shall not impose any duty upon any other Purchaser Party to exercise any such powers. The other Purchaser Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their respective officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

ARTICLE VII MISCELLANEOUS

7.1 Reinstatement. Each Grantor agrees that, if any payment made by any Purchaser Party or other Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of any Collateral are required to be returned by any Purchaser Party to such Purchaser Party, its estate, trustee, receiver or any other party, including any Grantor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any Lien or other Collateral securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, any Lien or other Collateral securing such Grantor's liability hereunder shall have been released or terminated by virtue of the foregoing or (b) any other provision of this Agreement shall have been terminated, cancelled or surrendered, such Lien, other Collateral or provision shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Grantor in respect of any Lien or other Collateral securing such obligation or the amount of such payment.

7.2 Independent Obligations. The obligations of each Grantor hereunder are independent of and separate from the Secured Obligations. If any Secured Obligation is not paid when due, or upon any Event of Default, the Collateral Agent may, at its sole election, proceed directly and at once, without notice, against any Grantor and any Collateral to collect and recover the full amount of any Secured Obligation then due, without first proceeding against any other

Grantor, any other Company Party or any other Collateral and without first joining any other Grantor or any other Company Party in any proceeding.

7.3 No Waiver by Course of Conduct. No Purchaser Party shall by any act (except by a written instrument pursuant to **Section 7.4**), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Purchaser Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Purchaser Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that such Purchaser Party would otherwise have on any future occasion.

7.4 Amendments in Writing; **Entire Agreement**. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with **Section 6.3(b)** of the Purchase Agreement; **provided**, that annexes to this Agreement may be supplemented (but no existing provisions may be modified and no Collateral may be released) through Pledge Amendments and Joinder Agreements (each as defined below), in substantially the form of **Annex 1** and **Annex 2**, respectively, in each case duly executed by the Collateral Agent and each Grantor directly affected thereby. Furthermore, as described in **Section 6.3(a) (Entire Agreement)** of the Purchase Agreement, this Agreement and the other Transaction Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof.

7.5 Additional Grantors; Additional Pledged Collateral.

(a) **Joinder Agreements**. The Company shall cause any Subsidiary that is not a Grantor to become a Grantor hereunder. Each such Subsidiary shall execute and deliver to the Collateral Agent a Joinder Agreement substantially in the form of **Annex 2** (each a "**Joinder Agreement**") and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto on the date hereof.

(b) **Pledge Amendments**. To the extent any Pledged Collateral has not been delivered as of the date hereof, such Grantor shall deliver a pledge amendment duly executed by the Grantor in substantially the form of **Annex 1** (each, a "**Pledge Amendment**"). Such Grantor authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement.

7.6 Notices. All notices, requests and demands to or upon the Collateral Agent or any Grantor hereunder shall be effected in the manner provided for in **Section 6.4 (Notices)** of the Purchase Agreement; **provided**, that any such notice, request or demand to or upon any Grantor shall be addressed to the Company's notice address set forth in such **Section 6.4**.

7.7 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of each Purchaser Party and their successors and assigns; **provided**, that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent and the Required Purchasers (and any attempt to effect such assignment, transfer or delegation without such consent shall be null and void at the outset), unless expressly authorized by the Purchase Agreement.

7.8 Amendments; Counterparts; Electronic Signatures. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with **Section 6.3(b) (Amendments)** of the Purchase Agreement. This Agreement may be executed in counterparts as provided in **Section 6.3(e) (Counterparts)** of the Purchase Agreement and, as provided in **Section 6.3(f) (Electronic Signatures)** of the Purchase Agreement, electronic signatures have the same force and effect as manual signatures.

7.9 Survival. All representations and warranties made by the Grantors in the Transaction Documents (including any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made by the Grantors

under this Agreement (including those representations and warranties set forth in the immediately preceding sentence) shall be made or deemed to be made at and as of the date hereof (except those that are expressly made as of a specific date), shall survive after the date hereof and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Collateral Agent or the purchase of any Note under the Purchase Agreement. Notwithstanding any termination of this Agreement, the indemnities to which the Purchaser Parties are entitled under the provisions of this Agreement or any other Transaction Document shall continue in full force and effect and shall protect the Purchaser Parties against events arising after such termination as well as before. This Agreement shall be reinstated at any time any payment of any Secured Obligation, in whole or in part, is rescinded or must otherwise be returned by the Collateral Agent upon the insolvency, bankruptcy or reorganization of any Grantor or other Company Party or otherwise, all as though such payment had not been made.

7.10 Security Interest Absolute. All rights of the Collateral Agent hereunder, the grant of the security interest in the Collateral, and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of any Transaction Document or any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Transaction Documents or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than payment of the outstanding Secured Obligations).

7.11 Governing Law. Each Grantor agrees to **Section 6.6 (Governing Law; Courts)** of the Purchase Agreement, including that (a) this Agreement and all claims, disputes, Proceedings, and matters related hereto or thereto or arising hereunder or thereunder or arising from or relating to the relationship among any of the parties hereto or thereto, are governed by, and shall be construed, interpreted and enforced exclusively in accordance with, the laws of the State of Delaware (without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware) and (b) any such Proceeding shall be brought exclusively in the Delaware state courts sitting in Wilmington, DE or the federal courts of the United States of America for the District of Delaware sitting in Wilmington, DE; provided, that the Collateral Agent and any Purchaser Party may bring Proceedings in other jurisdictions to enforce any Transaction Document. **Each Company Party hereby accepts such jurisdiction, waives any objections to venue, and agrees that a final judgment in any such Proceeding shall be conclusive and enforceable in other jurisdictions, all as provided in the Purchase Agreement and accepts that service of process may be made in the way set forth in the Purchase Agreement.**

7.12 Waiver of Jury Trial. Each party hereto hereby agree to Section 6.16 (Waiver of Jury Trial and Certain Other Rights) of the Purchase Agreement whereby, among other things, it irrevocably waives trial by jury in any Proceeding with respect to, or directly or indirectly arising out of, relating to or in connection with, this Guaranty or any other Transaction Document or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party or beneficiary hereof has represented, expressly or otherwise, that such other parties would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties have been induced to enter into this Agreement and the other Transaction Documents by, among other things, the mutual waivers and certifications in this section.

7.13 Interpretation. This Agreement is a Transaction Document and as such is subject to various interpretative, amendment and third party beneficiary and other miscellaneous provisions set forth in the Purchase Agreement that expressly apply to Transaction Documents, located principally in **Article VI** thereof, including **Sections 6.3(d) (No Implied Waivers or Notice Rights), 6.5 (Set off), 6.7 (Severability)** and **6.11 (Marshaling, Payments Set Aside)** thereof.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement as of the date first written above.

RESHAPE LIFESCIENCES INC.
as Company and Grantor

By: _____
Name: Paul F. Hickey
Title: President and CEO

[GRANTORS]
as Grantor

By: _____
Name:
Title:

ACCEPTED AND AGREED
as of the date first written above:

_____
as Collateral Agent

By: _____
Name:
Title: Authorized Signatory

SECURITY AGREEMENT

ANNEX 1 TO SECURITY AGREEMENT[1]

FORM OF PLEDGE AMENDMENT

This **Pledge Amendment**, dated as of _____ __, 20__, is delivered pursuant to **Section 7.5** of the Security Agreement, dated as of October 16, 2024, by ReShape Lifesciences Inc. (the "**Company**"), the undersigned Grantors and the other Company Parties and Affiliates of the Company from time to time party thereto as Grantors in favor of _____, as collateral agent for the Purchaser Parties referred to therein (the "**Security Agreement**"). Capitalized terms used herein without definition are used as defined in the Security Agreement.

The undersigned hereby agrees that this Pledge Amendment may be attached to the Security Agreement and that the Pledged Collateral listed on **Annex 1-A** to this Pledge Amendment shall be and become part of the Collateral referred to in the Security Agreement and shall secure all Secured Obligations of the undersigned.

The undersigned hereby represents and warrants that each of the representations and warranties contained in **Sections 3.1, 3.2, 3.5** and **3.10** of the Security Agreement is true and correct and as of the date hereof as if made on and as of such date.

[GRANTOR]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date first written above:

_____,
as Collateral Agent

By: _____
Name:
Title: Authorized Signatory

To be used for pledge of Additional Pledged Collateral by existing Grantor.

ANNEX 1 TO SECURITY AGREEMENT[1]

PLEDGED STOCK

ISSUER	CLASS	CERTIFICATE NO(S).	PAR VALUE	NUMBER OF SHARES, UNITS OR INTERESTS

PLEDGED DEBT INSTRUMENTS

ISSUER	DESCRIPTION OF DEBT	CERTIFICATE NO(S).	FINAL MATURITY	PRINCIPAL AMOUNT

To be used for pledge of Additional Pledged Collateral by existing Grantor.

ANNEX 2 TO SECURITY AGREEMENT

FORM OF JOINDER AGREEMENT

This **Joinder Agreement**, dated as of _____ __, 20__, is delivered pursuant to **Section 7.5** of the Security Agreement, dated as of October 16, 2024, by and among ReShape Lifesciences Inc. (together with its successors and, if permitted, assigns the "**Company**") and the Affiliates of the Company from time to time party thereto as Grantors in favor of _____, a Delaware limited liability company, for itself and as collateral agent for the Purchaser Parties referred to therein (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"). Capitalized terms used but not defined herein are used as defined in the Security Agreement.

By executing and delivering this Joinder Agreement, the undersigned, as provided in **Section 7.5** of the Security Agreement, hereby becomes a party to the Security Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein and, without limiting the generality of the foregoing, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of the undersigned, hereby mortgages, pledges and hypothecates to the Collateral Agent for the benefit of the Purchaser Parties, and grants to the Collateral Agent for the benefit of the Purchaser Parties a lien on and security interest in, all of its rights, title and interests in, to and under the Collateral of the undersigned and expressly assumes all obligations and liabilities of a Grantor thereunder. The undersigned hereby agrees to be bound as a Grantor for the purposes of the Security Agreement.

The information set forth in **Annex 1** hereto is hereby added to the information set forth in the Disclosure Certificate. By acknowledging and agreeing to this Joinder Agreement, the undersigned hereby agree that this Joinder Agreement may be attached to the Purchase Agreement and that the Pledged Collateral listed on **Annex 1** to this Joinder Amendment shall be and become part of the Collateral referred to in the Security Agreement and shall secure all Secured Obligations of the undersigned.

The undersigned hereby represents and warrants that each of the representations and warranties contained in **Article III** of the Security Agreement (including by reference to the Purchase Agreement) applicable to it and its Subsidiaries is true and correct on and as the date hereof as if made on and as of such date.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Joinder Agreement as of the date first written above.

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date first written above:

[EACH GRANTOR PLEDGING
ADDITIONAL COLLATERAL]

By: _____
Name:
Title:

_____,
as Collateral Agent

By: _____
Name:
Title: Authorized Signatory

ANNEX 3 TO SECURITY AGREEMENT

FORM OF
INTELLECTUAL PROPERTY SECURITY AGREEMENT[1]

This **[Copyright] [Patent] [Trademark] Security Agreement**, dated as of _____ __, 20__, is made by each of the entities listed on the signature pages hereof (each, together with their successors and, if permitted, assigns, a "**Grantor**" and, collectively, the "**Grantors**"), in favor of _____, for itself and as collateral agent for certain Purchaser Parties (as defined in the Purchase Agreement) (in such capacity, together with its successors and permitted assigns, the "**Collateral Agent**").

W I T N E S S E T H:

WHEREAS, pursuant to the Purchase Agreement, dated as of October 16, 2024 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Purchase Agreement**"), between the Company, various purchasers listed therein (together with their successors and permitted assigns, the "**Purchasers**") and the Collateral Agent, the Purchasers have agreed to purchase secured notes from the Company upon the terms and subject to the conditions set forth therein and the Collateral Agent has agreed to act as collateral agent of the Purchasers; and

WHEREAS, each Grantor (other than the Company) has guaranteed the Obligations (as defined in the Purchase Agreement) of the Company and other Company Parties (as defined in the Purchase Agreement) and all of the Grantors are party to a Security Agreement of even date herewith with the Collateral Agent (the "**Security Agreement**") pursuant to which the Grantors are required to execute and deliver this [Copyright] [Patent] [Trademark] Security Agreement.

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent to enter into the Purchase Agreement and to induce the initial Purchasers to make purchase notes from the Company thereunder, each Grantor hereby agrees with the Collateral Agent as follows:

Section 1. Defined Terms. Capitalized terms used herein without definition have the meanings ascribed to such terms in the Security Agreement.

Section 2. Grant of Security Interest in [Copyright] [Trademark] [Patent] Collateral. Each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of such Grantor, hereby mortgages, pledges and hypothecates to the Collateral Agent for the benefit of the Purchaser Parties, and grants to the Collateral Agent for the benefit of the Purchaser Parties a Lien on and security interest in, all of its rights, title and interests in, to and under the following Collateral of such Grantor (the "**[Copyright] [Patent] [Trademark] Collateral**"):

(a) [all of its Copyrights and all IP Licenses providing for the grant by or to such Grantor of any right under any Copyright, including, without limitation, those referred to on **Schedule 1** hereto;

(b) all renewals, reversions and extensions of the foregoing; and

[1] Separate agreements should be executed relating to each Grantor's respective Copyrights, Patents, and Trademarks.

(c) all income, royalties, proceeds and Losses at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Patents and all IP Licenses providing for the grant by or to such Grantor of any right under any Patent, including, without limitation, those referred to on **Schedule 1** hereto;

(b) all reissues, reexaminations, continuations, continuations-in-part, divisionals, renewals and extensions of the foregoing; and

(c) all income, royalties, proceeds and Losses at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Trademarks and all IP Licenses providing for the grant by or to such Grantor of any right under any Trademark, including, without limitation, those referred to on **Schedule 1** hereto;

(b) all renewals and extensions of the foregoing;

(c) all goodwill of the business connected with the use of, and symbolized by, each such Trademark; and

(d) all income, royalties, proceeds and Losses at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

Section 3. Security Agreement. The security interest granted pursuant to this [Copyright] [Patent] [Trademark] Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and each Grantor hereby acknowledges and agrees that the rights and remedies of the Collateral Agent with respect to the security interest in the [Copyright] [Patent] [Trademark] Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

Section 4. Grantor Remains Liable. Each Grantor hereby agrees that, anything herein to the contrary notwithstanding, such Grantor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with their [Copyrights] [Patents] [Trademarks] and IP Licenses subject to a security interest hereunder.

Section 5. Counterparts. This [Copyright] [Patent] [Trademark] Security Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart.

Section 6. Governing Law. This [Copyright] [Patent] [Trademark] Security Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of Delaware.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each Grantor has caused this [Copyright] [Patent] [Trademark] Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

[GRANTOR]
as Grantor

By: _____
Name:
Title:

ACKNOWLEDGMENT OF GRANTOR

STATE OF)
) ss.
COUNTY OF)

On this ___ day of _____, 20__ before me personally appeared _____, proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of _____, who being by me duly sworn did depose and say that he is an authorized officer of said [corporation][limited liability company], that the said instrument was signed on behalf of said [corporation][limited liability company] as authorized by its [Board of Directors][Board of Managers] and that he acknowledged said instrument to be the free act and deed of said [corporation][limited liability company].

_____
Notary Public

SCHEDULE 1 TO
[COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT

[Copyright] [Patent] [Trademark] Registrations

A. REGISTERED [COPYRIGHTS] [PATENTS] [TRADEMARKS]

[Include Registration Number and Date]

B. [COPYRIGHT] [PATENT] [TRADEMARK] APPLICATIONS

[Include Application Number and Date]

C. IP LICENSES

[Include complete legal description of agreement (name of agreement, parties and date)]

Exhibit 10.5

GUARANTY

This **Guaranty** (this "**Guaranty**"), dated as of October 16, 2024, by ReShape Lifesciences Inc., a Delaware corporation (together with its successors and, if permitted, assigns, the "**Company**") and each of the other entities listed on the signature pages hereof as guarantor or that becomes a party hereto as such pursuant to **Section 2.4** (together with their successors and, if permitted, assigns and the Company, the "**Guarantors**"), in favor of _____, a Delaware limited liability company, as collateral agent (in such capacity, and together with its successors and, if permitted, assigns, the **"Collateral Agent"**) under the Purchase Agreement (as defined below), the holders (together with their successors and, if permitted, assigns, the "**Holders**" or the "**Purchasers**") of the Notes issued and sold by the Company pursuant to, the Securities Purchase Agreement, dated as of October 16, 2024, by and among the Company and the Holders (the "**Purchase Agreement**") and the other Purchaser Parties (as defined in the Purchase Agreement). Capitalized terms used but not defined herein are used as defined in the Purchase Agreement or, if not defined therein, encompass all items covered by the definition of such term in any Note.

W I T N E S S E T H:

WHEREAS, pursuant to the Purchase Agreement, the Holders have severally agreed to purchase the Notes from the Company upon the terms and subject to the conditions set forth therein;

WHEREAS, the Collateral Agent has agreed to serve as collateral agent for the Holders under the Purchase Agreement;

WHEREAS, each Guarantor has agreed to guaranty the Guaranteed Obligations, as defined below;

WHEREAS, each Guarantor will derive substantial direct and indirect benefits from the purchase of the Notes under the Purchase Agreement; and

WHEREAS, it is a condition precedent to the obligation of the initial Holders to purchase the Notes from the Company under the Purchase Agreement that the Guarantors shall have executed this Guaranty and delivered it to such initial Holders;

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained in this Agreement, to induce the initial Holders and the Collateral Agent to enter into the Purchase Agreement and the initial Holders to purchase the Notes from the Company thereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I GUARANTY

1. Guaranty. To induce the initial Holders to purchase the Notes and the Collateral Agent to enter into the Purchase Agreement, each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment when due, whether at stated maturity or earlier, by reason of acceleration, mandatory prepayment or otherwise in accordance with any Transaction Document, of all the Obligations owing by any other Company Party to any Holder, the Collateral Agent or any other Purchaser Party whether existing on the date hereof or hereinafter incurred or created (the "**Guaranteed Obligations**"). This guaranty by each Guarantor hereunder constitutes a guaranty of payment and not of collection.

2. Limitation of Guaranty. Any term or provision of this Guaranty or any other Transaction Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor that is not a direct or indirect owner of stock in the Company (each a **"Subsidiary Guarantor"**) shall be liable hereunder shall not exceed the maximum amount for which such Subsidiary Guarantor can be liable without rendering this Guaranty or any other Transaction Document, as it relates to such Subsidiary Guarantor, subject to avoidance under applicable Regulations relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of title 11 of the United States Code or any applicable provisions of comparable Requirements of Law) (collectively, "**Fraudulent Transfer Laws**"). Any analysis of the provisions

of this Guaranty for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in **Section 3** and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under this Guaranty.

3. Contribution. To the extent that any Subsidiary Guarantor shall be required hereunder to pay any portion of any Guaranteed Obligation exceeding the greater of (a) the amount of the economic benefit actually received by such Subsidiary Guarantor from the Notes and other Obligations owing to each Holder, the Collateral Agent and each Purchaser Party and (b) the amount such Subsidiary Guarantor would otherwise have paid if such Subsidiary Guarantor had paid the aggregate amount of the Guaranteed Obligations (excluding the amount thereof repaid by the Company and any Guarantor that is not a Subsidiary Guarantor) in the same proportion as such Subsidiary Guarantor's net worth on the date enforcement is sought hereunder bears to the aggregate net worth of all the Subsidiary Guarantors on such date, then such Subsidiary Guarantor shall be reimbursed by such other Subsidiary Guarantors for the amount of such excess, pro rata, based on the respective net worth of such other Subsidiary Guarantors on such date.

4. Authorization; Other Agreements. The Holders, the Collateral Agent, the Purchaser Parties and each other holder of an Obligation or holder or beneficiary of a Guaranteed Obligation or beneficiary of a Lien granted under any Transactional Document (collectively, and together with their successors and permitted assigns, the "**Beneficiaries**") are hereby authorized, without notice to or demand upon any Guarantor and without discharging or otherwise affecting the obligations of any Guarantor hereunder and without incurring any liability hereunder, from time to time, to do each of the following:

(a) (i) modify, amend, supplement or otherwise change, (ii) accelerate or otherwise change the time of payment or (iii) waive or otherwise consent to noncompliance with, any Guaranteed Obligation or any Transaction Document;

(b) apply any sums by whomever paid or however realized to any Guaranteed Obligation in such order as provided in the Transaction Documents;

(c) refund at any time any payment received by any Beneficiary in respect of any Guaranteed Obligation;

(d) (i) enter into an sale, lease, license, assignment, transfer, conveyance or other disposition with respect to, or exchange, enforce, waive, substitute, liquidate, terminate, release, abandon, fail to perfect, subordinate, accept, substitute, surrender, exchange, affect, impair or otherwise alter or release, any Collateral for any Guaranteed Obligation or any other guaranty therefor in any manner, (ii) receive, take and hold additional Collateral to secure any Guaranteed Obligation, (iii) add, release or substitute any one or more other Guarantors, makers or endorsers of any Guaranteed Obligation or any part thereof and (iv) otherwise deal in any manner with the Company and any other Guarantor, maker or endorser of any Guaranteed Obligation or any part thereof; and

(e) settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations.

5. Guaranty Absolute and Unconditional. Each Guarantor hereby waives and agrees not to assert any defense, whether arising in connection with or in respect of any of the following or otherwise, and hereby agrees that its obligations under this Guaranty are irrevocable, absolute and unconditional and shall not be discharged as a result of or otherwise affected by any of the following (which may not be pleaded and evidence of which may not be introduced in any proceeding with respect to this Guaranty, in each case except as otherwise agreed in writing by the Collateral Agent):

(a) the invalidity or unenforceability of any obligation of the Company or any other Guarantor under any Transaction Document or any other agreement or instrument relating thereto (including any amendment, consent or waiver thereto), or any security for, or other guaranty of, any Guaranteed Obligation or any part thereof, or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations or any part thereof;

(b) the absence of (i) any attempt to collect any Guaranteed Obligation or any part thereof or from the Company or any other Guarantor or other action to enforce any of the same or (ii) any action to enforce any Transaction Document or any Lien thereunder;

(c) the failure by any Person to take any steps to perfect and maintain any Lien on, or to preserve any rights with respect to, any Collateral;

(d) any workout, insolvency, bankruptcy proceeding, reorganization, arrangement, liquidation or dissolution by or against the Company, any other Guarantor or any of the Company's other Subsidiaries or any procedure, agreement, order, stipulation, election, action or omission thereunder, including any discharge or disallowance of, or bar or stay against collecting, any Guaranteed Obligation (or any interest thereon) in or as a result of any such proceeding;

(e) any foreclosure, whether or not through judicial sale, and any other Sale involving Collateral or any election following the occurrence of an Event of Default by any Beneficiary to proceed separately against any Collateral in accordance with such Beneficiary's rights under any applicable law (including any applicable Regulation or Consent of any Governmental Authority); or

(f) any other defense, setoff, counterclaim or any other circumstance that might otherwise constitute a legal or equitable discharge of the Company, any other Guarantor or any of the Company's other Subsidiaries, in each case other than the payment in full of the Guaranteed Obligations.

6. Waivers. Each Guarantor hereby unconditionally and irrevocably waives and agrees not to assert any claim, defense, setoff or counterclaim based on diligence, promptness, presentment, requirements for any demand or notice hereunder including any of the following: (a) any demand for payment or performance and protest and notice of protest, (b) any notice of acceptance, (c) any presentment, demand, protest or further notice or other requirements of any kind with respect to any Guaranteed Obligation (including any accrued but unpaid interest thereon) becoming immediately due and payable and (d) any other notice in respect of any Guaranteed Obligation or any part thereof, and any defense arising by reason of any disability or other defense of the Company or any other Guarantor. Each Guarantor further unconditionally and irrevocably agrees not to (x) enforce or otherwise exercise any right of subrogation or any right of reimbursement or contribution or similar right against the Company or any other Guarantor by reason of any Transaction Document or any payment made thereunder or (y) assert any claim, defense, setoff or counterclaim it may have against any other Company Party or set off any of its obligations to such other Company Party against obligations of such Company Party to such Guarantor. No obligation of any Guarantor hereunder shall be discharged other than by complete performance.

7. Reliance. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Company, each other Guarantor and any other guarantor, maker or endorser of any Guaranteed Obligation or any part thereof, and of all other circumstances bearing upon the risk of nonpayment of any Guaranteed Obligation or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that no Beneficiary shall have any duty to advise any Guarantor of information known to it regarding such condition or any such circumstances. In the event any Beneficiary, in its sole discretion, undertakes at any time or from time to time to provide any such information to any Guarantor, such Beneficiary shall be under no obligation to (a) undertake any investigation not a part of its regular business routine, (b) disclose any information that such Beneficiary, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (c) make any future disclosures of such information or any other information to any Guarantor.

ARTICLE II MISCELLANEOUS

1. Representations and Warranties; Covenants. To induce the initial Holders and the Collateral Agent to enter into the Transaction Documents, each Guarantor hereby agrees to each of the following with the Holders, the Collateral Agent and the other Beneficiaries, as long as any Guaranteed Obligation remains outstanding with respect to any Guarantor:

(a) the representations and warranties as to such Guarantor and its Subsidiaries made by the Company in **Section 3.1 (Representations and Warranties of the Company Parties)** of the Purchase Agreement are true and correct on each date it is made thereunder; and

(b) such Guarantor agrees to comply with all covenants and other provisions applicable to it under the Purchase Agreement and each Note, including **Article IV (Other Agreements of the Parties)**, which includes indemnification provisions, and **Section 6.2 (Fees and Expenses)** of the Purchase Agreement and **Sections 6 (Negative Covenants), 7 (Events of Default), 8(k) (Non-Public Information)** and **8(l) (Public Disclosures)** of each Note.

2. Independent Obligations. The obligations of each Guarantor hereunder are independent of and separate from the Guaranteed Obligations. If any Guaranteed Obligation is not paid when due, or upon any Event of Default, a Holder, the Collateral Agent or any other Beneficiary may, at its sole election, proceed directly and at once, without notice, against any Guarantor to collect and recover the full amount or any portion of any Guaranteed Obligation then due, without first proceeding against any other Guarantor or any other Company Party and without first joining any other Guarantor or any other Company Party in any proceeding.

3. Amendments; Counterparts; Electronic Signatures; Entire Agreement. None of the terms or provisions of this Guaranty may be waived, amended, supplemented or otherwise modified except in accordance with **Section 6.3(b) (Amendments)** of the Purchase Agreement. Furthermore, this Guaranty may be executed in counterparts as provided in **Section 6.3(e) (Counterparts)** of the Purchase Agreement and, as provided in **Section 6.3(f) (Electronic Signatures)** of the Purchase Agreement, electronic signatures have the same force and effect as manual signatures. Finally, as described in **Section 6.3(a) (Entire Agreement)** of the Purchase Agreement, this Guaranty and the other Transaction Documents contain and constitute the entire agreement of the parties with respect to the subject matter hereof.

4. Additional Guarantors. The Company shall cause any Subsidiary that is not a Guarantor to become a Guarantor hereunder, such Subsidiary shall execute and deliver to the Holders and the Collateral Agent a Joinder Agreement substantially in the form of Annex 1 and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Guarantor party hereto on the date hereof.

5. Successors and Assigns. This Guaranty shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of each Beneficiary and their successors and assigns; provided, however, that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Guaranty without the prior written consent of the Required Purchasers and the Collateral Agent (and any attempt to effect such assignment, transfer or delegation without such consent shall be null and void at the outset) unless specifically authorized in the Purchase Agreement.

6. Notices. All notices, requests and demands to or upon any Holder, the Collateral Agent or any Guarantor hereunder shall be effected in the manner provided for in **Section 6.4 (Notices)** of the Purchase Agreement; **provided**, that any such notice, request or demand to or upon any Guarantor shall be addressed to the Company's notice address set forth in such **Section 6.4**.

7. Governing Law. **Each Guarantor agrees to Section 6.6 (Governing Law; Courts) of the Purchase Agreement, including that (a) this Guaranty and all claims, disputes, Proceedings, and matters related hereto or thereto or arising hereunder or thereunder or arising from or relating to the relationship among any of the parties hereto or thereto, are governed by, and shall be construed, interpreted and enforced exclusively in accordance with, the laws of the State of Delaware (without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware) and (b) any such Proceeding shall be brought exclusively in the Delaware state courts sitting in Wilmington, DE or the federal courts of the United States of America for the District of Delaware sitting in Wilmington, DE; provided, that the Collateral Agent, any Holder and any Purchaser Party may bring Proceedings in other jurisdictions to enforce any Transaction Document.** Each Company Party hereby accepts such jurisdiction, waives any objections to venue, and agrees that a final judgment in any such Proceeding shall be conclusive and enforceable in other jurisdictions, all as provided in the Purchase Agreement and accepts that service of process may be made in the way set forth in the Purchase Agreement.

8. Waiver of Jury Trial. **Each party hereto hereby agree to Section 6.16 (Waiver of Jury Trial and Certain Other Rights) of the Purchase Agreement whereby, among other things, it irrevocably waives trial by jury in any Proceeding with respect to, or directly or indirectly arising out of, relating to or in connection with, this Guaranty or any other Transaction Document or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory).** Each party hereto (a) certifies that no other party, no Beneficiary and no affiliate or representative of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Guaranty by the mutual waivers and certifications in this **Section 8**.

9. Interpretation. This Guaranty is a Transaction Document and as such is subject to various interpretative, amendment and third party beneficiary and other miscellaneous provisions set forth in the Purchase Agreement that expressly apply to Transaction Documents, located principally in **Article VI** thereof, including **Sections 6.3(d) (No Implied Waivers or Notice Rights), 6.5 (Set off), 6.7 (Severability), 6.11 (Marshaling, Payments Set Aside)** and **6.12 (Usury)** thereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Guaranty as of the date first written above.

ReShape Lifesciences Inc.
as Company and Guarantor

By: _____
Name: Paul F. Hickey
Title: President and CEO

[OTHER GUARANTORS]
as Guarantor

By: _____
Name:
Title:

ACCEPTED AND AGREED
as of the date first above written:

_____,
as Holder and Collateral Agent

By: _____
Name:
Title: Authorized Signatory

GUARANTY

ANNEX 1 TO GUARANTY

FORM OF JOINDER AGREEMENT

This **Joinder Agreement**, dated as of _____ __, 20__, is delivered pursuant to **Section 2.6** of the Guaranty, dated as of October 16, 2024, by ReShape Lifesciences Inc. and its Affiliates from time to time party thereto as Guarantors in favor of _____, as Collateral Agent and the Holders and other Beneficiaries referred to therein (the "**Guaranty**"). Capitalized terms used herein without definition are used as defined in the Guaranty.

By executing and delivering this Joinder Agreement, the undersigned, as provided in **Section 2.6** of the Guaranty, hereby becomes a party to the Guaranty as a Guarantor thereunder with the same force and effect as if originally named as a Guarantor therein and, without limiting the generality of the foregoing, expressly assumes all obligations and liabilities of a Guarantor thereunder and hereby agrees to be bound as a Guarantor for purposes thereof.

The undersigned hereby represents and warrants that each of the representations and warranties contained in **Article II** of the Guaranty applicable to it is true and correct on and as the date hereof as if made on and as of such date.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Joinder Agreement as of the date first written above.

[ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date first written above:

_____,
as Holder and Collateral Agent

_____
By:
Name:
Title: Authorized Signatory

Exhibit 10.6

RESHAPE LIFESCIENCES INC. - LOCK-UP AGREEMENT

_____
_____
_____

Ladies and Gentlemen:

The undersigned understands that ReShape Lifesciences Inc., a Delaware corporation (the "**Company**"), entered into a Securities Purchase Agreement (the "**SPA**") on October 16, 2024, with each purchaser (each, an "**Investor**", and collectively "**Investors**") identified on the signature page of the SPA, and _____, as collateral agent for Investors, providing for the purchase (the "**Transaction**") of senior secured convertible promissory notes (the "**Notes**") securities, and, in connection therewith, to enter into a registration rights agreement with the Investors. Capitalized terms used but not defined in this letter agreement shall have the meanings ascribed to such terms in the SPA.

To induce the Company to enter into and consummate the Transaction, the undersigned hereby irrevocably enters into this Lock-Up Agreement (this "**Agreement**") with the Investors and agrees that the undersigned will not, during the period commencing on the date hereof and ending on the date that is the later of payment in full in cash or conversion of the Notes and related obligations (the "**Lock-Up Period**"), (1) offer, pledge, sell, contract to sell, grant, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for shares of Common Stock, or any other Common Stock Equivalents, whether now owned or hereafter acquired by the undersigned (or any Affiliate of the undersigned) or with respect to which the undersigned (or any Affiliate of the undersigned) has or hereafter acquires the power of disposition (collectively, the "**Lock-Up Securities**"); (2) enter into any swap or other Derivative or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Lock-Up Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise; (3) make any demand for or exercise any right with respect to the registration of any Lock-Up Securities; or (4) publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement relating to any Lock-Up Securities.

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer Lock-Up Securities in connection with:

1. transfers of Lock-Up Securities as a *bona fide* gift, by will or intestacy or to a family member or trust for the benefit of the undersigned (for purposes of this lock-up agreement, "family member" means any relationship by blood, marriage or adoption, not more remote than first cousin) provided that the transferee agrees to sign and deliver a lock-up agreement substantially in the form of this lock-up agreement for the balance of the Lock-Up Period;

2. transfers of Lock-Up Securities to a charity or educational institution;

3. if the undersigned is a corporation, partnership, limited liability company or other business entity, (i) any transfers of Lock-Up Securities to another corporation, partnership or other business entity that controls, is controlled by or is under common control with the undersigned or (ii) distributions of Lock-Up Securities to members, partners, stockholders, subsidiaries or affiliates (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned as of the date of this Agreement, provided that the transferee agrees to sign and deliver a lock-up agreement substantially in the form of this lock-up agreement for the balance of the Lock-Up Period;

4. if the undersigned is a trust, to a trustee or beneficiary of the trust provided that any such transfer shall not involve a disposition for value, (ii) each transferee shall sign and deliver to the Company a lock-up agreement substantially in the form of this lock-up agreement and (iii) no filing under Section 13 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") or other public announcement shall be required or shall be voluntarily made during the Lock-Up Period;

5. the receipt by the undersigned from the Company of shares of Common Stock upon the vesting of restricted stock awards or stock units or upon the exercise of options to purchase shares of Common Stock issued under an equity incentive plan of the Company or an employment arrangement (the "**Plan Shares**") or the transfer or withholding of shares of Common Stock or any securities convertible into shares of Common Stock to the Company upon a vesting event of the Company's securities or upon the exercise of options to purchase the Company's securities, in each case on a "cashless" or "net exercise" basis or to cover tax obligations of the undersigned in connection with such vesting or exercise provided that (i) such shares are covered by this agreement and (ii) if the undersigned is required to file a report under Section 13 of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock during the Lock-Up Period, the undersigned shall include a statement in such schedule or report to the effect that such reduction is attributable to the "cashless" or "net exercise" of the options or to cover tax withholding obligations of the undersigned in connection with such vesting or exercise and, provided further that the Plan Shares shall be subject to the terms of this lock-up agreement;

6. the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Lock-Up Securities provided that (i) such plan does not provide for the transfer of Lock-Up Securities during the Lock-Up Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such public announcement or filing shall include a statement to the effect that no transfer of Lock-Up Securities may be made under such plan during the Lock-Up Period;

7. the transfer of Lock-Up Securities that occurs by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce settlement, provided that the transferee agrees to sign and deliver a lock-up agreement substantially in the form of this lock-up agreement for the balance of the Lock-Up Period, and provided further that any filing under Section 13 of the Exchange Act that is required to be made during the Lock-Up Period as a result of such transfer shall include a statement that such transfer has occurred by operation of law; and

8. the transfer of Lock-Up Securities pursuant to a bona fide third party tender offer, merger, consolidation or other similar transaction made to all holders of shares of Common Stock involving a change of control (as defined below) of the Company after the closing of the Transaction and approved by the Company's board of directors; provided that in the event that the tender offer, merger, consolidation or other such transaction is not completed, the Lock-Up Securities owned by the undersigned shall remain subject to the restrictions contained in this lock-up agreement. For purposes of clause (i) above, "change of control" shall mean the consummation of any bona fide third party tender offer, merger, amalgamation, consolidation or other similar transaction the result of which is that any "person" (as defined in Section 13(d)(3) of the Exchange Act), or group of persons, becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 of the Exchange Act) of a majority of total voting power of the voting stock of the Company. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's Lock-Up Securities except in compliance with this lock-up agreement.

This Agreement may not be amended or otherwise modified in any respect without the written consent of each of the Company and the undersigned. This Agreement shall be governed by and construed in accordance with the law of the State of Delaware. The undersigned hereby irrevocably submits to the exclusive jurisdiction of the Delaware state courts sitting in Wilmington, DE or the federal courts of the United States of America for the District of Delaware sitting in Wilmington, DE, for the purposes of any suit, action or proceeding arising out of or relating to this Agreement, and hereby waives, and agrees not to assert in any such suit, action or proceeding, any claim that (i) it is not personally subject to the jurisdiction of such court, (ii) the suit, action or proceeding is brought in an inconvenient forum, or (iii) the venue of the suit, action or proceeding is improper. The undersigned hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by receiving a copy thereof sent to the Company at the address in effect for notices to it under the SPA and agrees that such service shall constitute good and sufficient service of process and notice thereof. The undersigned hereby waives any right to a trial by jury. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. The undersigned agrees and understands that this Agreement does not intend to create any relationship between the undersigned and any Purchaser and that no Purchaser is entitled to cast any votes on the matters herein contemplated and that no issuance or sale of the Securities is created or intended by virtue of this Agreement.

The undersigned understands that the Company is relying upon this lock-up agreement in proceeding toward consummation of the Transaction. The undersigned further understands that this lock-up agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representative, successors and assigns. This Letter Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provisions hereof be enforced by, any of other person or entity.

The undersigned understands that, if the SPA is not executed by October 16, 2024 or if the SPA (other than the provisions thereof which survive termination) shall terminate or be terminated, then this lock-up agreement shall be void and of no further force or effect.

Whether or not the Transaction actually occurs depends on a number of factors, including market conditions. Any Transaction will only be made pursuant to the SPA.

[ReShape Lifesciences Inc. Lock-Up Agreement Signature Page Follows]

[ReShape Lifesciences Inc. Lock-Up Agreement Signature Page]

The undersigned has read and agrees to be bound by the terms of this Lock-Up Agreement dated as of October 16, 2024.

Very truly yours,

_____
(Signature)
Name: _____

Address: _____

_____

_____

Email: _____

Acknowledged and Agreed
As of the date first written above:

,
as Investor and Collateral Agent

By: _____
Name:
Title:

Address for Notices:

Exhibit 10.7

LEAK-OUT AGREEMENT

THIS LEAK-OUT AGREEMENT (the "**Agreement**") is made and entered into as of October 16, 2024, between _____ (the "**Holder**") and ReShape Lifesciences Inc., a Delaware corporation (the "**Company**"). Capitalized terms used but not defined herein are used as defined in the Purchase Agreement (as defined below) or, if not defined therein, encompass all items covered by the definition of such term in any Note.

RECITALS

WHEREAS, the Company is the issuer of that certain Secured Convertible Promissory Note (the "**Note**" or "**Securities**") pursuant to that certain Securities Purchase Agreement (the "**Purchase Agreement**") dated as of the date hereof by and among the Company and the Holder;

WHEREAS, any capitalized terms not defined in this Agreement shall their respective meanings ascribed to them in the Purchase Agreement;

WHEREAS, the Holder owns the amount of Securities as listed on **Schedule A**;

WHEREAS, each of the Securities provides the Holder with the right to receive shares of the Company's common stock, par value $0.001 of the Company (the "**Common Stock**") through the conversion of the Notes; and

WHEREAS, the Company and the Holder agree to enter into this Agreement in order to provide for the orderly conversion of the Securities; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the others and to all third party beneficiaries of this Agreement that: (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is the binding and enforceable obligation of such party, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party's obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound.

2. Leak Out.

(a) Except as otherwise expressly provided herein, and subject to any other restrictions prohibiting the conversion, offer, sale or transfer of the shares of Common Stock under applicable United States federal or state securities laws, rules and regulations (collectively, the "**Regulations**"), the Company and the Holder agree that:

(i) Commencing the date of this Agreement, subject to any applicable Regulations, the Holder shall be entitled to convert the Note and sell the underlying shares, in accordance with the restrictions contained under Section 2(b) (the "**Leak Out**"). The

Leak Out will remain in effect so long as any Notes (as defined in that certain Securities Purchase Agreement, dated October 16, 2024, by and among the Company and the investors party thereto) or shares Common Stock of the Company remain outstanding, unless otherwise expressly extended in writing by the Holder (the "**Leak Out Period**"), at which time the Holder shall no longer be subject to the Leak Out restrictions, and shall be entitled to sell shares of Common Stock, as the Holder in their sole discretion may determine. In the event the Company terminates, reduces, waives or otherwise modifies any of the restrictions set forth in any other Leak-Out Agreement executed and delivered on or about the date hereof, then the Holder under this Agreement shall be entitled to the same modification of its restrictions hereunder.

(ii) Upon a breach of any representation, warranty or covenant of the Company pursuant to this Agreement, the Holder shall no longer be subject to the Leak Out restrictions, subject to any applicable Regulations.

(b) Commencing on the date of this Agreement, subject to any applicable Regulations, each Holder agrees, on behalf of itself and each affiliate (as defined in Rule 405 under the Securities Act of 1933, as amended) of the Holder which (x) had knowledge of the transactions contemplated hereby, (y) has or shares discretion relating to the Holder's investments or trading or information concerning the Holder's investments, including in respect of the Securities, or (z) is subject to the Holder's review or input concerning such affiliate's investments or trading (collectively, the "**Trading Affiliates**"), that, on any trading day during the Leak Out Period, the Holder will not, and will cause each of its Trading Affiliates not to, sell, dispose or otherwise transfer, in the aggregate, more than 10% of the composite daily trading volume of the Common Stock as reported by Bloomberg, LP.

3. Conflict. In the event there is a conflict between the terms of any of the Securities with this Agreement, the terms of this Agreement shall control any interpretation; provided, however, that, unless this Agreement expressly amends or supplements the language of the respective Security, the Security shall remain in full force and effect.

4. Remedies. The Holder shall have the right to specifically enforce all of the obligations of the Company under this Agreement (without posting a bond or other security), in addition to recovering damages by reason of any breach by the Company of any provision of this Agreement and to exercise all other rights granted by law and/or any of the documents related to the acquisition of the Securities by the Holder. The Company shall have the right to request statements and/or any transaction or trading records from the Holder at any time during the term of this Agreement. In the event that the Holder is found to have intentionally violated its obligations under this Agreement, such Holder will be precluded from trading for a period of ten (10) trading days (the "**Standstill Period**") and the Company shall not be required to honor any conversions, conversion notices during such Standstill Period.

5. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. By way of illustration and not limitation, so that the Company may monitor Holder's compliance with the terms hereof, the Holder shall provide to the Company brokerage account statements (or other suitable evidence, such as confirmations) on a monthly basis, and, upon reasonable demand. Such statements shall show the beginning securities balance, the number of securities sold during the month, and the ending securities balance.

6. Notices. All notices, instructions or other communications required or permitted to be given pursuant to this Agreement shall be given in writing and delivered by facsimile, certified mail, return receipt requested or overnight courier by a nationally recognized courier service to the respective address as set forth in the Note. All notices shall be deemed to be given on the same day if delivered by facsimile, on the following business day if sent by overnight delivery or on the third business day following the date of mailing.

7. Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof, and may not be amended except by a written instrument executed by the parties hereto. This Agreement supersedes any prior agreement (including, without limitation any prior lock-up or leak-out agreements), representation or understanding with respect to such subject matter.

8. **Governing Law. Each party agrees to Section 6.6 (Governing Law; Courts) of the Purchase Agreement, including that (a) this Agreement and all claims, disputes, Proceedings, and matters related hereto or thereto or arising hereunder or thereunder or arising from or relating to the relationship among any of the parties hereto or thereto, are governed by, and shall be construed, interpreted and enforced exclusively in accordance with, the laws of the State of Delaware (without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware) and (b) any such Proceeding shall be brought exclusively in the Delaware state courts sitting in Wilmington, DE or the federal courts of the United States of America for the District of Delaware sitting in Wilmington, DE; provided, that the Collateral Agent, any Holder and any Purchaser Party may bring Proceedings in other jurisdictions to enforce any Transaction Document. Each Company Party hereby accepts such jurisdiction, waives any objections to venue, and agrees that a final judgment in any such Proceeding shall be conclusive and enforceable in other jurisdictions, all as provided in the Purchase Agreement and accepts that service of process may be made in the way set forth in the Purchase Agreement.**

9. **Waiver of Jury Trial. Each party hereto hereby agree to Section 6.16 (Waiver of Jury Trial and Certain Other Rights) of the Purchase Agreement whereby, among other things, it irrevocably waives trial by jury in any Proceeding with respect to, or directly or indirectly arising out of, relating to or in connection with, this Guaranty or any other Transaction Document or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory).** Each party hereto (a) certifies that no other party, no Beneficiary and no affiliate or representative of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Guaranty by the mutual waivers and certifications in this Section 9.

10. Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

11. Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which shall remain in full force and effect, enforceable in accordance with its terms.

12. Effectiveness. This Agreement shall become effective immediately upon the full execution of this Agreement by the Company and the Holder. The Company agrees that the rest and the remainder of the terms and conditions of the Notes of the Company, not specifically altered by this Agreement shall remain in full force and effect, and inure to the benefit of the Holder.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as of the day and year first above written.

HOLDER:

_____

By: _____
Name:
Title: Authorized Signatory

COMPANY:

RESHAPE LIFESCIENCES INC.

By: _____
Name: Paul F. Hickey
Title: President and CEO

Schedule A

Purchaser	Initial Notes (Principal Amount)	Initial Notes (Purchase Price)	Additional Notes (Principal Amount)	Additional Notes (Purchase Price)
	$833,333.34	$750,000.00	$555,555.56	$500,000.00