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

FORM 10-Q

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

For the quarterly period ended June 30, 2023

OR

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

For the transition period from _____ to _____

Commission file number: 001-33221

HERON THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**94-2875566**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
4242 Campus Point Court, Suite 200 San Diego, CA	**92121**
(Address of principal executive offices)	(Zip Code)

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.01 per share	HRTX	The Nasdaq Capital Market

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

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

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☑	Smaller reporting company	☑
		Emerging growth company	☐

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

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

The number of shares of the registrant's common stock, par value $0.01 per share, outstanding as of July 25, 2023 was 140,759,276.

HERON THERAPEUTICS, INC.

FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2023

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PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

HERON THERAPEUTICS, INC.

Condensed Consolidated Balance Sheets
(In thousands)

	June 30, 2023 (Unaudited)	December 31, 2022 (See Note 2)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 13,462	$ 15,364
Short-term investments	19,782	69,488
Accounts receivable, net	76,693	52,049
Inventory	44,623	54,573
Prepaid expenses and other current assets	10,720	13,961
Total current assets	165,280	205,435
Property and equipment, net	20,873	22,160
Right-of-use lease assets	6,488	7,645
Other assets	8,583	15,711
Total assets	$ 201,224	$ 250,951
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,957	$ 3,225
Accrued clinical and manufacturing liabilities	19,881	24,468
Accrued payroll and employee liabilities	9,856	13,416
Other accrued liabilities	52,448	38,552
Current lease liabilities	2,580	2,694
Total current liabilities	86,722	82,355
Non-current lease liabilities	4,158	5,499
Non-current convertible notes payable, net	149,387	149,284
Other non-current liabilities	241	241
Total liabilities	240,508	237,379
Stockholders' equity (deficit):		
Common stock	1,199	1,191
Additional paid-in capital	1,829,805	1,807,855
Accumulated other comprehensive loss	(6)	(19)
Accumulated deficit	(1,870,282)	(1,795,455)
Total stockholders' equity (deficit)	(39,284)	13,572
Total liabilities and stockholders' equity	$ 201,224	$ 250,951

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(In thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenues:				
Net product sales	$ 31,762	$ 27,630	$ 61,377	$ 51,087
Operating expenses:				
Cost of product sales	20,158	16,175	37,012	27,530
Research and development	17,572	28,834	31,389	70,904
General and administrative	15,230	9,181	26,083	18,714
Sales and marketing	21,205	22,938	42,359	46,360
Total operating expenses	74,165	77,128	136,843	163,508
Loss from operations	(42,403)	(49,498)	(75,466)	(112,421)
Other income (expense), net	344	(6,861)	639	(7,826)
Net loss	(42,059)	(56,359)	(74,827)	(120,247)
Other comprehensive income (loss):				
Unrealized gains (losses) on short-term investments	(15)	(3)	13	(5)
Comprehensive loss	$ (42,074)	$ (56,362)	$ (74,814)	$ (120,252)
Basic and diluted net loss per share	$ (0.35)	$ (0.55)	$ (0.63)	$ (1.18)
Weighted average common shares outstanding, basic and diluted	119,719	102,405	119,484	102,265

See accompanying notes.

HERON THERAPEUTICS, INC.

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

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance as of December 31, 2022	119,155	$ 1,191	$ 1,807,855	$ (19)	$ (1,795,455)	$ 13,572
Issuance of common stock under equity incentive plan	125	2	(210)	—	—	(208)
Stock-based compensation expense	—	—	7,947	—	—	7,947
Net loss	—	—	—	—	(32,768)	(32,768)
Net unrealized gain on short-term investments	—	—	—	28	—	28
Comprehensive loss						(32,740)
Balance as of March 31, 2023	119,280	1,193	1,815,592	9	(1,828,223)	(11,429)
Issuance of common stock under equity incentive plan	330	3	(388)	—	—	(385)
Issuance of common stock under the employee stock purchase plan	346	3	701	—	—	704
Stock-based compensation expense	—	—	13,900	—	—	13,900
Net loss	—	—	—	—	(42,059)	(42,059)
Net unrealized loss on short-term investments	—	—	—	(15)	—	(15)
Comprehensive loss						(42,074)
Balance as of June 30, 2023	119,956	$ 1,199	$ 1,829,805	$ (6)	$ (1,870,282)	$ (39,284)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance as of December 31, 2021	102,005	$ 1,020	$ 1,689,987	$ (6)	$ (1,613,431)	$ 77,570
Issuance of common stock under equity incentive plan	138	1	(638)	—	—	(637)
Stock-based compensation expense	—	—	10,915	—	—	10,915
Net loss	—	—	—	—	(63,888)	(63,888)
Net unrealized loss on short-term investments	—	—	—	(2)	—	(2)
Comprehensive loss						(63,890)
Balance as of March 31, 2022	102,143	1,021	1,700,264	(8)	(1,677,319)	23,958
Issuance of common stock under equity incentive plan	154	2	(459)	—	—	(457)
Issuance of common stock under the employee stock purchase plan	201	2	770	—	—	772
Stock-based compensation expense	—	—	10,353	—	—	10,353
Net loss	—	—	—	—	(56,359)	(56,359)
Net unrealized loss on short-term investments	—	—	—	(3)	—	(3)
Comprehensive loss						(56,362)
Balance as of June 30, 2022	102,498	$ 1,025	$ 1,710,928	$ (11)	$ (1,733,678)	$ (21,736)

See accompanying notes.

HERON THERAPEUTICS, INC.

Condensed Consolidated Statements of Cash Flows
(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2023	**2022**
Operating activities:		
Net loss	$ (74,827)	$ (120,247)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	21,847	21,268
Depreciation and amortization	1,457	1,392
Amortization of debt issuance costs	103	100
(Accretion of discount) amortization of premium on short-term investments	(835)	93
Impairment of property and equipment	309	88
Loss on disposal of property and equipment	23	96
Change in operating assets and liabilities:		
Accounts receivable	(24,644)	(4,804)
Inventory	9,950	(12,936)
Prepaid expenses and other assets	10,369	4,098
Accounts payable	(1,268)	10,001
Accrued clinical and manufacturing liabilities	(4,587)	19,954
Accrued payroll and employee liabilities	(3,560)	1,060
Other accrued and other non-current liabilities	13,598	7,525
Net cash used in operating activities	(52,065)	(72,312)
Investing activities:		
Purchases of short-term investments	(28,381)	(58,945)
Maturities and sales of short-term investments	78,935	90,957
Purchases of property and equipment	(502)	(1,366)
Proceeds from the sale of property and equipment	—	56
Net cash provided by investing activities	50,052	30,702
Financing activities:		
Payments for stock issued under the equity incentive plan	(593)	(1,094)
Proceeds from purchases under the employee stock purchase plan	704	772
Net cash provided by (used in) financing activities	111	(322)
Net decrease in cash and cash equivalents	(1,902)	(41,932)
Cash and cash equivalents at beginning of year	15,364	90,541
Cash and cash equivalents at end of period	$ 13,462	$ 48,609
Supplemental disclosure of cash flow information:		
Interest paid	$ 1,125	$ 1,125

See accompanying notes.

In this Quarterly Report on Form 10-Q, all references to "Heron," the "Company," "we," "us," "our" and similar terms refer to Heron Therapeutics, Inc. and its wholly-owned subsidiary, Heron Therapeutics B.V. Heron Therapeutics®, the Heron logo, ZYNRELEF®, APONVIE®, CINVANTI®, SUSTOL®, and Biochronomer® are our trademarks. All other trademarks appearing or incorporated by reference into this Quarterly Report on Form 10-Q are the property of their respective owners.

1. Business

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

ZYNRELEF (bupivacaine and meloxicam) extended-release solution ("ZYNRELEF") is approved in the United States ("U.S.") and 30 European countries for the management of postoperative pain. APONVIE (aprepitant) injectable emulsion ("APONVIE") is approved in the U.S. for the prevention of postoperative nausea and vomiting. CINVANTI (aprepitant) injectable emulsion ("CINVANTI") and SUSTOL (granisetron) extended-release injection ("SUSTOL") are both approved in the U.S. for the prevention of chemotherapy-induced nausea and vomiting. HTX-034, an investigational agent, is our next-generation product candidate which has been evaluated for the management of postoperative pain. With the recent change of the executive management team, we decided to pause the development of HTX-034 to evaluate the program and market potential going forward.

As of June 30, 2023, we had cash, cash equivalents and short-term investments of $33.2 million. In July 2023, we entered into an agreement to sell shares of our common stock and pre-funded warrants (see Note 13) in a private placement. The private placement closed on July 25, 2023 and we received net proceeds of $29.7 million. In August 2023, we entered into a working capital facility agreement which provides an aggregate principal amount of up to $50.0 million. The working capital facility closed on August 9, 2023 at which time we received $24.5 million (see Note 13). Adjusting for net proceeds of $29.7 million from the private placement and proceeds of $24.5 million from the working capital facility, the Company has cash, cash equivalents and short-term investments of $87.4 million. Based on our current operating plan and projections, management believes that the Company's cash, cash equivalents and short-term investments, including the net proceeds from the July 2023 private placement and the proceeds from the working capital facility, will be sufficient to meet the Company's anticipated cash requirements for a period of at least one year from the date this Quarterly Report on Form 10-Q is filed with the U.S. Securities and Exchange Commission ("SEC").

2. Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, since they are interim statements, they do not include all of the information and disclosures required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three and six months ended June 30, 2023 are not necessarily indicative of the results that may be expected for other quarters or the year ending December 31, 2023. The condensed consolidated balance sheet as of December 31, 2022 has been derived from the audited financial statements as of that date. For more complete financial information, these condensed consolidated financial statements and the notes thereto should be read in conjunction with the audited financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2022, which was filed with the SEC on March 29, 2023.

3. Accounting Policies

Principles of Consolidation

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

Use of Estimates

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

Cash, Cash Equivalents and Short-term Investments

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

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

Concentration of Credit Risk

Cash, cash equivalents and short-term investments are financial instruments that potentially subject us to concentrations of credit risk. We deposit our cash in financial institutions. At times, such deposits may be in excess of insured limits. We have not experienced any losses in such accounts and believe we are not exposed to significant risk with respect to our cash, cash equivalents and short-term investments.

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

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

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

	Product Sales		Accounts Receivable
	Three Months Ended June 30, 2023	Six Months Ended June 30, 2023	As of June 30, 2023
Customer A	43.2%	42.3%	33.1%
Customer B	35.1%	37.2%	50.3%
Customer C	20.6%	19.3%	16.1%
Total	98.9%	98.8%	99.5%

Accounts Receivable, Net

Accounts receivable are recorded at the invoice amount, net of an allowance for credit losses. The allowance for credit losses reflects accounts receivable balances that are believed to be uncollectible. In estimating the allowance for credit losses, we consider: (1) our historical experience with collections and write-offs; (2) the credit quality of our Customers and any recent or anticipated changes thereto; (3) the outstanding balances and past due amounts from our Customers; and (4) reasonable and supportable forecast of economic conditions expected to exist throughout the contractual term of the receivable.

We offered extended payment terms to our Customers in connection with our product launch of APONVIE in March 2023. As of June 30, 2023 and December 31, 2022, we determined that an allowance for credit losses was not required. For the three and six months ended June 30, 2023 and 2022, we did not have any material write-offs of accounts receivable balances.

Inventory

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

Leases

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

Revenue Recognition

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

Product Sales

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

Revenue is recognized in an amount that reflects the consideration we expect to receive in exchange for our Products. To determine revenue recognition for contracts with customers within the scope of Topic 606, we perform the following 5 steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations of the contract(s); (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract(s); and (v) recognize revenue when (or as) we satisfy the performance obligations. We recognize revenue from product sales when there is a transfer of control of the product to our Customers. We typically determine transfer of control based on when the product is delivered, and title passes to our Customers.

Product Sales Allowances

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

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

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

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

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

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2023	2022	2023	2022
CINVANTI net product sales	$ 24,474	$ 22,661	$ 47,329	$ 43,004
SUSTOL net product sales	2,836	2,446	5,819	4,508
ZYNRELEF net product sales	4,128	2,523	7,661	3,575
APONVIE net product sales	324	—	568	—
Total net product sales	$ 31,762	$ 27,630	$ 61,377	$ 51,087

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

	Product Returns	Distributor Fees	Discounts, Rebates and Administrative Fees	Total
Balance at December 31, 2022	$ 3,336	$ 4,180	$ 25,801	$ 33,317
Provision	1,533	11,487	84,664	97,684
Payments/credits	(755)	(9,889)	(71,862)	(82,506)
Balance at June 30, 2023	$ 4,114	$ 5,778	$ 38,603	$ 48,495

Comprehensive Loss

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

Net Loss per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common shares outstanding for the period, without consideration of common stock equivalents. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of common shares and common stock equivalents outstanding for the period determined using the treasury stock method. For purposes of this calculation, stock options, restricted stock units, warrants and shares of common stock underlying convertible notes are considered to be common stock equivalents and are included in the calculation of diluted net loss per share only when their effect is dilutive.

Because we have incurred a net loss for all periods presented in the unaudited condensed consolidated statements of operations and comprehensive loss, the following common stock equivalents were not included in the computation of net loss per share because their effect would be anti-dilutive (in thousands):

	June 30,	
	2023	2022
Stock options outstanding	28,778	20,371
Restricted stock units outstanding	2,732	2,207
Warrants outstanding	8,548	—
Shares of common stock underlying convertible notes outstanding	9,819	9,819

Recent Accounting Pronouncements

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

4. Fair Value Measurements

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The FASB ASC Topic 820, *Fair Value Measurements and Disclosures*, establishes a fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

- Level 1—Observable inputs such as quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

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

		Fair Value Measurements at Reporting Date Using		
	Balance at June 30, 2023	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and money market funds	$ 13,462	$ 13,462	$ —	$ —
U.S. treasury bills and government agency obligations	16,323	16,323	—	—
Foreign commercial paper	3,459	—	3,459	—
Total	$ 33,244	$ 29,785	$ 3,459	$ —

		Fair Value Measurements at Reporting Date Using		
	Balance at December 31, 2022	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and money market funds	$ 13,867	$ 13,867	$ —	$ —
U.S. treasury bills and government agency obligations	35,715	35,715	—	—
U.S. corporate debt securities	1,497	—	1,497	—
U.S. commercial paper	5,481	—	5,481	—
Foreign commercial paper	28,292	—	28,292	—
Total	$ 84,852	$ 49,582	$ 35,270	$ —

We have not transferred any investment securities between the three levels of the fair value hierarchy.

As of June 30, 2023, short-term investments included $19.8 million of available-for-sale securities with contractual maturities of three months to one year. As of December 31, 2022, cash equivalents included $1.5 million of available-for-sale securities with contractual maturities of three months or less and short-term investments included $69.5 million of available-for-sale securities with contractual maturities of three months to one year. The money market funds as of June 30, 2023 and December 31, 2022 are included in cash and cash equivalents on the condensed consolidated balance sheets.

A company may elect to use fair value to measure accounts receivable, available-for-sale securities, accounts payable, guarantees and issued debt, among others. If the use of fair value is elected, any upfront costs and fees related to the item such as debt issuance costs must be recognized in earnings and cannot be deferred. The fair value election is irrevocable and generally made on an instrument-by-instrument basis, even if a company has similar instruments that it elects not to measure based on fair value. Unrealized gains and losses on existing items for which fair value has been elected are reported as a cumulative adjustment to beginning retained earnings and any changes in fair value are recognized in earnings. We have elected to not apply the fair value option to our financial assets and liabilities.

Financial instruments, including cash, cash equivalents, receivables, inventory, prepaid expenses, other current assets, accounts payable and accrued expenses are carried at cost, which is considered to be representative of their respective fair values because of the short-term maturity of these instruments. Short-term available-for-sale investments are carried at fair value. Our convertible notes outstanding at June 30, 2023 and December 31, 2022 do not have a readily available ascertainable market value, however, the carrying value is considered to approximate its fair value.

5. Short-term Investments

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

	June 30, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. treasury bills and government agency obligations	$ 16,329	$ —	$ (6)	$ 16,323
Foreign commercial paper	3,459	—	—	3,459
Total	$ 19,788	$ —	$ (6)	$ 19,782

	December 31, 2022			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
U.S. treasury bills and government agency obligations	$ 35,734	$ —	$ (19)	$ 35,715
U.S. commercial paper	5,481	—	—	5,481
Foreign commercial paper	28,292	—	—	28,292
Total	$ 69,507	$ —	$ (19)	$ 69,488

The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. We regularly monitor and evaluate the realizable value of our marketable securities. We did not recognize any impairment losses during the three and six months ended June 30, 2023 and 2022.

Unrealized gains and losses associated with our investments are reported in accumulated other comprehensive income (loss). Realized gains and losses associated with our investments, if any, are reported in the statements of operations and comprehensive loss. We recognized $1,000 in realized losses during the three and six months ended June 30, 2023. We did not recognize any realized gains or losses during the three and six months ended June 30, 2022.

6. Inventory

Inventory consists of the following (in thousands):

	June 30, 2023	December 31, 2022
Raw materials	$ 18,414	$ 15,137
Work in process	9,016	20,723
Finished goods	17,193	18,713
Total inventory	$ 44,623	$ 54,573

As of June 30, 2023, total inventory included $21.4 million related to CINVANTI, $19.9 million related to ZYNRELEF, $2.3 million related to SUSTOL and $1.0 million related to APONVIE. As of December 31, 2022, total inventory included $30.9 million related to ZYNRELEF, $19.9 million related to CINVANTI, $2.6 million related to SUSTOL and $1.2 million for APONVIE. For the three and six months ended June 30, 2023, cost of product sales included charges of $7.5 million and $12.8 million, respectively, resulting from the write-off of ZYNRELEF inventory. For the three and six months ended June 30, 2022, cost of product sales included charges of $2.5 million resulting primarily from the write-off of short-dated ZYNRELEF inventory.

7. Leases

As of June 30, 2023, we had an operating lease for 52,148 square feet of laboratory and office space in San Diego, California, with a lease term that expires on December 31, 2025. In October 2021, we entered into a sublease agreement to sublet 23,873 square feet of laboratory and office space. The space was delivered to the subtenant in March 2022. As a result of the sublease agreement, our one 5-year option to renew this lease on expiration applies only with respect to our remaining 28,275 square feet of laboratory and office space. During the three and six months ended June 30, 2023, we recognized $0.7 million and $1.4 million, respectively, of operating lease expense and we paid $1.0 million and $1.7 million, respectively, for our operating lease. During the three and six months ended June 30, 2022, we recognized $0.7 million and $1.4 million, respectively, of operating lease expense and we paid $0.7 million and $1.4 million, respectively, for our operating lease.

Annual future minimum lease payments as of June 30, 2023 are as follows (in thousands):

2023	$	1,247
2024		3,030
2025		3,097
2026		—
Total future minimum lease payments	$	7,374
Less: discount		(636)
Total lease liabilities	**$**	**6,738**

8. Reorganizations

June 2023 Reorganization

In June 2023, we implemented a restructuring plan under which we provided or will provide employees one-time severance payments upon termination, continuation of benefits for a specific period of time, outplacement services and certain stock award modifications. The total amount expected to be incurred for these activities is $2.8 million, which primarily consists of severance payments to terminated employees. During the three and six months ended June 30, 2023, we recognized $1.8 million of the total expense, $1.1 million of which was included in sales and marketing expense, $0.6 million of which was included in research and development expense, and $0.1 million of which was included in general and administrative expense. We expect to recognize the remaining expense during the third and fourth quarters of 2023. We anticipate that the cash payments due to terminated employees will be substantially complete in the first quarter of 2024.

Executive Officer Departures

During the second and third quarters of 2023, we also implemented changes to our executive leadership structure. In connection with these changes, we provided five executive officers, with one-time severance payments upon termination, continued benefits for a specified period of time, and certain stock option modifications. The anticipated total expense for these activities is $13.4 million, $4.7 million of which is primarily for severance and $8.7 million of which is for non-cash, stock-based compensation expense. During the three and six months ended June 30, 2023, we recognized $11.2 million of the total expense, $5.0 million of which was included in general and administrative expense, $3.9 million of which was included in sales and marketing expense, and $2.3 million of which was included in research and development expense. We expect to recognize the remaining expense of $2.2 million in the third quarter of 2023. As of June 30, 2023, we have paid $3.6 million of the total cash severance charges and we anticipate that the cash payments due to the terminated executive officers will be substantially complete in the third quarter of 2023.

June 2022 Reorganization

In June 2022, we implemented a restructuring plan under which we provided employees one-time severance payments upon termination, continuation of benefits for a specific period of time, outplacement services and certain stock award modifications. The total amount incurred for these activities was $5.4 million, $5.0 million of which was primarily for severance and $0.4 million of which was for non-cash, stock-based compensation expense related to stock award modifications. As of June 30, 2023, we have paid $5.0 million of the total cash severance charges.

We have accounted for these expenses in accordance with the FASB ASC Topic 420, *Exit or Disposal Cost Obligations*.

9. Convertible Notes

Senior Unsecured Convertible Notes

In May 2021, we entered into a note purchase agreement with funds affiliated with Baker Bros. Advisors LP for a private placement of $150.0 million in Senior Unsecured Convertible Notes ("Notes"). We received a total of $149.0 million, net of issuance costs, from the issuance of these Notes.

The Notes were issued at par. The Notes bear interest at a rate of 1.5% per annum, payable in cash semi-annually in arrears on June 15th and December 15th of each year, beginning on December 15, 2021. The Notes mature on May 26, 2026, unless earlier converted, redeemed or repurchased.

The Notes will be subject to redemption at our option, between May 24, 2024 and May 24, 2025, but only if the last reported sale price per share of our common stock exceeds 250% of the conversion price for a specified period of time, or on or after May 24, 2025 if the last reported sale price per share of our common stock exceeds 200% of the conversion price for a specified period of time. The redemption price will be equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest.

Upon conversion, we will settle the Notes in shares of our common stock. The initial conversion rate for the Notes is 65.4620 shares per $1,000 principal amount of the Notes (equivalent to an initial conversion price of $15.276 per share of common stock).

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

In May 2021, we filed a registration statement with the SEC to register for resale 12.4 million shares of our common stock underlying the Notes, including the maximum number of shares of common stock issuable under the make-whole premium.

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

We incurred issuance costs related to the Notes of $1.0 million, which we recorded as debt issuance costs and are included as a reduction to the Notes on the condensed consolidated balance sheets. The debt issuance costs are being amortized to interest expense using the effective interest rate method over the term of the Notes, resulting in an effective interest rate of 1.6%. For the three months ended June 30, 2023, interest expense related to the Notes was $614,000, which included $563,000 related to the stated interest rate and $51,000 related to the amortization of debt issuance costs. For the three months ended June 30, 2022, interest expense related to the Notes was $613,000, which included $563,000 related to the stated interest rate and $50,000 related to the amortization of debt issuance costs. For both the six months ended June 30, 2023 and 2022, interest expense related to the Notes was $1.2 million, which included $1.1 million related to the stated interest rate and $0.1 million related to the amortization of debt issuance costs. As of June 30, 2023, the carrying value of the Notes was $149.4 million, which is comprised of the $150.0 million principal amount of the Notes outstanding, less debt issuance costs of $0.6 million.

10. Stockholders' Equity

On August 8, 2022, we entered into an agreement to sell 16.1 million shares of our common stock in a private placement at a purchase price of $3.10 per share ("2022 Private Placement"). In addition, as a component of the 2022 Private Placement, we agreed to sell 8.5 million pre-funded warrants to purchase shares of our common stock at a purchase price of $3.0999 per share. The pre-funded warrants have an exercise price of $0.0001 per share. The total net proceeds from the sale of the common stock and pre-funded warrants was $75.1 million (net of $1.4 million in issuance costs). The 2022 Private Placement closed on August 10, 2022. In October 2022, we filed a registration statement with the SEC to register for resale 24.6 million shares of our common stock. The registration statement was declared effective on October 18, 2022.

11. Equity Incentive Plan

Option Plan Activity

The following table summarizes the stock option activity for the six months ended June 30, 2023:

	Shares (in thousands)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)
Outstanding at December 31, 2022	20,749	$ 14.61	6.44
Granted	11,688	$ 1.83	
Exercised	—	$ —	
Expired and forfeited	(3,659)	$ 9.23	
Outstanding at June 30, 2023	28,778	$ 10.10	6.18

The following table summarizes the restricted stock unit activity ("RSUs") for the six months ended June 30, 2023:

	Shares (in thousands)	Weighted-Average Grant Date Fair Value
Outstanding at December 31, 2022	3,167	$ 6.46
Granted	1,758	$ 2.39
Released	(732)	$ 8.12
Expired and forfeited	(1,461)	$ 4.06
Outstanding at June 30, 2023	2,732	$ 4.67

Stock-based Compensation

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Research and development	$ 3,846	$ 4,422	$ 6,785	$ 8,985
General and administrative	5,773	2,783	8,102	5,785
Sales and marketing	4,281	3,148	6,960	6,498
Total stock-based compensation expense	$ 13,900	$ 10,353	$ 21,847	$ 21,268

As of June 30, 2023, there was $35.6 million of total unrecognized compensation cost related to non-vested, stock-based payment awards granted under all of our equity compensation plans and all non-plan option grants. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures. We expect to recognize this compensation cost over a weighted-average period of three years.

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

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

	For the Six Months Ended June 30,	
	2023	2022
Risk-free interest rate	3.6%	3.1%
Dividend yield	0.0%	0.0%
Volatility	67.4%	60.8%
Expected life (years)	6 to 10	6

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

	For the Six Months Ended June 30,	
	2023	2022
Risk-free interest rate	5.1%	1.5%
Dividend yield	0.0%	0.0%
Volatility	97.1%	75.3%
Expected life (months)	6	6

12. Income Taxes

Deferred income tax assets and liabilities are recognized for temporary differences between financial statements and income tax carrying values using tax rates in effect for the years such differences are expected to reverse. Due to uncertainties surrounding our ability to generate future taxable income and consequently realize such deferred income tax assets, a full valuation allowance has been established. We continue to maintain a full valuation allowance against our deferred tax assets as of June 30, 2023.

The impact of an uncertain income tax position on the income tax return must be recognized at the largest amount that is more likely than not to be sustained upon audit by the relevant tax authority. An uncertain income tax position will be recognized when it is more likely than not of being sustained. The disclosures regarding uncertain tax positions included in our Annual Report on Form 10-K for the year ended December 31, 2022, which was filed with the SEC on March 29, 2023, continue to be accurate for the three and six months ended June 30, 2023.

13. Subsequent Events

2023 Private Placement

On July 21, 2023, we entered into a Securities Purchase Agreement (the "July 2023 Private Placement") with Rubric Capital Management L.P., Velan Capital, Clearline Capital and Hercules Capital, Inc. (collectively, the "Purchasers") whereby we sold 20.7 million shares of our common stock in a private placement at a purchase price of $1.37 per share. In addition, as a component of the July 2023 Private Placement, we sold 1.2 million pre-funded warrants to purchase shares of our common stock at a purchase price of $1.3699 per share. The pre-funded warrants have an exercise price of $0.0001 per share. The total estimated net proceeds from the sale of the common stock and pre-funded warrants is $29.7 million (net of $0.3 million in issuance costs). The July 2023 Private Placement closed on July 25, 2023.

Working Capital Facility Agreement

On August 9, 2023, we entered into a working capital facility agreement (the "Loan Agreement") with Hercules Capital, Inc., as administrative agent and collateral agent, and the lenders party thereto (the "Lenders"). The Loan Agreement provides an aggregate principal amount of up to $50.0 million with tranched availability as follows: $25.0 million at closing ("tranche 1A"), $5.0 million available through December 15, 2024 ("tranche 1B"), and $20.0 million available from the earlier of: (1) the full draw of tranche 1B and (2) the expiration of tranche 1B, and available through December 15, 2025 ("tranche 1C"), and in the case of tranches 1B and 1C, subject to certain customary conditions to draw down.

The Loan Agreement has a term of four years, with a spring maturity date that is 91 days prior to the stated maturity of our existing senior unsecured convertible notes (if still outstanding at such time). The loans thereunder do not have any scheduled amortization payments and accrue interest at a floating rate equal to, as of closing, 9.95% per annum, payable in cash on a monthly basis and upon maturity or payoff. In addition, under the terms of the Loan Agreement, the loans also accrue paid-in-kind interest at a fixed-rate of 1.5% per annum which is due upon maturity or payoff.

In addition, in connection with the entry into the Loan Agreement, we issued warrants to the Lenders to purchase up to an amount of shares of our common stock equal to 2.00% of the principal amount of loans funded by the Lenders (the "Warrant Coverage"). The Loan Agreement also requires that we issue additional warrants to the Lenders at the time of each draw down of tranches 1B and 1C with the same Warrant Coverage. Each warrant is exercisable for seven years from the date of issuance.

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

The following discussion and analysis of our financial condition and results of operations should be read together with our condensed consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and the audited financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2022, which was filed with the U.S. Securities and Exchange Commission ("SEC") on March 29, 2023.

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

Factors that might cause these differences include the following:

- our ability to successfully commercialize, market and achieve market acceptance of ZYNRELEF® (bupivacaine and meloxicam) extended-release solution ("ZYNRELEF") in the United States ("U.S."), the European Union ("EU"), the other countries in the European Economic Area ("EEA"), and any other countries in which we receive applicable regulatory approvals, and of CINVANTI® (aprepitant) injectable emulsion ("CINVANTI"), SUSTOL® (granisetron) extended-release injection ("SUSTOL") and APONVIE® (aprepitant) injectable emulsion ("APONVIE") in the U.S. (collectively, our "Products"), and our positioning relative to products that now or in the future compete with our Products or product candidates;
- the timing of the U.S. Food and Drug Administration's ("FDA") review process, whether and to what degree the FDA approves our currently pending, and any future, supplemental New Drug Application ("sNDA") for ZYNRELEF to further expand the U.S. label, and our ability to capture the potential additional market opportunity for any expanded U.S. label;
- our ability to establish satisfactory pricing and obtain adequate reimbursement from government and third-party payors of our Products and product candidates that receive regulatory approvals;
- whether study results of our Products and product candidates are indicative of the results in future studies;
- the results of the commercial launch of APONVIE in the U.S.;
- the timing and results of the commercial launch of ZYNRELEF in Europe;
- the potential regulatory approval for and commercial launch of any product candidates, if approved;
- the potential market opportunities for our Products and any product candidates, if approved;
- our competitors' activities, including decisions as to the timing of competing product launches, generic entrants, pricing and discounting;
- whether safety and efficacy results of our clinical studies and other required tests for expansion of the indications for our Products and approval of our product candidates provide data to warrant progression of clinical trials, potential regulatory approval or further development of any of our Products or product candidates;
- our ability to develop, acquire and advance product candidates into, and successfully complete, clinical studies, and our ability to submit for and obtain regulatory approval for product candidates in our anticipated timing, or at all;

- our ability to meet the postmarketing study requirements within the FDA's mandated timelines and to obtain favorable results and comply with standard postmarketing requirements, including U.S. federal advertising and promotion laws, federal and state anti-fraud and abuse laws, healthcare information privacy and security laws, safety information, safety surveillance and disclosure of payments or other transfers of value to healthcare professionals and entities for Products or any of our product candidates;
- our ability to successfully develop and achieve regulatory approval for any product candidates utilizing our proprietary Biochronomer® drug delivery technology ("Biochronomer Technology");
- our ability to establish key collaborations and vendor relationships for our Products and our product candidates;
- our ability to successfully develop and commercialize any technology that we may in-license or products we may acquire;
- unanticipated delays due to manufacturing difficulties, supply constraints or changes in the regulatory environment;
- our ability to successfully operate in non-U.S. jurisdictions in which we may choose to do business, including compliance with applicable regulatory requirements and laws;
- uncertainties associated with obtaining and enforcing patents and trade secrets to protect our Products, our product candidates, our Biochronomer Technology and our other technology, and our ability to successfully defend ourselves against unforeseen third-party infringement claims;
- our estimates regarding our capital requirements;
- the impact of our restructuring activities, including the reduced headcount and external spend; and
- our ability to obtain additional financing and raise capital as necessary to fund operations or pursue business opportunities.

Any forward-looking statements in this Quarterly Report on Form 10-Q reflect our current views with respect to future events or to our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under the section entitled "Risk Factors" in this Quarterly Report on Form 10-Q, as well as the "Risk Factors" disclosed in Item 1A of our Annual Report on Form 10-K. You should carefully review all of these factors. Given these uncertainties, you should not place undue reliance on these forward-looking statements. These forward-looking statements were based on information, plans and estimates as of the date of this Quarterly Report on Form 10-Q, and except as required by law, we assume no obligation to update any forward-looking statements to reflect changes in underlying assumptions or factors, new information, future events or other changes. These risk factors may be updated by our future filings under the Securities Exchange Act of 1934 ("Exchange Act"). You should carefully review all information therein.

Overview

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

Acute Care Product Portfolio

ZYNRELEF

ZYNRELEF was initially approved by the FDA in May 2021, and we commenced commercial sales in the U.S. in July 2021. In December 2021, the FDA approved our sNDA for ZYNRELEF, which significantly expanded the indication statement. ZYNRELEF is currently indicated for use in adults for soft tissue or periarticular instillation to produce postsurgical analgesia for up to 72 hours after foot and ankle, small-to-medium open abdominal, and lower extremity total joint arthroplasty surgical procedures.

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

In December 2022, we submitted an sNDA to the FDA requesting expansion of the indication statement for ZYNRELEF to broadly cover soft tissue and orthopedic surgical procedures. This sNDA is based on safety and pharmacokinetic data from clinical trials in total shoulder arthroplasty, spinal surgery, abdominoplasty, and C-section showing comparable results to the previously completed pivotal safety and efficacy trials of ZYNRELEF. The FDA accepted the sNDA for filing and set a Prescription Drug User Fee Act goal date of October 23, 2023. On July 31, 2023, Heron was notified by the FDA that the FDA was extending the goal date by three months to provide time for a full review of the submission. The FDA set a new extended PDUFA goal date of January 23, 2024.

In the fourth quarter of 2022, we validated large-scale manufacturing of our proprietary polymer and ZYNRELEF, which will allow for the manufacturing of millions of doses of ZYNRELEF annually at a significantly reduced cost of product sales.

In March 2022, the Centers for Medicare and Medicaid Services (“CMS”) approved a 3-year transitional pass-through status of ZYNRELEF, which became effective on April 1, 2022, for separate reimbursement outside of the surgical bundle payment in the Hospital Outpatient Department setting of care. In addition, in December 2022, H.R. 2617, the Omnibus spending bill was approved by Congress that includes a provision requiring CMS to pay for certain non-opioids outside the existing bundled payment for surgeries for the period January 1, 2025 to December 31, 2027.

ZYNRELEF was granted a marketing authorization by the European Commission (“EC”) in September 2020 and by the United Kingdom (“U.K.”) Regulatory Authority in January 2021. In August 2023, we cancelled the U.K. marketing authorization for ZYNRELEF, as we do not plan to commercially launch ZYNRELEF in the U.K. As of August 2, 2023, ZYNRELEF is approved in 30 European countries including the countries of the EU and EEA. ZYNRELEF is indicated in Europe for the treatment of somatic postoperative pain from small- to medium-sized surgical wounds in adults.

Health Canada issued a Notice of Compliance to commercialize ZYNRELEF in March 2022. In the second quarter of 2023, we withdrew our new drug submission, as we do not plan to commercially launch ZYNRELEF in Canada.

APONVIE

APONVIE was approved by the FDA in September 2022 and became commercially available in the U.S. in March 2023. APONVIE is indicated for the prevention of postoperative nausea and vomiting (“PONV”) in adults. CMS granted pass-through payment status for APONVIE, effective April 1, 2023.

APONVIE is the first and only intravenous formulation of a substance P/neurokinin-1 (“NK_1”) receptor antagonist indicated for PONV. Delivered via a single 30-second intravenous (“IV”) injection, APONVIE has demonstrated rapid achievement of therapeutic drug levels ideally suited for the surgical setting.

Oncology Care Product Portfolio

SUSTOL

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

SUSTOL is indicated in combination with other antiemetics in adults for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of moderately emetogenic chemotherapy (MEC) or anthracycline and cyclophosphamide (AC) combination chemotherapy regimens. SUSTOL is an extended-release, injectable 5-hydroxytryptamine type 3 ("5-HT_3") receptor antagonist that utilizes our Biochronomer Technology to maintain therapeutic levels of granisetron for ≥5 days. The SUSTOL global Phase 3 development program was comprised of two, large, guideline-based clinical studies that evaluated SUSTOL's efficacy and safety in more than 2,000 patients with cancer. SUSTOL's efficacy in preventing nausea and vomiting was evaluated in both the acute phase (0–24 hours following chemotherapy) and the delayed phase (24–120 hours following chemotherapy).

SUSTOL is the first extended-release 5-HT_3 receptor antagonist approved for the prevention of acute and delayed nausea and vomiting associated with both MEC and AC combination chemotherapy regimens. A standard of care in the treatment of breast cancer and other cancer types, AC regimens are among the most commonly prescribed HEC regimens, as defined by both the National Comprehensive Cancer Network ("NCCN") and the American Society of Clinical Oncology ("ASCO").

In February 2017, the NCCN included SUSTOL as a part of its NCCN Clinical Practice Guidelines in Oncology for Antiemesis Version 1.2017. The NCCN has given SUSTOL a Category 1 recommendation, the highest-level category of evidence and consensus, for use in the prevention of acute and delayed nausea and vomiting in patients receiving HEC or MEC regimens. The guidelines now identify SUSTOL as a "preferred" agent for preventing nausea and vomiting following MEC. Further, the guidelines highlight the unique, extended-release formulation of SUSTOL.

In January 2018, a product-specific billing code, or permanent J-code ("J-code"), for SUSTOL became available. The new J-code was assigned by CMS and has helped simplify the billing and reimbursement process for prescribers of SUSTOL.

CINVANTI

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

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

CINVANTI is an IV formulation of aprepitant, a substance NK_1 receptor antagonist. CINVANTI is the first IV formulation to directly deliver aprepitant, the active ingredient in EMEND® capsules. Aprepitant (including its prodrug, fosaprepitant) is the only single-agent NK_1 receptor antagonist to significantly reduce nausea and vomiting in both the acute phase (0–24 hours after chemotherapy) and the delayed phase (24–120 hours after chemotherapy). CINVANTI is the first and only IV formulation of an NK_1 receptor antagonist indicated for the prevention of acute and delayed nausea and vomiting associated with HEC and nausea and vomiting associated with MEC that is free of synthetic surfactants, including polysorbate 80.

NK_1 receptor antagonists are typically used in combination with 5-HT_3 receptor antagonists. The only other injectable NK_1 receptor antagonist currently approved in the U.S. for both acute and delayed chemotherapy induced nausea and vomiting ("CINV"), EMEND® IV (fosaprepitant), contains polysorbate 80, a synthetic surfactant, which has been linked to hypersensitivity reactions, including anaphylaxis, and infusion site reactions. The CINVANTI formulation does not contain polysorbate 80 or any other synthetic surfactant. Our CINVANTI data has demonstrated the bioequivalence of CINVANTI to EMEND IV, supporting its efficacy for the prevention of both acute and delayed nausea and vomiting associated with HEC and nausea and vomiting associated with MEC. Results also showed CINVANTI was better tolerated in healthy volunteers than EMEND IV, with significantly fewer adverse events reported with CINVANTI.

In January 2019, a J-code for CINVANTI became available. The new J-code was assigned by CMS and has helped simplify the billing and reimbursement process for prescribers of CINVANTI.

In February 2019, the FDA approved our sNDA for CINVANTI, for IV use, which expanded the administration of CINVANTI beyond the initially approved administration method (a 30-minute IV infusion) to include a 2-minute IV injection.

In October 2019, the FDA approved our sNDA for CINVANTI to expand the indication and recommended dosage to include the 130 mg single-dose regimen for patients receiving MEC.

In the fourth quarter of 2022, we validated larger-scale manufacturing of CINVANTI, which will significantly reduce the cost of product sales.

Biochronomer Technology

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

Critical Accounting Estimates

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

Our critical accounting estimates include: revenue recognition, investments, inventory and the related reserves, accrued research and development expenses, income taxes, and stock-based compensation. There have been no material changes to our critical accounting estimates disclosures included in our Annual Report on Form 10-K for the year ended December 31, 2022, which was filed with the SEC on March 29, 2023.

Recent Accounting Pronouncements

See Note 3 to the condensed consolidated financial statements included in Item 1 of this Quarterly Report on Form 10-Q.

Results of Operations for the Three and Six Months Ended June 30, 2023 and 2022

Net Product Sales

For the three and six months ended June 30, 2023, net product sales were $31.8 million and $61.4 million, respectively, compared to $27.6 million and $51.1 million, respectively, for the same periods in 2022.

Net Product Sales – Acute Care

For the three and six months ended June 30, 2023, net product sales of ZYNRELEF were $4.1 million and $7.7 million, respectively, compared to $2.5 million and $3.5 million, respectively, for the same periods in 2022. For the three and six months ended June 30, 2023, net product sales of APONVIE were $0.3 million and $0.6 million, respectively. APONVIE became commercially available in the U.S. in March 2023.

Net Product Sales – Oncology Care

For the three and six months ended June 30, 2023, net product sales of CINVANTI were $24.5 million and $47.3 million, respectively, compared to $22.7 million and $43.0 million, respectively, for the same periods in 2022. For the three and six months ended June 30, 2023, net product sales of SUSTOL were $2.9 million and $5.8 million, respectively, compared to $2.4 million and $4.5 million, respectively, for the same periods in 2022.

Cost of Product Sales

For the three and six months ended June 30, 2023, cost of product sales was $20.2 million and $37.0 million, respectively, compared to $16.2 million and $27.5 million, respectively, for the same periods in 2022. Cost of product sales primarily included raw materials, labor and overhead related to the manufacturing of our Products, as well as shipping and distribution costs. For the three and six months ended June 30, 2023, cost of product sales also included charges of $7.5 million and $12.8 million, respectively, compared to $2.5 million for the three and six months ended June 30, 2022, resulting primarily from the write-off of ZYNRELEF inventory.

We began capitalizing raw materials, labor and overhead related to the manufacturing of APONVIE following FDA approval in September 2022. There were no costs incurred prior to FDA approval for the commercial manufacturing of APONVIE.

Research and Development Expense

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
ZYNRELEF-related costs	$ 5,131	$ 12,452	$ 7,317	$ 37,615
SUSTOL-related costs	397	465	662	1,310
CINVANTI-related costs	491	717	1,184	2,077
APONVIE-related costs	1,234	465	1,850	728
HTX-034-related costs	3	114	15	287
Personnel costs and other expenses	6,470	10,199	13,576	19,902
Stock-based compensation expense	3,846	4,422	6,785	8,985
Total research and development expense	$ 17,572	$ 28,834	$ 31,389	$ 70,904

For the three and six months ended June 30, 2023, research and development expense was $17.6 million and $31.4 million, respectively, compared to $28.8 million and $70.9 million, respectively, for the same periods in 2022. The decrease was primarily due to decreases in costs related to ZYNRELEF, as production scale-up, validation activities and raw materials qualification were completed in 2022. In addition, the decrease in research and development expense was due to a decrease in personnel and related costs as a result of the savings from the June 2022 reduction in force.

General and Administrative Expense

For the three and six months ended June 30, 2023, general and administrative expense was $15.2 million and $26.1 million, respectively, compared to $9.2 million and $18.7 million, respectively, for the same periods in 2022. The increase was primarily due to severance and non-cash, stock-based compensation expense in connection with an executive departure in the second quarter of 2023, and ongoing legal costs associated with the CINVANTI patent litigation.

Sales and Marketing Expense

For the three and six months ended June 30, 2023, sales and marketing expense was $21.2 million and $42.4 million, respectively, compared to $22.9 million and $46.4 million, respectively, for the same periods in 2022. The decrease was primarily due to a decrease in costs to support the ongoing commercialization of ZYNRELEF, due to improved operational efficiencies.

Other Income (Expense), Net

For the three and six months ended June 30, 2023, other income (expense) was $0.3 million and $0.6 million, respectively, compared to ($6.9) million and ($7.8) million, respectively, for the same periods in 2022. The change for the three and six months ended June 30, 2023 was primarily due to the write-off of property and equipment at a third-party manufacturing site in 2022, as well as an increase in interest income earned on our invested cash balances in 2023.

Restructuring Plans

See Note 8 to the condensed consolidated financial statements included in Item 1 of this Quarterly Report on Form 10-Q for discussion of the June 2022 Reorganization and the June 2023 Reorganization.

Liquidity and Capital Resources

As of June 30, 2023, we had cash, cash equivalents and short-term investments of $33.2 million. In July 2023, we entered into an agreement to sell shares of our common stock and pre-funded warrants in a private placement. The private placement closed on July 25, 2023 and we received net proceeds of $29.7 million. In August 2023, we entered into a working capital facility agreement which provides an aggregate principal amount of up to $50.0 million. The working capital facility closed on August 9, 2023 at which time we received $24.5 million. Adjusting for net proceeds of $29.7 million from the private placement and proceeds of $24.5 million from the working capital facility, the Company has cash, cash equivalents and short-term investments of $87.4 million. Based on our current operating plan and projections, management believes that the Company's cash, cash equivalents and short-term investments, including the net proceeds from the July 2023 private placement and the proceeds from the working capital facility, will be sufficient to meet the Company's anticipated cash requirements for a period of at least one year from the date this Quarterly Report on Form 10-Q is filed with the SEC.

Our net loss for the three and six months ended June 30, 2023 was $42.1 million, or $0.35 per share, and $74.8 million, or $0.63 per share, respectively, compared to a net loss of $56.4 million, or $0.55 per share, and $120.2 million, or $1.18 per share, respectively, for the same periods in 2022.

Our net cash used in operating activities for the six months ended June 30, 2023 was $52.1 million, compared to $72.3 million for the same period in 2022. The decrease in net cash used in operating activities was primarily due to a decrease in net loss, partially offset by changes in working capital.

Our net cash provided by investing activities for the six months ended June 30, 2023 was $50.1 million, compared to $30.7 million for the same period in 2022. The increase in cash provided by investing activities was primarily due to net maturities of short-term investments of $50.6 million for the six months ended June 30, 2023, compared to $32.0 million for the same period in 2022.

Our net cash provided by financing activities for the six months ended June 30, 2023 was $0.1 million, compared to net cash used in financing activities of $0.3 million for the same period in 2022.

Historically, we have financed our operations, including technology and product research and development, primarily through sales of our common stock and debt financings.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not required for smaller reporting companies.

ITEM 4. CONTROLS AND PROCEDURES

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports, filed under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer, principal financial officer, and principal accounting officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable and not absolute assurance of achieving the desired control objectives. In reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, a control may become inadequate because of changes in conditions or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

As required by Exchange Act Rule 13a-15(b), we carried out an evaluation under the supervision and with the participation of our management, including our principal executive officer, principal financial officer, and principal accounting officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on the foregoing, our principal executive officer, principal financial officer, and principal accounting officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

There were no changes in our internal control over financial reporting that occurred during the quarter covered by this report that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

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

On July 27, 2022, the Company filed a complaint for patent infringement of the CINVANTI Patents against Fresenius Kabi and a related entity in the U.S. District Court for the District of Delaware in response to Fresenius Kabi's ANDA filing. The complaint seeks, among other relief, equitable relief enjoining Fresenius Kabi from infringing the CINVANTI Patents. The action is currently in fact discovery, and a five-day bench trial is scheduled for June 24, 2024. The Company intends to vigorously enforce its intellectual property rights relating to CINVANTI. As a result of filing our complaint for patent infringement, the FDA may not approve the ANDA until the earlier of December 14, 2024 or resolution of the litigation.

ITEM 1A. RISK FACTORS

Our business is subject to various risks, including those described in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022. There have been no material changes from the risk factors disclosed in Item 1A of our Annual Report on Form 10-K.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Description
3.1	Certificate of Amendment to the Certificate of Incorporation (incorporated by reference to our Current Report on Form 8-K, as Exhibit 3.1, filed on June 12, 2023)
10.1*+	Executive Employment Agreement, dated April 3, 2023, by and between the Company and Craig Collard
10.2*	Amendment to Executive Employment Agreement, dated May 5, 2023, by and between the Company and David Szekeres (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.2, filed on July 24, 2023)
10.3*+	Management Retention Agreement, dated June 6, 2023, by and between the Company and William Forbes
10.4*+	Management Retention Agreement, dated June 16, 2023, by and between the Company and Ira Duarte
10.5*	Amended and Restated 2007 Equity Incentive Plan (incorporated by reference to our Form S-8 Registration Statement, as Exhibit 99.1, filed on June 30, 2023)
10.6*	Amended and Restated 1997 Employee Stock Purchase Plan (incorporated by reference to our Form S-8 Registration Statement, as Exhibit 99.2, filed on June 30, 2023)
10.7*	Form of Inducement Notice of Grant of Stock Options and Option Agreement (incorporated by reference to our Registration Statement on Form S-8, as Exhibit 99.3, filed on June 30, 2023)
10.8*	Form of Inducement Notice of Grant of Restricted Stock Units and Restricted Stock Unit Agreement (incorporated by reference to our Form S-8 Registration Statement, as Exhibit 99.4, filed on June 30, 2023)
10.9	Securities Purchase Agreement, dated July 21, 2023, by and among the Company and the Purchasers signatory thereto (incorporated by reference to our Current Report on Form 8-K, as Exhibit 10.1, filed on July 24, 2023)
10.10+	Working Capital Facility Agreement, dated August 9, 2023, by and among the Company, the several banks and other financial institutions or entities from time to time party thereto, and Hercules, Capital, Inc.
31.1+	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2+	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1++	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Extension Definition
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document included as Exhibit 101)

* Management contract or compensatory plan, contract or arrangement.
+ Filed herewith
++ Furnished herewith

SIGNATURES

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

Heron Therapeutics, Inc.

Date: August 14, 2023

/s/ Craig Collard

Craig Collard
Chief Executive Officer
(As Principal Executive Officer)

/s/ Ira Duarte

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

Exhibit 10.1

EXECUTIVE EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (the "***Agreement***") is made and entered into effective as of April 3, 2023 (the "***Effective Date***"), by and between HERON THERAPEUTICS, INC. (the "***Company***"), and CRAIG COLLARD (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

AGREEMENT

In consideration of the foregoing and the mutual promises and covenants herein contained, and for other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

1. EMPLOYMENT.

1.1 Title. The Executive shall initially have the title of Chief Executive Officer of the Company and shall serve in such other capacity or capacities as the Company may from time to time prescribe and to which the Executive agrees. The Executive shall initially report to the Board of Directors of the Company (the "***Board***").

1.2 Duties. The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Chief Executive Officer, consistent with the Bylaws of the Company and as required by the Board.

1.3 Directorship. The Executive shall continue to serve as a member of the Board, subject to reelection by the Company's stockholders in accordance with the Company's Certificate of Incorporation, as amended and Bylaws; provided, however, that the Executive shall tender his resignation as a member of the Board concurrent with his termination of service as Chief Executive Officer, which resignation shall be conditional and subject to majority acceptance by the disinterested members of the Board. The Executive shall devote such time to the business of the Company as is necessary for the fulfillment of the Executive's duties as a member of the Board. The Executive shall not be compensated for serving as a member of the Board while he is serving as Chief Executive Officer of the Company, provided that the Executive shall be entitled to continued vesting under the Legacy RSU Grant for so long as the Executive remains on the Board and for six months thereafter. The Company shall reimburse the Executive for reasonable expenses incurred in connection with his service as a member of the Board. If the Executive ceases to serve as Chief Executive Officer of the Company, but remains a member of the Board, the Executive's compensation for serving as a member of the Board will resume at then-current rates.

1.4 Policies and Practices. The employment relationship between the Parties shall be governed by the policies and practices established by the Company and the Board. The Executive acknowledges that the Executive has read the Company's employee handbook and other governing policies, which will govern the terms and conditions of the Executive's employment with the Company, collectively with this Agreement. In the event that the terms of this Agreement differ from or are in conflict with the Company's policies or practices or the Company's employee handbook, this Agreement shall control.

1.5 Location. Unless the Parties otherwise agree in writing, during the term of this Agreement, it is expected that the Executive will work at the Company's offices in San Diego, California as needed to reasonably perform his duties under this Agreement; provided, however, that the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business. In no event shall the Executive's work in California exceed six months in any calendar year. The Company shall pay for all travel expenses in connection with Executive's duties.

2. LOYAL AND CONSCIENTIOUS PERFORMANCE; NONCOMPETITION.

2.1 Loyalty. During the Executive's employment by the Company, the Executive shall devote the Executive's full business energies, interest, abilities and productive time to the proper and efficient performance of the Executive's duties under this Agreement.

2.2 Covenant Not to Compete. Except with the prior written consent of the Board, which shall not be unreasonably withheld, the Executive will not, during the Executive's employment by the Company, engage in competition with the Company and/or any of its Affiliates, either directly or indirectly, in any manner or capacity, as adviser, principal, agent, affiliate, promoter, partner, officer, director, employee, stockholder, owner, co-owner, consultant, or member of any association or otherwise, in any phase of the business of developing, manufacturing and marketing of products or services which are in the same field of use or which otherwise compete with the products or services or proposed products or services of the Company and/or any of its Affiliates. For purposes of this Agreement, *"**Affiliate**"* means, with respect to any specific entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified entity.

2.3 Agreement Not to Participate in Company's Competitors. During the term of this agreement, the Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by the Executive to be adverse or antagonistic to the Company, its business or prospects, financial or otherwise or in any company, person or entity that is, directly or indirectly, in competition with the business of the Company or any of its Affiliates. Ownership by the Executive, as a passive investment, of less than two percent (2%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or in the over-the-counter market shall not constitute a breach of this paragraph.

3. COMPENSATION OF THE EXECUTIVE.

3.1 Base Salary. The Company shall pay the Executive a base salary of at least $650,000 per year, less payroll deductions and all required withholdings payable in regular periodic payments in accordance with Company policy ("***Base Salary***"). Such base salary shall be prorated for any partial year of employment on the basis of a 365-day fiscal year.

3.2 Performance Bonus. In addition to the Executive's base salary, the Executive shall be eligible for a performance bonus based upon the Executive's and the Company's achievement of specified objectives established by the Board during the first quarter of each year after consultation with the Executive, as evaluated by the Board in its discretion. The target bonus for full achievement of all objectives shall be 75% of the Executive's Base Salary, prorated for 2023 based on the number of days the Executive is employed during the year. The Performance Bonus will be paid post annual audit and at the same time as other executives in the

Company, and in any event no later than March 15 of the year following the year to which it relates.

3.3 Equity Incentives. On the Effective Date, the Executive will be granted the following equity awards under the Company's Amended and Restated 2007 Equity Incentive Plan (the "***Plan***"):

3.3.1 Stock Option. An option to purchase up to 3,000,000 shares of the Company's common stock (the *"**Option**"*). Subject to the Executive continuing to serve as Chief Executive Officer of the Company (except as set forth below), the Option will vest over a four-year period, with 750,000 shares vesting on the first anniversary of the Effective Date, and then the remainder vesting pro rata monthly thereafter over the next three years. The Option will have a ten-year term and will be treated as an incentive stock option, to the maximum extent possible under applicable regulations, with the remainder being non-statutory stock options. The portion of the Option that is vested as of the date of termination of the Executive's service with the Company (whether as Chief Executive Officer or as a member of the board of directors, whichever occurs later) shall remain exercisable for a period of 90 days ; provided that, if the Executive continues to serve as a member of the Board following termination of his service as Chief Executive Officer of the Company, the Executive's options will be treated for purposes of vesting as if the Executive had served for an additional 6 months as Chief Executive Officer. The Option shall be granted under the Plan and form of stock option award agreement in effect and in use by the Company at the time of grant, and shall be subject to the terms and conditions set forth in the award agreement evidencing the Option.

3.3.2 Restricted Stock Unit. An award of restricted stock units covering 250,000 shares of the Company's common stock (the *"**RSU**"*). Subject to the Executive continuing to serve as Chief Executive Officer of the Company (except as set forth below), the RSU will vest over a four-year period, with 25% of the shares subject to the RSU vesting on each of the first four anniversaries of the Effective Date; provided that, if the Executive continues to serve as a member of the Board following termination of his service as Chief Executive Officer of the Company, the Executive's RSUs will be treated for purposes of vesting as if the Executive had served for an additional 6 months as Chief Executive Officer. The RSU shall be granted under the Plan and form of restricted stock unit award agreement in effect and in use by the Company at the time of grant, and shall be subject to the terms and conditions set forth in the award agreement evidencing the RSU.

3.3.3 Performance Option. An option to purchase up to 4,250,000 shares of the Company's common stock (the *"**PSOs**"*). Subject to the Executive continuing to serve as Chief Executive Officer of the Company (except as set forth below), the PSOs will vest based upon the achievement of the stock price performance goals as set forth in the following table (with vesting occurring on the date on which the closing price of the Company's common stock equals or exceeds the below listed stock price (as adjusted for stock splits, stock dividends, reorganizations and recapitalizations) for any 20 trading days within any 30-trading day period):

Stock Price	# PSOs Vesting	Stock Price	# PSOs Vesting
$4.50	2,000,000	$7.00	3,250,000
$5.00	2,250,000	$7.50	3,500,000
$5.50	2,500,000	$8.00	3,750,000
$6.00	2,750,000	$8.50	4,000,000
$6.50	3,000,000	$9.00	4,250,000

The PSOs will have a ten-year term and will be treated as a non-statutory stock option. The portion of the PSOs that is vested as of the date of termination of the Executive's service with the Company (whether as Chief Executive Officer or as a member of the board of directors, whichever occurs later) shall remain exercisable for a period of 90 days following such termination. The PSOs shall be granted under the Plan and form of stock option award agreement in effect and in use by the Company at the time of grant, and shall be subject to the terms and conditions set forth in the award agreement evidencing the PSOs.

3.4 Changes to Compensation. The Executive's compensation will be reviewed on a regular basis by the Company and may be changed from time to time as deemed appropriate. For clarity, the provisions of this Section 3.4 are not meant to supersede the right of the Executive to terminate for Good Reason in the event of a material reduction of Executive's Base Salary as provided in Section 4.5.3.

3.5 Employment Taxes. All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

3.6 Temporary Living Expenses. The Company shall pay the Executive's temporary living expenses in the amount of up to $150,000 for the first calendar year from the Effective Date (the "Living Expense Advance") and thereafter up to $12,500 per month, so long as the Executive remains employed by the Company. If the Executive resigns as Chief Executive Officer (other than for Good Reason) prior to the first anniversary of the Effective Date, then the Executive shall reimburse the Company for a portion of the Living Expense Advance equal to the portion of such one-year period that the Executive did not serve as Chief Executive Officer.

4. TERMINATION.

4.1 Termination by the Company. The Executive's employment by the Company shall be at-will. The Executive's employment with the Company may be terminated by the Company at any time and for any reason or no reason, with or without Cause (as defined below), subject to the provisions of this Section 4.

4.2 Termination by Mutual Agreement of the Parties. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement.

4.3 Termination by the Executive. The Executive's employment by the Company shall be at-will. The Executive shall have the right upon four weeks' notice to resign or terminate the Executive's employment at any time and for any reason, or no reason, with or without Good Reason (as defined below), subject to the provisions of this Section 4.

4.4 Compensation Upon Termination.

4.4.1 With Cause or Without Good Reason. If the Executive's employment shall be terminated by the Company for Cause, or if the Executive terminates employment hereunder for other than Good Reason, the Company shall pay the Executive's base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings, and the Company shall thereafter have no further obligations to the Executive under this Agreement,

other than with respect to the Executive's vested equity compensation and any rights the Executive may have under the Company's employee benefit plans and arrangements.

4.4.2 Without Cause or With Good Reason. If the Executive's employment shall be terminated by the Company without Cause, or by the Executive for Good Reason, the Executive shall receive the payments specified in Section 4.4.1, and, in addition, within ten days of the Executive's delivery to the Company of a fully effective and irrevocable Release and Waiver in the form attached hereto as ***Exhibit A***, within the applicable time period set forth therein, but in no event later than 21 days following termination of the Executive's employment, the Executive shall receive the following: (i) a lump-sum payment equal to the sum of (A) the Executive's annual base salary then in effect pursuant to Section 3.1, less required deductions and withholdings, and (B) the Executive's target performance bonus then in effect pursuant to Section 3.2, less required deductions and withholdings; (ii) accelerated time-based vesting of shares subject to all stock awards issued by the Company, for the number of shares which would have vested accordingly had the Executive continued employment with the Company for a period of 12 months after termination (for the avoidance of doubt, which shall include partial accelerated vesting of the Option and RSU, but not the PSOs); and (iii) to the extent permitted under applicable law, provided that the Executive timely elects continued coverage under COBRA, reimbursement for or continuation of payment by the Company of its portion of the health insurance benefits provided to Executive immediately prior to termination pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("***COBRA***") or other applicable law for a period of up to 18 months from the date of termination.

4.4.3 Change in Control. If the Executive's employment shall be terminated by the Company without Cause, or by the Executive for Good Reason within three months before or within 18 months following a Change in Control, the Executive shall receive the payments specified in Section 4.4.1, and, in addition, within ten days of the Executive's delivery to the Company of a fully effective and irrevocable Release and Waiver in the form attached hereto as ***Exhibit A***, within the applicable time period set forth therein, but in no event later than 45 days following termination of the Executive's employment, the Executive shall receive the following: (i) a lump-sum payment equal to the sum of (A) the Executive's annual base salary then in effect pursuant to Section 3.1, less required deductions and withholdings, and (B) the Executive's target performance bonus then in effect pursuant to Section 3.2, less required deductions and withholdings; (ii) accelerated vesting of 100% of any outstanding and unvested time-based stock awards held by the Executive at such time (for the avoidance of doubt, which shall include accelerated vesting of the Option and RSU, but not the PSOs); and (iii) to the extent permitted under applicable law, provided that the Executive timely elects continued coverage under COBRA, reimbursement for or continuation of payment by the Company of its portion of the health insurance benefits provided to the Executive immediately prior to termination pursuant to the terms of COBRA or other applicable law for a period of up to 18 months from the date of termination. For the avoidance of doubt, the payment under this Section 4.4.3 (if applicable) shall be paid in lieu of, and not in addition to, the payment described in Section 4.4.2.

Additionally, upon the occurrence of a Change in Control, the Executive will vest in 100% of any outstanding and unvested performance-based stock awards held by the Executive at such time (including any outstanding and unvested portion of the PSOs) based upon actual performance through the date of such Change in Control (and based on the value of the Company's common stock in connection with the Change in Control).

4.4.4 Parachute Payment. If any payment or benefit Executive would receive pursuant to a Change in Control or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then such Payment shall be reduced to the Reduced Amount. The "***Reduced Amount***" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Executive's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order: reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of Executive's stock awards.

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, then the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Executive and the Company within 15 calendar days after the date on which the Executive's right to a Payment is triggered (if requested at that time by the Executive or the Company) or such other time as requested by the Executive or the Company. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Executive and the Company.

4.4.5 Application of Section 409A. Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Agreement (the "***Severance Benefits***") that constitute "deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "***Code***") and the regulations and other guidance thereunder and any state law of similar effect (collectively "***Section 409A***") that are payable upon termination of employment shall not commence in connection with Executive's termination of employment unless and until Executive has also incurred a "separation from service" (as such term is defined in Treasury Regulation Section 1.409A-1(h) ("***Separation From Service***")), unless the Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A.

It is intended that each installment of the Severance Benefits payments provided for in this Agreement is a separate "payment" for purposes of Treasury Regulation Section 1.409A- 2(b)(2)(i). For the avoidance of doubt, it is intended that payments of the Severance Benefits set forth in this Agreement satisfy, to the greatest extent possible, the

exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9). However, if the Company (or, if applicable, the successor entity thereto) determines that the Severance Benefits constitute "deferred compensation" under Section 409A and Executive is, on the termination of Executive's service, a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) of the Code, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Severance Benefit payments shall be delayed until the earlier to occur of: (i) the date that is six months and one day after Executive's Separation From Service or (ii) the date of Executive's death (such applicable date, the "***Specified Employee Initial Payment Date***"), and the Company (or the successor entity thereto, as applicable) shall (A) pay to Executive a lump sum amount equal to the sum of the Severance Benefit payments that Executive would otherwise have received through the Specified Employee Initial Payment Date if the commencement of the payment of the Severance Benefits had not been so delayed pursuant to this Section and (B) commence paying the balance of the Severance Benefits in accordance with the applicable payment schedules set forth in this Agreement.

Except to the extent that payments may be delayed until the Specified Employee Initial Payment Date pursuant to the preceding paragraph, on the first regular payroll pay day following the effective date of the Release and Waiver, the Company will pay Executive the Severance Benefits that Executive would otherwise have received under the Agreement on or prior to such date but for the delay in payment related to the effectiveness of the Release and Waiver, with the balance of the Severance Benefits being paid as originally scheduled. All amounts payable under the Agreement will be subject to standard payroll taxes and deductions.

4.5 Definitions.

4.5.1 Cause. For purposes of this Agreement, "***Cause***" means that, in the reasonable determination of the Company, the Executive has:

(i) been indicted for or convicted of or pleaded guilty or no contest to any felony or crime involving dishonesty that is likely to inflict or has inflicted demonstrable and material injury on the business of the Company;

(ii) participated in any fraud against the Company;

(iii) willfully and materially breached a Company policy;

(iv) intentionally damaged any property of the Company thereby causing demonstrable and material injury to the business of the Company; or

(v) engaged in conduct that, in the reasonable determination of the Company, demonstrates gross unfitness to serve.

Notwithstanding the foregoing, Cause shall not exist based on conduct described in clause (iii) above unless the conduct described in such clause has not been cured within 15 days following the Executive's receipt of written notice from the Company specifying the particulars of the conduct constituting Cause.

4.5.2 Change in Control. For purposes of this Agreement, "***Change in Control***" means the occurrence of any of the following:

(i) the closing of an Ownership Change Event or a series of related Ownership Change Events (collectively, a "***Transaction***") in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately before the Transaction, direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or such surviving entity immediately outstanding after the Transaction, or, in the case of an Ownership Change Event the entity to which the assets of the Company were transferred (the "***Transferee***"), as the case may be; or

(ii) the liquidation or dissolution of the Company.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Board shall have the right to determine whether multiple sales or exchanges of the voting securities in the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive. The Board may also, but need not, specify that other transactions or events constitute a Change in Control.

4.5.3 Good Reason. "***Good Reason***" for the Executive to terminate the Executive's employment hereunder shall mean the occurrence of any of the following events without the Executive's consent:

(i) a material reduction (20% or more) by the Company of the Executive's Base Salary as initially set forth herein or as the same may be increased from time to time;

(ii) a material reduction by the Company of the Executive's management responsibilities;

(iii) a material breach of this Agreement by the Company;

(iv) any requirement by the Company that the Executive relocate his primary residence to California or that the Executive perform work in California for more than six months in any one calendar year.

provided however, that any resignation by the Executive due to any of the following conditions shall only be deemed for Good Reason if: (i) the Executive gives the Company written notice of the intent to terminate for Good Reason within 90 days following the first occurrence of the condition(s) that the Executive believes constitutes Good Reason, which notice shall describe such condition(s); (ii) the Company fails to remedy, if remediable, such condition(s) within 15 days following receipt of the written notice (the "***Cure Period***") of such condition(s) from the Executive; and (iii) Executive actually resigns his employment within the first 15 days after expiration of the Cure Period.

4.5.4 Ownership Change Event. For purposes of this Agreement, "***Ownership Change Event***" means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than 50% of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company.

5. ASSIGNMENT AND BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

6. CHOICE OF LAW.

This Agreement is made in California. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California.

7. INTEGRATION.

This Agreement (including Exhibit A), that certain Indemnification Agreement entered into with the Company as of February 22, 2023, and that certain Restricted Stock Unit Agreement, dated as of February 22, 2023 and relating to the award of 37,879 RSUs (the "***Legacy RSU Grant***") contains the complete, final and exclusive agreement of the Parties relating to the terms and conditions of the Executive's service on the Board, his employment and the termination of Executive's employment, and supersedes all prior and contemporaneous oral and written employment agreements or arrangements between the Parties. To the extent this Agreement conflicts with the terms of the Company's employee handbook, governing polices, or bylaws, this Agreement controls.

8. AMENDMENT.

This Agreement cannot be amended or modified except by a written agreement signed by the Executive and the Company.

9. WAIVER.

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the wavier is claimed, and any waiver or any such term, covenant, condition or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.

10. SEVERABILITY.

The finding by a court of competent jurisdiction of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or

provision which most accurately represents the Parties' intention with respect to the invalid or unenforceable term or provision.

11. INTERPRETATION; CONSTRUCTION.

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with, and has consulted with, the Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and 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 this Agreement.

12. REPRESENTATIONS AND WARRANTIES.

The Executive represents and warrants that the Executive is not restricted or prohibited, contractually or otherwise, from entering into and performing each of the terms and covenants contained in this Agreement, and that the Executive's execution and performance of this Agreement will not violate or breach any other agreements between the Executive and any other person or entity.

13. COUNTERPARTS.

This Agreement may be executed in two counterparts, each of which shall be deemed an original, all of which together shall contribute one and the same instrument.

14. ARBITRATION.

To ensure the rapid and economical resolution of disputes that may arise in connection with the Executive's employment with the Company, the Executive and the Company agree that any and all disputes, claims, or causes of action, in law or equity, arising from or relating to the Executive's employment, or the termination of that employment, will be resolved pursuant to the Federal Arbitration Act and to the fullest extent permitted by law, by final, binding and confidential arbitration conducted by the Judicial Arbitration and Mediation Services ("***JAMS***"), or its successors, under the then current rules of JAMS for employment disputes; provided that the arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (ii) issue a written arbitration decision including the arbitrator's essential findings and conclusions and a statement of the award. Both the Executive and the Company shall be entitled to all rights and remedies that either the Executive or the Company would be entitled to pursue in a court of law. The Company shall pay all fees, including the arbitrator's fee. Nothing in this Agreement is intended to prevent either the Executive or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration.

15. TRADE SECRETS OF OTHERS.

It is the understanding of both the Company and the Executive that the Executive shall not divulge to the Company and/or its subsidiaries any confidential information or trade secrets belonging to others, including the Executive's former employers, nor shall the Company and/or its Affiliates seek to elicit from the Executive any such information. Consistent with the

foregoing, the Executive shall not provide to the Company and/or its Affiliates, and the Company and/or its Affiliates shall not request, any documents or copies of documents containing such information.

16. ADVERTISING WAIVER.

The Executive agrees to permit the Company and/or its Affiliates, and persons or other organizations authorized by the Company and/or its Affiliates, to use, publish and distribute advertising or sales promotional literature concerning the products and/or services of the Company and/or its Affiliates, or the machinery and equipment used in the provision thereof, in which the Executive's name and/or pictures of the Executive taken in the course of the Executive's provision of services to the Company and/or its Affiliates, appear. The Executive hereby waives and releases any claim or right the Executive may otherwise have arising out of such use, publication or distribution during the term of this Agreement.

17. NON-SOLICIT.

During the term of this Agreement and for a period of 12 months thereafter, Executive will not, directly or indirectly, solicit for employment (including as an independent contractor) any officer or employee of the Company; provided, however, that the foregoing will not prevent indirect employment solicitations in response to general online advertisements or advertisements in periodicals such as newspapers and trade publications.

[Signature Page Follows.]

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

HERON THERAPEUTICS, INC.
/s/ Adam Morgan
Adam Morgan
Chairman

Dated: May 12, 2023

EXECUTIVE:
/s/ Craig Collard
CRAIG COLLARD

Dated: May 12, 2023

EXHIBIT A
RELEASE AND WAIVER OF CLAIMS
TO BE SIGNED AT TIME OF TERMINATION WITHOUT CAUSE OR RESIGNATION FOR GOOD REASON

In consideration of the payments and other benefits set forth in Section 4.4 of the Executive Employment Agreement dated April 3, 2023, to which this form is attached, I, CRAIG COLLARD hereby furnish HERON THERAPEUTICS, INC. (the "***Company***"), with the following release and waiver (the "***Release and Waiver***").

In exchange for the consideration provided to me by the Employment Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, Affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release and Waiver. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including, but not limited to, salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including, but not limited to, claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including, but not limited to, claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("***ADEA***"), and the California Fair Employment and Housing Act (as amended).

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows:

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

I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to

claims under the ADEA which may arise after this Release and Waiver is executed; (b) I should consult with an attorney prior to executing this Release and Waiver; (c) I have twenty-one (21) days in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the eighth day after I execute this Release and Waiver and the revocation period has expired (the "***Effective Date***").

I understand that nothing in this Release and Waiver prevents me from filing a charge with the Equal Employment Opportunity Commission ("EEOC"), the National Labor Relations Board ("NLRB"), the California Department of Fair Employment and Housing ("DFEH"), or any other federal, state or local government agency, or otherwise cooperating with or providing information to any such agencies. However, this Release and Waiver does prohibit me from obtaining any personal or monetary relief for yourself based on such a charge or based on my providing information to or cooperating with the EEOC, NLRB, DFEH, or any other federal, state, or local government agency.

I understand that among other things, I must not use or disclose any confidential or proprietary information of the Company and I must immediately return all Company property and documents (including all embodiments of proprietary information) and all copies thereof in my possession or control. However, I understand that nothing in this Release and Waiver prevents me from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that I have reason to believe is unlawful.

This Release and Waiver constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated herein. This Release and Waiver may only be modified by a writing signed by both me and a duly authorized officer of the Company.

Date: _____

By: _____

CRAIG COLLARD

Exhibit 10.3

HERON THERAPEUTICS, INC.

MANAGEMENT RETENTION AGREEMENT

This Management Retention Agreement (this "Agreement") is dated as of June 6, 2023 (the "Effective Date"), by and between **William Forbes** ("Employee") and Heron Therapeutics, Inc., a Delaware corporation (the "Company"). This Agreement is intended to provide Employee with certain benefits described herein upon the occurrence of specific events. The Company and the Employee may each be referred to herein as a "Party" and, collectively, as the "Parties".

RECITALS

A. The Company's Board of Directors believes it is in the best interests of the Company and its shareholders to retain Employee and provide incentives to Employee to continue in the service of the Company.

B. The Board of Directors further believes that it is imperative to provide Employee with certain benefits upon Employee's Involuntary Termination or a Change of Control, which benefits are intended to provide Employee with financial security and provide sufficient income and encouragement to Employee to remain employed with the Company, notwithstanding the possibility of a Change of Control.

C. To accomplish the foregoing objectives, the Board of Directors has directed the Company, upon execution of this Agreement by Employee, to agree to the terms provided in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and premises contained in this Agreement, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

AGREEMENT

1. **At-Will Employment**. The Company and Employee acknowledge that Employee's employment is and shall continue to be at-will, as defined under applicable law, and that Employee's employment with the Company may be terminated by either Party at any time for any or no reason. If Employee's employment terminates for any reason, Employee shall not be entitled to any payments, benefits, damages, award or compensation other than as provided in this Agreement or otherwise agreed to by the Company. The terms of this Agreement shall terminate upon the earlier of: (i) the date on which Employee ceases to be employed as a corporate officer of the Company, other than as a result of an Involuntary Termination; or (ii) the date that all obligations of the Parties hereunder have been satisfied. A termination of the terms of this Agreement pursuant to the preceding sentence shall be effective for all purposes, except that such termination shall not affect the payment or provision of compensation or benefits on account of a termination of employment occurring prior to the termination of the terms of this Agreement. The rights and duties created by this Section 1 are contingent upon Employee's release of claims against the Company (at the time of termination in a form reasonably satisfactory to the Company)

and may not be modified in any way except by a written agreement executed by an officer of the Company upon direction from the Board of Directors.

2. **Benefits Upon Termination of Employment**.

(a) **Severance Upon Involuntary Termination.** In the event that Employee suffers an Involuntary Termination at any time under circumstances other than as covered in paragraph 2(b) below, then in addition to all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings, Employee will be entitled to receive severance benefits as follows (less standard deductions and withholdings): (i) an amount equal to twelve (12) months (the "Severance Period") of the monthly base salary which Employee was receiving immediately prior to the Involuntary Termination payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; (ii) an amount equal to the average bonus paid by the Company to Employee for services during each of the three 12-month periods (or such shorter period of time during which Employee was eligible for a bonus) prior to the Involuntary Termination date, payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; and (iii) reimbursement for or continuation of payment by the Company of its portion of the health insurance benefits provided to Employee immediately prior to the Involuntary Termination pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") or other applicable law through the earlier of the end of the Severance Period or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law. In addition, on the date of such Involuntary Termination, Employee's stock options, restricted stock and other equity awards shall immediately vest, become exercisable and/or the restrictions thereon lapse with respect to that number of shares of Company common stock that otherwise would have vested during the Severance Period had Employee's employment continued. Employee's stock options, restricted stock and other equity awards shall otherwise be subject to the terms of the plan and option or award agreement pursuant to which such options and other equity awards were granted.

(b) **Severance Upon a Change in Control**. In the event that Employee suffers an Involuntary Termination within three (3) months prior to or eighteen (18) months following the effective date of a Change of Control, then in addition to all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings, Employee will be entitled to receive severance benefits as follows (less standard deductions and withholdings): (i) an amount equal to twelve (12) months (the "Change of Control Severance Period") of the greater of (A) the monthly base salary which Employee was receiving immediately prior to the Involuntary Termination or (B) the monthly base salary which Employee was receiving immediately prior to the Change of Control, in each case, payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; (ii) an amount equal to the average bonus paid by the Company to Employee for services during each of the three 12-month periods (or such shorter period of time during which Employee was eligible for a bonus) prior to the Involuntary Termination date, payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; and (iii) reimbursement for or continuation of payment by the Company of its portion of the health insurance benefits provided to Employee immediately prior to the Involuntary Termination pursuant to the terms of COBRA or other applicable law through the earlier of the end of the

Change of Control Severance Period or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law. In addition, on the date of such Involuntary Termination, Employee's stock options, restricted stock and other equity awards shall immediately vest, become exercisable and/or the restrictions thereon lapse with respect to one hundred percent (100%) of the shares of Company common stock subject thereto. Employee's stock options, restricted stock and other equity awards shall otherwise be subject to the terms of the plan and option or award agreement pursuant to which such options and other equity awards were granted.

(c) **Termination for Cause**. Notwithstanding any other provision of this Agreement to the contrary, if Employee's employment is terminated for Cause at any time, then Employee shall not be entitled to receive payment of any severance benefits, or any continuation or acceleration of stock option vesting or relinquishment of forfeiture and transfer restrictions on restricted stock awards. Employee will receive payment(s) for all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings.

(d) **Voluntary Resignation; Death, Disability**. If Employee voluntarily resigns from the Company under circumstances which do not constitute an Involuntary Termination, or if Employee's employment terminates as a result of Employee's death or permanent disability, then Employee shall not be entitled to receive payment of any severance benefits, or option acceleration, or relinquishment of forfeiture and transfer restrictions. Employee (or Employee's estate or beneficiary, as applicable) will receive payment(s) for all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings.

3. **Definition of Terms**. The following terms referred to in this Agreement shall have the following meanings:

(a) "**Affiliate**" means, with respect to any specific entity, any other entity that, now or in the future, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified entity.

(b) "**Cause**" means any of the following: (i) Employee's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Company or Affiliate documents or records; (ii) Employee's material failure to abide by a Company's or Affiliate's code of conduct or other policies (including without limitation, policies relating to confidentiality and reasonable workplace conduct); (iii) Employee's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company or an Affiliate (including, without limitation, Employee's improper use or disclosure of confidential or proprietary information); (iv) any intentional act by Employee which has a material detrimental effect on the Company or an Affiliate's reputation or business; (v) Employee's repeated failure or inability to perform any reasonable assigned duties after written notice from the Company or an Affiliate (including, without limitation, habitual absence from work for reasons other than illness), and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by Employee of any employment or service agreement between Employee and the Company or an Affiliate, which breach is not cured pursuant to the terms of such agreement; or (vii) Employee's conviction (including any plea of guilty or *nolo contendere*) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs Employee's ability to perform his or her duties with the Company or an Affiliate.

(c) "**Change in Control**" means the occurrence of an Ownership Change Event or a series of related Ownership Change Events (collectively, a "Transaction") in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately before the Transaction, direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or such surviving entity immediately outstanding after the Transaction, or, in the case of an Ownership Change Event the entity to which the assets of the Company were transferred (the "Transferee"), as the case may be.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Board shall have the right to determine whether multiple sales or exchanges of the voting securities in the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive. The Board may also, but need not, specify that other transactions or events constitute a Change in Control.

(d) "**Involuntary Termination**" shall include any termination by the Company other than for Cause and Employee's voluntary termination within sixty days following the occurrence of any of the following events without Employee's written consent: (i) a material reduction or change in job duties, responsibilities and requirements inconsistent with Employee's position with the Company and Employee's prior duties, responsibilities and requirements or a material negative change in Employee's reporting relationship; (ii) a material reduction of Employee's base compensation (other than in connection with a general decrease in base salaries for officers of the Company or successor corporation generally); or (iii) Employee's refusal to relocate to a facility or location more than forty miles from the Company's current location, provided that Employee will not resign due to such change, reduction or relocation without first providing the Company with written notice of the event or events constituting the grounds for his voluntary resignation within thirty days of the initial existence of such grounds and a reasonable cure period of not less than thirty days following the date of such notice.

(e) "**Ownership Change Event**" means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company.

4. **Limitation and Conditions on Payments.**

(a) **Parachute Payments**. In the event that the severance and other benefits provided for in this Agreement to the Employee: (i) constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"); and (ii) but for this Section, would be subject to the excise tax imposed by Section 4999 of the Code, then the Employee's severance benefits under Sections 2(a) and 2(b) shall be payable either:

(i) in full; or

(ii) as to such lesser amount which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by the Employee on an after-tax basis, of the greatest amount of severance benefits under Section 2(a) and 2(b), notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. Any determination required under this Section 4 shall be made in writing by independent public accountants selected by the Company (the "Accountants"), whose determination shall be conclusive and binding upon the Employee and the Company for all purposes. For purposes of making the calculations required by this Section 4, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and the Employee shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company shall bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 4. Any reduction in severance benefits required by this Section 4 shall occur in a manner necessary to provide the service provider with the greatest economic benefit. If more than one manner of reduction of severance benefits necessary to arrive at the reduced amount yields the greatest economic benefit to the service provider, the payments and benefits shall be reduced pro rata.

(b) **Release Prior to Receipt of Benefits**. Prior to the receipt of any benefits under this Agreement, Employee shall execute a release of claims agreement in the form provided by the Company (the "Release") and such Release shall become effective and irrevocable not later than fifty-two (52) days following Employee's employment termination. Such Release shall specifically relate to all of Employee's rights and claims in existence at the time of such execution and shall confirm Employee's obligations under the Company's standard form of proprietary information agreement. In no event will severance benefits be provided to Employee until the Release becomes effective. In the event severance payments are delayed because of the effective date of the Release, the Company will pay Employee the severance payments, that Employee would otherwise have received under Section 2(a) on or prior to the effective date of the Release, on the first regular payroll pay day following the effective date of the Release, with the balance of the payments being paid as originally scheduled.

(c) **Cooperation**. As a condition to the receipt of benefits under this Agreement, Employee agrees to be reasonably available to answer questions and provide information requested by the Company relating the transition of Employee's role to Employee's successor. In addition, as a condition to the receipt of benefits under this Agreement, Employee agrees to reasonably cooperate (with due regard given to Employee's other commitments), (i) with the Company in the defense of any legal matter not adverse to Employee and involving any matter that arose during Employee's employment with the Company or any of its affiliates; and (ii) with all government authorities on matters pertaining to any investigation, litigation or administrative proceeding

pertaining to the Company or any of its affiliates, in each case, relating to Employee's employment period and not adverse to Employee. The Company will reimburse Employee for any reasonable travel and out-of-pocket costs and expenses incurred by Employee in providing such cooperation.

(d) **Return of Company Property**. Prior to the receipt of any benefits under this Agreement, Employee shall return all property belonging to the Company or its affiliates (including, but not limited to, any Company-provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to the Company). Employee may retain your address books (including as electronic files) provided that such items only include contact information.

5. **Section 409A**. All severance payments to be made upon a termination of employment under this Agreement may be made only upon a "separation of service" within the meaning of Section 409A of the Code and the Department of Treasury regulations and other guidance promulgated thereunder. Notwithstanding any provision to the contrary in this Agreement, if Employee is deemed by the Company at the time of Employee's separation from service to be a "specified employee" for purposes of Code Section 401A(a)(2)(B)(i), to the extent delayed commencement of any portion of the benefits to which Employee is entitled under this Agreement is required in order to avoid a prohibited distribution under Code Section 409A(a)(2)(B)(i), such portion of Employee's benefits shall not be provided to Employee prior to the earlier of (i) the expiration of the six-month period measured from the date of Employee's "separation of service" with the Company or (ii) the date of Employee's death. Upon the first business day following the expiration of the applicable Code Section 409A(a)(2)(B)(i) period, all payments deferred pursuant to this Section 5 shall be paid in a lump sum to Employee, and any remaining payments due under the Agreement shall be paid as otherwise provided herein. For purposes of Code Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Employee's right to receive installment payments under this Agreement shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. It is intended that none of the severance payments and benefits to be provided hereunder will be subject to Section 409A of the Code and any ambiguities herein will be interpreted to be so exempt. Employee and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A of the Code. Notwithstanding anything to the contrary contained herein, to the extent that any amendment to this Agreement with respect to the payment of any severance payments or benefits would constitute under Code Section 409A a delay in a payment or a change in the form of payment, then such amendment must be done in a manner that complies with Code Section 409A(a)(4)(C).

6. **Conflicts**. Employee represents that Employee's performance of all the terms of this Agreement will not breach any other agreement to which Employee is a party. Employee has not, and will not during the term of this Agreement, enter into any oral or written agreement in conflict with any of the provisions of this Agreement. Employee further represents that Employee is entering into or has entered into an employment relationship with the Company of Employee's own free will and that Employee has not been solicited as an employee in any way by the Company.

7. **Successors**. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. The terms of this Agreement and all of Employee's rights hereunder and thereunder shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

8. **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. Mailed notices to Employee shall be addressed to Employee at the home address which Employee most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

9. **Miscellaneous Provisions**.

(a) **No Duty to Mitigate**. Employee shall not be required to mitigate the amount of any payment contemplated by this Agreement (whether by seeking new employment or in any other manner), nor shall any such payment be reduced by any earnings that Employee may receive from any other source.

(b) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either Party of any breach of, or of compliance with, any condition or provision of this Agreement by the other Party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) **Whole Agreement**. No agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either Party with respect to the subject matter hereof. This Agreement supersedes any agreement of the same title and concerning similar subject matter dated prior to the Effective Date, and by execution of this Agreement both Parties agree that any such predecessor agreement shall be deemed null and void.

(d) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without reference to conflict of laws provisions.

(e) **Severability**. If any term or provision of this Agreement or the application thereof to any circumstance shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable, and a suitable and equitable term

or provision shall be substituted therefore to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

(f) **Arbitration**. Any dispute or controversy arising under or in connection with this Agreement may be settled at the option of either Party by binding arbitration in the County of San Diego, California, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. Punitive damages shall not be awarded.

(g) **Legal Fees and Expenses**. The Parties shall each bear their own expenses, legal fees and other fees incurred in connection with this Agreement.

(h) **No Assignment of Benefits**. The rights of any person to payments or benefits under this Agreement shall not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, including (without limitation) bankruptcy, garnishment, attachment or other creditor's process, and any action in violation of this Section 9(h) shall be void.

(i) **Employment Taxes**. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(j) **Assignment by Company**. The Company may assign its rights under this Agreement to an Affiliate, and an Affiliate may assign its rights under this Agreement to another Affiliate of the Company or to the Company. In the case of any such assignment, the term "Company" when used in a section of this Agreement shall mean the corporation that actually employs the Employee. Because of the unique and personal nature of the Employee's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement are assignable or delegable by the Employee. This Agreement shall be binding upon and inure to the benefit of the (i) Company and its successors, assigns and legal representatives and (ii) Employee and his or her heirs, executors, personal representatives, administrators and legal representatives.

(k) **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

(l) **Term; Renewal**. The initial term of this Agreement shall begin on the Effective Date and continue until December 31, 2023 (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for additional one-year periods (each, a "Renewal Term") unless, not later than three (3) months prior to the end of the Initial Term or any Renewal Term, a Party gives written notice to the other Party of its intention not to renew this Agreement; provided, however, that in no event shall this Agreement terminate during the eighteen (18) month period commencing upon a Change of Control.

[Signature page follows]

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

HERON THERAPEUTICS, INC.

By: /s/ Craig Collard
Name: Craig Collard
Title: Chief Executive Officer

EMPLOYEE

By: /s/ William Forbes
Name: William Forbes

Exhibit 10.4

HERON THERAPEUTICS, INC.

MANAGEMENT RETENTION AGREEMENT

This Management Retention Agreement (this "Agreement") is dated as of June 16, 2023 (the "Effective Date"), by and between **Ira Duarte** ("Employee") and Heron Therapeutics, Inc., a Delaware corporation (the "Company"). This Agreement is intended to provide Employee with certain benefits described herein upon the occurrence of specific events. The Company and the Employee may each be referred to herein as a "Party" and, collectively, as the "Parties".

RECITALS

A. The Company's Board of Directors believes it is in the best interests of the Company and its shareholders to retain Employee and provide incentives to Employee to continue in the service of the Company.

B. The Board of Directors further believes that it is imperative to provide Employee with certain benefits upon Employee's Involuntary Termination or a Change of Control, which benefits are intended to provide Employee with financial security and provide sufficient income and encouragement to Employee to remain employed with the Company, notwithstanding the possibility of a Change of Control.

C. To accomplish the foregoing objectives, the Board of Directors has directed the Company, upon execution of this Agreement by Employee, to agree to the terms provided in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and premises contained in this Agreement, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

AGREEMENT

1. **At-Will Employment**. The Company and Employee acknowledge that Employee's employment is and shall continue to be at-will, as defined under applicable law, and that Employee's employment with the Company may be terminated by either Party at any time for any or no reason. If Employee's employment terminates for any reason, Employee shall not be entitled to any payments, benefits, damages, award or compensation other than as provided in this Agreement or otherwise agreed to by the Company. The terms of this Agreement shall terminate upon the earlier of: (i) the date on which Employee ceases to be employed as a corporate officer of the Company, other than as a result of an Involuntary Termination; or (ii) the date that all obligations of the Parties hereunder have been satisfied. A termination of the terms of this Agreement pursuant to the preceding sentence shall be effective for all purposes, except that such termination shall not affect the payment or provision of compensation or benefits on account of a termination of employment occurring prior to the termination of the terms of this Agreement. The rights and duties created by this Section 1 are contingent upon Employee's release of claims against the Company (at the time of termination in a form reasonably satisfactory to the Company)

and may not be modified in any way except by a written agreement executed by an officer of the Company upon direction from the Board of Directors.

2. **Benefits Upon Termination of Employment**.

(a) **Severance Upon Involuntary Termination.** In the event that Employee suffers an Involuntary Termination at any time under circumstances other than as covered in paragraph 2(b) below, then in addition to all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings, Employee will be entitled to receive severance benefits as follows (less standard deductions and withholdings): (i) an amount equal to twelve (12) months (the "Severance Period") of the monthly base salary which Employee was receiving immediately prior to the Involuntary Termination payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; (ii) an amount equal to the average bonus paid by the Company to Employee for services during each of the three 12-month periods (or such shorter period of time during which Employee was eligible for a bonus) prior to the Involuntary Termination date, payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; and (iii) reimbursement for or continuation of payment by the Company of its portion of the health insurance benefits provided to Employee immediately prior to the Involuntary Termination pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") or other applicable law through the earlier of the end of the Severance Period or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law. In addition, on the date of such Involuntary Termination, Employee's stock options, restricted stock and other equity awards shall immediately vest, become exercisable and/or the restrictions thereon lapse with respect to that number of shares of Company common stock that otherwise would have vested during the Severance Period had Employee's employment continued. Employee's stock options, restricted stock and other equity awards shall otherwise be subject to the terms of the plan and option or award agreement pursuant to which such options and other equity awards were granted.

(b) **Severance Upon a Change in Control**. In the event that Employee suffers an Involuntary Termination within three (3) months prior to or eighteen (18) months following the effective date of a Change of Control, then in addition to all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings, Employee will be entitled to receive severance benefits as follows (less standard deductions and withholdings): (i) an amount equal to twelve (12) months (the "Change of Control Severance Period") of the greater of (A) the monthly base salary which Employee was receiving immediately prior to the Involuntary Termination or (B) the monthly base salary which Employee was receiving immediately prior to the Change of Control, in each case, payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; (ii) an amount equal to the average bonus paid by the Company to Employee for services during each of the three 12-month periods (or such shorter period of time during which Employee was eligible for a bonus) prior to the Involuntary Termination date, payable in a lump sum on the first payroll date following the date the Release (as described in Section 4(b) becomes effective and irrevocable; and (iii) reimbursement for or continuation of payment by the Company of its portion of the health insurance benefits provided to Employee immediately prior to the Involuntary Termination pursuant to the terms of COBRA or other applicable law through the earlier of the end of the

Change of Control Severance Period or the date upon which Employee is no longer eligible for such COBRA or other benefits under applicable law. In addition, on the date of such Involuntary Termination, Employee's stock options, restricted stock and other equity awards shall immediately vest, become exercisable and/or the restrictions thereon lapse with respect to one hundred percent (100%) of the shares of Company common stock subject thereto. Employee's stock options, restricted stock and other equity awards shall otherwise be subject to the terms of the plan and option or award agreement pursuant to which such options and other equity awards were granted.

(c) **Termination for Cause**. Notwithstanding any other provision of this Agreement to the contrary, if Employee's employment is terminated for Cause at any time, then Employee shall not be entitled to receive payment of any severance benefits, or any continuation or acceleration of stock option vesting or relinquishment of forfeiture and transfer restrictions on restricted stock awards. Employee will receive payment(s) for all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings.

(d) **Voluntary Resignation; Death, Disability**. If Employee voluntarily resigns from the Company under circumstances which do not constitute an Involuntary Termination, or if Employee's employment terminates as a result of Employee's death or permanent disability, then Employee shall not be entitled to receive payment of any severance benefits, or option acceleration, or relinquishment of forfeiture and transfer restrictions. Employee (or Employee's estate or beneficiary, as applicable) will receive payment(s) for all base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings.

3. **Definition of Terms**. The following terms referred to in this Agreement shall have the following meanings:

(a) "**Affiliate**" means, with respect to any specific entity, any other entity that, now or in the future, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified entity.

(b) "**Cause**" means any of the following: (i) Employee's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Company or Affiliate documents or records; (ii) Employee's material failure to abide by a Company's or Affiliate's code of conduct or other policies (including without limitation, policies relating to confidentiality and reasonable workplace conduct); (iii) Employee's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company or an Affiliate (including, without limitation, Employee's improper use or disclosure of confidential or proprietary information); (iv) any intentional act by Employee which has a material detrimental effect on the Company or an Affiliate's reputation or business; (v) Employee's repeated failure or inability to perform any reasonable assigned duties after written notice from the Company or an Affiliate (including, without limitation, habitual absence from work for reasons other than illness), and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by Employee of any employment or service agreement between Employee and the Company or an Affiliate, which breach is not cured pursuant to the terms of such agreement; or (vii) Employee's conviction (including any plea of guilty or *nolo contendere*) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs Employee's ability to perform his or her duties with the Company or an Affiliate.

(c) "**Change in Control**" means the occurrence of an Ownership Change Event or a series of related Ownership Change Events (collectively, a "Transaction") in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately before the Transaction, direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or such surviving entity immediately outstanding after the Transaction, or, in the case of an Ownership Change Event the entity to which the assets of the Company were transferred (the "Transferee"), as the case may be.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Board shall have the right to determine whether multiple sales or exchanges of the voting securities in the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive. The Board may also, but need not, specify that other transactions or events constitute a Change in Control.

(d) "**Involuntary Termination**" shall include any termination by the Company other than for Cause and Employee's voluntary termination within sixty days following the occurrence of any of the following events without Employee's written consent: (i) a material reduction or change in job duties, responsibilities and requirements inconsistent with Employee's position with the Company and Employee's prior duties, responsibilities and requirements or a material negative change in Employee's reporting relationship; (ii) a material reduction of Employee's base compensation (other than in connection with a general decrease in base salaries for officers of the Company or successor corporation generally); or (iii) Employee's refusal to relocate to a facility or location more than forty miles from the Company's current location, provided that Employee will not resign due to such change, reduction or relocation without first providing the Company with written notice of the event or events constituting the grounds for his voluntary resignation within thirty days of the initial existence of such grounds and a reasonable cure period of not less than thirty days following the date of such notice.

(e) "**Ownership Change Event**" means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company.

4. **Limitation and Conditions on Payments.**

(a) **Parachute Payments**. In the event that the severance and other benefits provided for in this Agreement to the Employee: (i) constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"); and (ii) but for this Section, would be subject to the excise tax imposed by Section 4999 of the Code, then the Employee's severance benefits under Sections 2(a) and 2(b) shall be payable either:

(i) in full; or

(ii) as to such lesser amount which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by the Employee on an after-tax basis, of the greatest amount of severance benefits under Section 2(a) and 2(b), notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. Any determination required under this Section 4 shall be made in writing by independent public accountants selected by the Company (the "Accountants"), whose determination shall be conclusive and binding upon the Employee and the Company for all purposes. For purposes of making the calculations required by this Section 4, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and the Employee shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company shall bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 4. Any reduction in severance benefits required by this Section 4 shall occur in a manner necessary to provide the service provider with the greatest economic benefit. If more than one manner of reduction of severance benefits necessary to arrive at the reduced amount yields the greatest economic benefit to the service provider, the payments and benefits shall be reduced pro rata.

(b) **Release Prior to Receipt of Benefits**. Prior to the receipt of any benefits under this Agreement, Employee shall execute a release of claims agreement in the form provided by the Company (the "Release") and such Release shall become effective and irrevocable not later than fifty-two (52) days following Employee's employment termination. Such Release shall specifically relate to all of Employee's rights and claims in existence at the time of such execution and shall confirm Employee's obligations under the Company's standard form of proprietary information agreement. In no event will severance benefits be provided to Employee until the Release becomes effective. In the event severance payments are delayed because of the effective date of the Release, the Company will pay Employee the severance payments, that Employee would otherwise have received under Section 2(a) on or prior to the effective date of the Release, on the first regular payroll pay day following the effective date of the Release, with the balance of the payments being paid as originally scheduled.

(c) **Cooperation**. As a condition to the receipt of benefits under this Agreement, Employee agrees to be reasonably available to answer questions and provide information requested by the Company relating the transition of Employee's role to Employee's successor. In addition, as a condition to the receipt of benefits under this Agreement, Employee agrees to reasonably cooperate (with due regard given to Employee's other commitments), (i) with the Company in the defense of any legal matter not adverse to Employee and involving any matter that arose during Employee's employment with the Company or any of its affiliates; and (ii) with all government authorities on matters pertaining to any investigation, litigation or administrative proceeding

pertaining to the Company or any of its affiliates, in each case, relating to Employee's employment period and not adverse to Employee. The Company will reimburse Employee for any reasonable travel and out-of-pocket costs and expenses incurred by Employee in providing such cooperation.

(d) **Return of Company Property**. Prior to the receipt of any benefits under this Agreement, Employee shall return all property belonging to the Company or its affiliates (including, but not limited to, any Company-provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to the Company). Employee may retain your address books (including as electronic files) provided that such items only include contact information.

5. **Section 409A**. All severance payments to be made upon a termination of employment under this Agreement may be made only upon a "separation of service" within the meaning of Section 409A of the Code and the Department of Treasury regulations and other guidance promulgated thereunder. Notwithstanding any provision to the contrary in this Agreement, if Employee is deemed by the Company at the time of Employee's separation from service to be a "specified employee" for purposes of Code Section 401A(a)(2)(B)(i), to the extent delayed commencement of any portion of the benefits to which Employee is entitled under this Agreement is required in order to avoid a prohibited distribution under Code Section 409A(a)(2)(B)(i), such portion of Employee's benefits shall not be provided to Employee prior to the earlier of (i) the expiration of the six-month period measured from the date of Employee's "separation of service" with the Company or (ii) the date of Employee's death. Upon the first business day following the expiration of the applicable Code Section 409A(a)(2)(B)(i) period, all payments deferred pursuant to this Section 5 shall be paid in a lump sum to Employee, and any remaining payments due under the Agreement shall be paid as otherwise provided herein. For purposes of Code Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Employee's right to receive installment payments under this Agreement shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. It is intended that none of the severance payments and benefits to be provided hereunder will be subject to Section 409A of the Code and any ambiguities herein will be interpreted to be so exempt. Employee and the Company agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A of the Code. Notwithstanding anything to the contrary contained herein, to the extent that any amendment to this Agreement with respect to the payment of any severance payments or benefits would constitute under Code Section 409A a delay in a payment or a change in the form of payment, then such amendment must be done in a manner that complies with Code Section 409A(a)(4)(C).

6. **Conflicts**. Employee represents that Employee's performance of all the terms of this Agreement will not breach any other agreement to which Employee is a party. Employee has not, and will not during the term of this Agreement, enter into any oral or written agreement in conflict with any of the provisions of this Agreement. Employee further represents that Employee is entering into or has entered into an employment relationship with the Company of Employee's own free will and that Employee has not been solicited as an employee in any way by the Company.

7. **Successors**. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. The terms of this Agreement and all of Employee's rights hereunder and thereunder shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

8. **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. Mailed notices to Employee shall be addressed to Employee at the home address which Employee most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

9. **Miscellaneous Provisions**.

(a) **No Duty to Mitigate**. Employee shall not be required to mitigate the amount of any payment contemplated by this Agreement (whether by seeking new employment or in any other manner), nor shall any such payment be reduced by any earnings that Employee may receive from any other source.

(b) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either Party of any breach of, or of compliance with, any condition or provision of this Agreement by the other Party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) **Whole Agreement**. No agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either Party with respect to the subject matter hereof. This Agreement supersedes any agreement of the same title and concerning similar subject matter dated prior to the Effective Date, and by execution of this Agreement both Parties agree that any such predecessor agreement shall be deemed null and void.

(d) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without reference to conflict of laws provisions.

(e) **Severability**. If any term or provision of this Agreement or the application thereof to any circumstance shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable, and a suitable and equitable term

or provision shall be substituted therefore to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

(f) **Arbitration**. Any dispute or controversy arising under or in connection with this Agreement may be settled at the option of either Party by binding arbitration in the County of San Diego, California, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. Punitive damages shall not be awarded.

(g) **Legal Fees and Expenses**. The Parties shall each bear their own expenses, legal fees and other fees incurred in connection with this Agreement.

(h) **No Assignment of Benefits**. The rights of any person to payments or benefits under this Agreement shall not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, including (without limitation) bankruptcy, garnishment, attachment or other creditor's process, and any action in violation of this Section 9(h) shall be void.

(i) **Employment Taxes**. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(j) **Assignment by Company**. The Company may assign its rights under this Agreement to an Affiliate, and an Affiliate may assign its rights under this Agreement to another Affiliate of the Company or to the Company. In the case of any such assignment, the term "Company" when used in a section of this Agreement shall mean the corporation that actually employs the Employee. Because of the unique and personal nature of the Employee's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement are assignable or delegable by the Employee. This Agreement shall be binding upon and inure to the benefit of the (i) Company and its successors, assigns and legal representatives and (ii) Employee and his or her heirs, executors, personal representatives, administrators and legal representatives.

(k) **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

(l) **Term; Renewal**. The initial term of this Agreement shall begin on the Effective Date and continue until December 31, 2023 (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for additional one-year periods (each, a "Renewal Term") unless, not later than three (3) months prior to the end of the Initial Term or any Renewal Term, a Party gives written notice to the other Party of its intention not to renew this Agreement; provided, however, that in no event shall this Agreement terminate during the eighteen (18) month period commencing upon a Change of Control.

[Signature page follows]

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

HERON THERAPEUTICS, INC.

By: /s/ Craig Collard
Name: Craig Collard
Title: Chief Executive Officer

EMPLOYEE

By: /s/ Ira Duarte
Name: Ira Duarte

Exhibit 10.10

Execution Version

WORKING CAPITAL FACILITY AGREEMENT

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

RECITALS

A. Borrower has requested Lenders make available to Borrower up to three (3) tranches of term loans in an aggregate principal amount of up to Fifty Million Dollars ($50,000,000) (collectively, the "Term Loans"); and

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

AGREEMENT

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

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION

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

"25% Revenue Limitation" means, as of any date of determination, a limit that is exceeded if the Outstanding Loan Amount as of such date exceeds 25% of Net Product Sales.

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

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

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

through licensing (other than "off-the-shelf" licenses)), any product, product line or intellectual property of or from any other Person.

"Advance(s)" means a Term Loan Advance.

"Advance Date" means the funding date of any Advance.

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

"Affiliate" means (a) any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question, (b) any Person directly or indirectly owning, controlling or holding with power to vote twenty percent (20%) or more of the outstanding voting securities of another Person, or (c) any Person twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held by another Person with power to vote such securities. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

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

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

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

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

"Blocked Person" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

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

"Borrower Products" means all products, software, service offerings, technical data or technology that are currently being designed, developed, tested, manufactured, marketed, advertised,

licensed, distributed, promoted or sold by Borrower or any of its Subsidiaries or which Borrower or any of its Subsidiaries intends to designed, develop, test, manufacture, market, advertise, promote, sell, license, or distribute in the future.

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

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

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

"Cash" means all cash, cash equivalents and liquid funds.

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

"Change in Control" means (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of Securities Exchange Act of 1934, as amended), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under Securities Exchange Act of 1934, as amended), directly or indirectly, of more than fifty percent (50.0%) of the ordinary voting power for the election of directors, partners, managers and members, as applicable, of Company (determined on a fully diluted basis); (b) at any time, Company shall cease to own and control, of record and beneficially, directly or indirectly, free and clear of all Liens (other than Permitted Liens), one hundred percent (100.0%) of the Equity Interests of each Subsidiary of Company (other than as a result of a Permitted Transfer or a transaction permitted under Section 7.9); or (c) the occurrence of a "change of control", "fundamental change", "make-whole fundamental change" or any comparable term under and as defined in any Permitted Convertible Debt Document.

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

"Closing Date" means the date of this Agreement.

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

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

"Common Stock" means the Common Stock, $0.01 par value per share, of Company.

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

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

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

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

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

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

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

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

"Due Diligence Fee" means a fee in an amount equal to Forty Thousand Dollars ($40,000), which fee has been paid to Agent and received by Agent prior to the Closing Date and shall be deemed fully earned on such date regardless of the early termination of this Agreement.

"Enforcement Action" means, with respect to any Lender and with respect to any Collateral Claim of such Lender or any item of Collateral in which such Lender has or claims a security interest lien or right of offset, any action, whether judicial or nonjudicial, to repossess, collect, accelerate, offset, recoup,

give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Collateral Claim or Collateral. The filing, or the joining in the filing, by any Lender of an involuntary bankruptcy or Insolvency Proceeding against Borrower also is an Enforcement Action.

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

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

"Excluded Accounts" means any of the following Deposit Accounts which are designated as such in writing to Agent as of the Closing Date or, with respect to any Deposit Account opened after the Closing Date, in the next Compliance Certificate delivered after such Deposit Account is opened: (i) Deposit Accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of employees of Borrower or any Subsidiary holding an aggregate amount across all such accounts of not more than amounts needed for the then-next two (2) payroll cycles, (b) any Deposit Account which is a zero-balance disbursement account so long as the proceeds therein are swept on a daily basis into one or more accounts that are not Excluded Accounts, (c) any Deposit Account which is solely used for disbursements and payments of withheld income taxes, payroll taxes and/or federal, state or local employee taxes, (d) any Deposit Account which is solely used as a trust account, escrow account, or other fiduciary account (including those accounts holding funds representing deferred compensation for directors and employees of Borrower or its Subsidiaries) or (e) any Deposit Account with a balance less than $100,000; provided that the aggregate balance of all such Deposit Accounts excluded pursuant to this clause (e) shall at no time exceed $250,000.

"Facility Charge" means, with respect to any Advance, a fee in an amount equal to 1.00% of the aggregate principal amount of such Advance, which Facility Charge is payable to Lenders pursuant to Section 4.1(i) or 4.2(f), as the case may be.

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

"Foreign Subsidiary" means a Subsidiary other than any Domestic Subsidiary.

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

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

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

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

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

"Healthcare Laws" means all health care laws applicable to Borrower or any Subsidiary and to the ownership, testing, development, sale, marketing, manufacture, packaging, processing, use, distribution, storage, import, export or disposal of Borrower's or any Subsidiary's products or product candidates, including but not limited to, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), the Public Health Service Act (42 U.S.C. Section 201 et seq.), the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. §§ 286, 287, 1035, 1347, 1349 and the health care fraud criminal provisions under HIPAA (42 U.S.C. Section 1320d et seq.), the exclusion laws (42 U.S.C. § 1320a-7), HIPAA and similar state and foreign privacy and data security laws such as the European Union General Data Protection Regulation, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), any other health care law governing or pertaining to a government healthcare program, including the collection and reporting requirements, and the processing of any applicable rebate, chargeback or adjustment, under applicable rules and regulations relating to the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8) and any state supplemental rebate program, Medicare average sales price reporting (42 U.S.C. § 1395w-3a), the Public Health Service Act (42 U.S.C. § 256b), the VA Federal Supply Schedule (38 U.S.C. § 8126) or under any state pharmaceutical assistance program or U.S. Department of Veterans Affairs agreement, and any successor government programs, and any and all other comparable state, local, federal or foreign health care laws and the regulations promulgated pursuant to such laws, each as amended from time to time.

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

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

"Indebtedness" means indebtedness of any kind, including (a) all indebtedness for borrowed money or the deferred purchase price of property or services (excluding trade credit entered into in the ordinary course of business and not past ninety (90) days due), including reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, (d) all equity securities of any Person

subject to repurchase or redemption other than at the sole option of such Person, (e) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature arising out of purchase and sale contracts, (f) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements (other than those arising in the ordinary course of business), (g) non-contingent obligations to reimburse any bank or Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, and (h) all Contingent Obligations. Notwithstanding the foregoing, no obligation in respect of a Permitted Bond Hedge Transaction or a Permitted Warrant Transaction shall be deemed to be Indebtedness.

"Initial Facility Charge" means the Facility Charge with respect to the Tranche 1A Advance made on the Closing Date, which, for the avoidance of doubt, shall be in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) and payable to Lenders pursuant to Section 4.1(i).

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

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

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

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

"IRS" means the U.S. Internal Revenue Service.

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

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

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

"Loan" means the Advances made under this Agreement.

"Loan Documents" means this Agreement, the promissory notes (if any), the ACH Authorization, the Account Control Agreements, any Joinder Agreement, all UCC Financing Statements,

any Guaranty, any Warrant, the Pledge Agreement, the Intellectual Property Security Agreement and any other documents executed in connection with the Secured Obligations or the transactions contemplated hereby, as the same may from time to time be amended, modified, supplemented or restated.

"Loan Party" means Borrower or any Guarantor.

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

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

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

"Material Agreement" means (i) any license, agreement or other contractual arrangement involving the receipt or payment of amounts in the aggregate exceeding One Million Dollars ($1,000,000) per fiscal year, (ii) any Permitted Convertible Debt Document or (iii) any "material agreement", "material contract" or any comparable term under and as defined in any Permitted Convertible Debt Document.

"Material Subsidiary" means any Subsidiary that is not an Immaterial Subsidiary.

"Maximum Term Loan Amount" means Fifty Million Dollars ($50,000,000).

"Net Product Sales" means, as of any date of determination, the aggregate amount of Borrower's "net product sales" (as set forth in Borrower's condensed consolidated statements of operations and comprehensive loss contained in its audited or unaudited financial statements filed with the SEC on Form 10-K or Form 10-Q) for the most recently ended period of four consecutive fiscal quarters.

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

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

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

"Organizational Documents" means with respect to any Person, such Person's Charter, and (a) if such Person is a corporation, its bylaws, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"Outstanding Loan Amount" means, as of any date of determination, the aggregate outstanding principal balance of Term Loan Advances hereunder (including, for the avoidance of doubt, all Capitalized PIK Interest thereon).

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

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

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

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

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

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

"Permitted Convertible Debt" means (x) Indebtedness of Company in respect of the Senior Unsecured Convertible Notes and (y) any other Indebtedness of Company that is convertible into a fixed number (subject to customary anti-dilution adjustments, "make-whole" increases and other customary changes thereto) of shares of Common Stock (or other securities or property following a merger event or other change of the Common Stock), cash or any combination thereof (with the amount of such cash or such combination determined by reference to the market price of such Common Stock or such other securities); provided, that, with respect to any Indebtedness described in the foregoing clause (y), (i) such Indebtedness shall (a) have no scheduled amortization or principal payments, mandatory redemptions or other required payments of principal prior to the date that is one hundred eighty (180) days after the Term Loan Maturity Date, other than customary payments upon a "change of control", "fundamental change" or any comparable term under and as defined in the Permitted Convertible Debt Document applicable thereto (it being understood that a holder's option to convert any such Indebtedness into Common Stock (and Cash

in lieu of fractional shares) shall not be considered a required mandatory redemption or payment of principal), (b) be unsecured and/or subordinated to the Secured Obligations, (c) not be guaranteed by any Subsidiary of Company that is not a Borrower or a Guarantor, (d) shall not contain any terms that are unusual or not customary for underwritten offerings of senior convertible notes as determined in good faith by the Company's Board of Directors and (e) be Indebtedness of Company and not of any Subsidiary thereof, (ii) the incurrence of such Indebtedness shall be subject to the absence of any Default or Event of Default immediately before and immediately after giving effect thereto and (iii) any cross-default or cross-acceleration event of default (each howsoever defined) provision contained therein that relates to indebtedness or other payment obligations of a Loan Party (any such indebtedness or other payment obligations, a "Cross-Default Reference Obligation") contains a cure period of at least thirty (30) calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under such Cross-Default Reference Obligation results in an event of default under such cross-default or cross-acceleration provision.

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

"Permitted Indebtedness" means:

(i)Indebtedness of Borrower in favor of any Lender or Agent arising under this Agreement or any other Loan Document;

(ii)Indebtedness existing on the Closing Date which is disclosed in Schedule 1A;

(iii)Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred to finance the acquisition, repair, improvement or construction of fixed or capital assets of Borrower; provided that the aggregate outstanding principal amount of all other such Indebtedness does not exceed Two Million Dollars ($2,000,000) at any time; provided, further that no Indebtedness may be incurred under this clause (iii) unless the Borrower's Net Product Sales as of such date of incurrence exceeds One Hundred Thirty Million Dollars ($130,000,000);

(iv)unsecured Indebtedness to trade creditors incurred in the ordinary course of business (due within one hundred twenty (120) days);

(v)Indebtedness in connection with security deposits or letters of credit relating to real property leases incurred in the ordinary course of business; provided that the aggregate outstanding principal amount of all such Indebtedness does not exceed One Million Dollars ($1,000,000) at any time;

(vi)intercompany Indebtedness to the extent permitted pursuant to clause (ix) of the definition of Permitted Investment;

(vii)Indebtedness incurred in the ordinary course of business owed to any Person providing property, casualty, liability, or other insurance to Borrower or any of its Subsidiaries, including to finance insurance premiums, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the policy year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such policy year;

(viii)Permitted Convertible Debt not to exceed One Hundred Fifty Million Dollars ($150,000,000) in aggregate principal amount at any time outstanding;

(ix)advances or deposits received in the ordinary course of business from customers or vendors;

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

(xi)Subordinated Indebtedness; and

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

"Permitted Investment" means:

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

(ii)(x) (a) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (b) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (c) certificates of deposit issued by any bank with assets of at least Five Hundred Million Dollars ($500,000,000) maturing no more than one year from the date of investment therein, and (d) money market accounts and (y) in the case of such Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, (a) investments of the type and maturity described in clause (ii)(x) above of foreign obligors, which investments or obligors (or the parents or such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (b) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous, and of comparable quality, to the types of investments described in the foregoing clause (ii)(x) and clause (ii)(y)(a);

(iii)repurchases of stock of Borrower from former employees, directors, or consultants of Borrower under the terms of applicable repurchase agreements at the original issuance price of such securities in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000) in any fiscal year, provided that no Event of Default has occurred, is continuing or could exist after giving effect to the repurchases;

(iv)Investments accepted in connection with Permitted Transfers;

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

(vi)Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business,

provided that this subsection (vi) shall not apply to Investments of any Loan Party in any Subsidiary of a Loan Party;

(vii)Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of Company pursuant to employee stock purchase plans or other similar agreements approved by Company's Board of Directors;

(viii)Investments consisting of (A) travel advances and employee relocation loans in the ordinary course of business, and (B) loans to employees, officers, managers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors or similar governing body, not to exceed One Hundred Thousand Dollars ($100,000) in the aggregate for (A) and (B), collectively, during the term of this Agreement;

(ix)Investments (A) among the Loan Parties, (B) by a Loan Party in Subsidiaries that are not Loan Parties in an aggregate amount not to exceed $100,000 or as otherwise approved in advance in writing by Agent and (C) Investments among Subsidiaries that are not Loan Parties;

(x)joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash Investments by a Loan Party do not exceed One Hundred Thousand Dollars ($100,000) in the aggregate in any fiscal year;

(xi)additional Investments that do not exceed Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate;

(xii)Permitted Acquisitions; and

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

"Permitted Liens" means:

(i)Liens in favor of Agent or Lenders;

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

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

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

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

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

performance bonds and other obligations of a like nature incurred in the ordinary course of business;

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

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

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

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

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

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

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

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

(xv)Licenses that qualify as Permitted Transfers;

(xvi)statutory Liens of landlords; and

(xvii)Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described above; provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

"Permitted Transfers" means:

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

(ii)licenses and similar arrangements for the use of Intellectual Property in the ordinary course of business on an arms' length basis, including in connection with business development transactions, co-development or co-promotion transactions, collaborations, licensing, partnering or similar transactions with third parties and that are entered into with commercially reasonable terms, that are not exclusive or could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory or may be exclusive as to territory but only as to discrete geographical areas outside of the United States of America in the ordinary course of business;

(iii)transfers by and among the Loan Parties;

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

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

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

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

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

(ix)Transfers of assets having a fair market value of not more than One Hundred Fifty Thousand Dollars ($150,000) in the aggregate in any fiscal year.

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

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

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

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

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

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

"Qualified Subsidiary" means any Material Subsidiary.

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

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

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

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

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

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

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

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

"SEC" means the U.S. Securities and Exchange Commission.

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

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

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

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

"Subsequent Financing" means the consummation of the issuance and sale, after the Closing Date, of any equity securities (including any securities convertible into equity securities) of Borrower in a private placement marketed to multiple investors.

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

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

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

"Term Loan" means any Term Loan Advance made under this Agreement.

"Term Loan Advance" means the Tranche 1A Advance, each Tranche 1B Advance, each Tranche 1C Advance and any other funds advanced under Section 2.2(a).

"Term Loan Cash Interest Rate" means, for any day, a floating per annum rate of interest equal to the greater of (a) 9.95% and (b) the sum of (i) 9.95% plus (ii)(x) the prime rate as reported in The Wall Street Journal minus (y) 8.25%.

"Term Loan Maturity Date" means the earlier of (x) September 1, 2027 and (y) solely to the extent that any Senior Unsecured Convertible Note remains outstanding on such date, the date that is ninety-one (91) days prior to the stated maturity date of the Senior Unsecured Convertible Notes; provided, that, in each case of the foregoing clauses (x) and (y), if such day is not a Business Day, the Term Loan Maturity Date shall be the immediately preceding Business Day.

"Term Loan PIK Interest Rate" means per annum rate of interest equal to 1.50%.

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

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

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

"Tranche" means the Tranche 1A Advance, Tranche 1B Advance and/or the Tranche 1C Advance, as applicable.

"Tranche 1A Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 1A Commitment opposite such Lender's name on Schedule 1.1. The aggregate amount of the Lenders' Tranche 1A Commitments as of the Closing Date is Twenty-Five Million Dollars ($25,000,000).

"Tranche 1B Availability Period" means the period commencing on the Closing Date and continuing through December 15, 2024; provided that no Tranche 1B Advance shall be made during the occurrence and continuance of an Event of Default.

"Tranche 1B Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 1B Commitment opposite such Lender's name on Schedule 1.1. The aggregate amount of the Lenders' Tranche 1B Commitments as of the Closing Date is Five Million Dollars ($5,000,000).

"Tranche 1C Availability Period" means the period (i) commencing on the earlier of (x) the date on which the Tranche 1B Commitments have been fully funded and (y) December 16, 2024 and (ii) continuing through December 15, 2025; provided that no Tranche 1C Advance shall be made during the occurrence and continuance of an Event of Default.

"Tranche 1C Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 1C Commitment opposite such Lender's name on Schedule 1.1. The aggregate amount of the Lenders' Tranche 1C Commitments as of the Closing Date is Twenty Million Dollars ($20,000,000).

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

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

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

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

Defined Term	Section
1940 Act	5.6(b)

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

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

1.4 If at any time any change in GAAP would affect the computation of any financial requirement set forth in any Loan Document, and either Borrower or the Required Lenders shall so request, Agent, Lenders and Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, such requirement shall continue to be computed in accordance with GAAP prior to such change.

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

SECTION 2. THE LOAN

2.1 [Reserved]

2.2 Term Loan Advances.

(a) Advances.

(i) Tranche 1A. Subject to the terms and conditions of this Agreement, on the Closing Date, each Lender will severally (and not jointly) make a Term Loan Advance in a principal amount equal to its respective Tranche 1A Commitment, and Borrower agrees to draw such Term Loan Advance in an aggregate principal amount equal to Twenty-Five Million Dollars ($25,000,000) (such Term Loan Advance, the "Tranche 1A Advance").

(ii) Tranche 1B. Subject to the terms and conditions of this Agreement, Borrower may request, and each Lender shall, during the Tranche 1B Availability Period, severally (and not jointly) make one or more additional Term Loan Advances in minimum increments of Two Million Five Hundred Thousand Dollars ($2,500,000) (or if less, the remaining amount of Term Loan Advances available to be drawn pursuant to this Section 2.2(a)(ii)) in an aggregate principal amount up to Five Million Dollars ($5,000,000) (each such Term Loan Advance, a "Tranche 1B Advance" and collectively, the "Tranche 1B Advances").

(iii) Tranche 1C. Subject to the terms and conditions of this Agreement, Borrower may request, and each Lender shall, during the Tranche 1C Availability Period, severally (and not jointly) make one or more additional Term Loan Advances in minimum increments of Two Million Five Hundred Thousand Dollars ($2,500,000) (or if less, the remaining amount of Term Loan Advances available to be drawn pursuant to this Section 2.2(a)(iii)) in an aggregate principal amount up to Twenty Million Dollars ($20,000,000) (each such Term Loan Advance, a "Tranche 1C Advance" and, collectively, the "Tranche 1C Advances").

(b) Maximum Term Loan Amount; Reborrowings.

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

(ii) After repayment, no Term Loan Advance (or any portion thereof) may be reborrowed; provided that, notwithstanding the foregoing, Term Loan Advances that are mandatorily prepaid pursuant to Section 2.5(b) may, at the sole discretion of the Lenders, be reborrowed. For avoidance of doubt, (x) no Lender shall be obligated to make any such reborrowings of a Term Loan Advance without its consent and (y) no such reborrowings may be made after the last day of the Tranche 1C Availability Period. It is further agreed that no such reborrowing shall require the payment of a Facility Charge and the prepayment or repayment thereof shall not be subject to payment of the End of Term Charge (i.e., in either case, so as to avoid double payment of the Facility Charge or the End of Term Charge, as applicable).

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

(d) Interest.

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

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

(e) Payment. Borrower will pay accrued but unpaid interest on each Term Loan Advance on the first Business Day of each month (each such date, a "Payment Date"), beginning the month after the Advance Date. The entire principal balance of the Term Loan Advances and all accrued but unpaid interest hereunder, shall be due and payable on the Term Loan Maturity Date. Borrower shall make all payments under this Agreement without setoff, recoupment or

deduction and regardless of any counterclaim or defense. If a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately preceding Business Day. Agent or Lenders will initiate debit entries to Borrower's account as authorized on the ACH Authorization (i) on each Payment Date of all periodic obligations payable to Lenders under each Term Loan Advance and (ii) out-of-pocket legal fees and costs incurred by Agent or Lenders in connection with Section 11.12; provided that, with respect to clause (i) above, in the event that Lenders or Agent informs Borrower that Lenders will not initiate a debit entry to Borrower's account for a certain amount of the periodic obligations due on a specific Payment Date, Borrower shall pay to Lenders, such amount of periodic obligations in full in immediately available funds on such Payment Date; provided, further, that, with respect to clause (i) above, if Lenders or Agent informs Borrower that Lenders will not initiate a debit entry as described above later than the date that is three (3) Business Days prior to such Payment Date, Borrower shall pay to Lenders such amount of periodic obligations in full in immediately available funds on the date that is three (3) Business Days after the date on which Lenders or Agent notifies Borrower of such; provided, further, that, with respect to clause (ii) above, in the event that Lenders or Agent informs Borrower that Lenders will not initiate a debit entry to Borrower's account for specified out-of-pocket legal fees and costs incurred by Agent or Lenders, Borrower shall pay to Lenders such amount in full in immediately available funds within three (3) Business Days.

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

2.4Default Interest. In the event any payment is not paid on the scheduled payment date, an amount equal to four percent (4%) of such past due amount shall be payable on demand. In addition, upon the occurrence and during the continuation of an Event of Default hereunder, all outstanding Secured Obligations, including principal, interest, compounded interest, and professional fees, shall bear interest at a rate per annum equal to the rate set forth in Section 2.2(d) plus four percent (4%) per annum. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded at the rate set forth in Section 2.2(d) or 2.4, as applicable.

2.5Prepayment.

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

(b) Mandatory Prepayment. If at any time the 25% Revenue Limitation is exceeded, Borrower shall immediately repay a portion of the Advances until the Outstanding Loan Amount does not exceed 25% of Net Product Sales. For the avoidance of doubt, no Prepayment Charges shall apply to prepayments made to comply with the 25% Revenue Limitation.

(c) Prepayment Charge. In the event all or any portion of any Advance (including, for the avoidance of doubt, any Capitalized PIK Interest) is repaid, prepaid (including any voluntary prepayment under Section 2.5(a), but excluding any mandatory prepayment under Section 2.5(b)) or accelerated for any reason, including as a result of any Event of Default, the commencement of any proceeding against Borrower under the U.S. Bankruptcy Code or any other debtor relief law, the foreclosure and sale of, or collection of, the Collateral, or the restructuring, reorganization or compromise of the Advances and other Secured Obligations by the confirmation of a plan of reorganization or any other plan of compromise, restructure or arrangement (it being understood and agreed that the prepayment charge set forth in this Section 2.5(c) (I) will be due and payable as though such Advances were voluntarily prepaid as of the date of acceleration and (II) shall constitute part of the Secured Obligations), such repayment, prepayment, or acceleration will be subject to a prepayment premium equal to (i) 3.00% of the principal amount so repaid, prepaid or accelerated if such repayment, prepayment or acceleration occurs at any time on or prior to the first anniversary of the Closing Date, (ii) 2.00% of the principal amount so repaid, prepaid or accelerated if such repayment, prepayment or acceleration occurs after the first anniversary of the Closing Date, but on or prior to the second anniversary of the Closing Date and (iii) 1.00% of the principal amount so repaid, prepaid or accelerated if such repayment, prepayment or acceleration occurs at any time thereafter (the "Prepayment Charge XE "Prepayment Charge" "), which Prepayment Charge shall be due and payable on such date of repayment, prepayment or acceleration and shall be in addition to the principal balance of such Advance (or portion thereof) and any accrued and unpaid interests and any other amounts then due and payable hereunder.

(d) Borrower agrees that the Prepayment Charge is a reasonable calculation of Lenders' lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the Term Loan Advances. Borrower shall prepay the outstanding amount of all principal and accrued interest through the prepayment date and the Prepayment Charge upon the occurrence of a Change in Control or any other prepayment hereunder. Notwithstanding the foregoing, Agent and Lenders agree to waive the Prepayment Charge if Agent and Lenders (in their sole and absolute discretion) agree in writing to refinance the Advances prior to the Term Loan Maturity Date.

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

2.6 End of Term Charge. On the earliest to occur of (i) the Term Loan Maturity Date, (ii) the date that Borrower prepays all or any portion of the outstanding Secured Obligations (other than any inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) (including, for the avoidance of doubt, any prepayment required under Section 2.5 (subject to the last sentence of Section 2.2(b)(ii)) or (iii) the date that the outstanding Secured Obligations become due and payable, Borrower shall pay Lenders a charge equal to three percent (3.00)% of the principal amount of Term Loans subject to such payment, prepayment or repayment (the "End of Term Charge"). Notwithstanding the required payment date of any such End of Term Charge, the applicable pro rata portion of such End of Term Charge shall be deemed fully earned by Lenders as of each date that an applicable Term Loan Advance is made. For the avoidance of doubt, no End of Term Charge shall be earned or be payable with respect to any amounts constituting Capitalized PIK Interest.

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

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

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

SECTION 3. SECURITY INTEREST

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

3.2Notwithstanding the broad grant of the security interest set forth in Section 3.1, above, the Collateral shall not include (a) any "intent to use" trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with

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

SECTION 4. CONDITIONS PRECEDENT TO LOAN

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

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

(a) duly executed copies of the Loan Documents (other than the Warrant, which shall be an original), and all other documents and instruments reasonably required by Agent to effectuate the transactions contemplated hereby or to create and perfect the Liens of Agent with respect to all Collateral, in all cases in form and substance reasonably acceptable to Agent;

(b) subject to Section 7.24 hereof, duly executed Account Control Agreement(s) with respect to each Deposit Account and account holding Investment Property (other than an Excluded Account) maintained by Borrower or any Subsidiary;

(c) a legal opinion of Borrower's counsel in form and substance reasonably acceptable to Agent;

(d) copy of resolutions of Borrower's Board of Directors, certified by an officer of Borrower, (i) evidencing approval of the Loan and other transactions evidenced by the Loan Documents (including the Warrant), (ii) authorizing a specified person or persons to execute the Loan Documents to which it is a party on its behalf, (iii) authorizing a specified person or persons, on its behalf, to sign and/or dispatch all documents and notices (including, if relevant, any Advance Request or other relevant notice) to be signed and/or dispatched by it under or in connection with the Loan Documents to which it is a party, and (iv) acknowledging that the Board of Directors are acting for a proper purpose and that the Loan Documents are in the best interests of that Borrower and for its commercial benefit;

(e) certified copies of the Charter of Borrower, certified by the Secretary of State of its jurisdiction of organization and the other Organizational Documents of Borrower, each as amended through the Closing Date;

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

(g) certified copies, dated as of a recent date, of searches for financing statements filed in the central filing office of the State of Delaware, accompanied by written evidence (including

any UCC termination statements) that the Liens on any Collateral indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Term Loan Advance, will be terminated or released;

(h) [reserved];

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

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

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

(l) subject to Section 7.24 hereof, duly executed landlord consents for its (i) chief executive office or its principal place of business and (ii) offices or business locations, including warehouses, containing in excess of Five Hundred Thousand Dollars ($500,000) of Borrower's assets or property;

(m) subject to Section 7.24 hereof, duly executed bailee agreements for any bailee location holding a portion of Borrower's assets or property valued, individually or in the aggregate, in excess of Five Hundred Thousand Dollars ($500,000);

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

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

4.2 All Advances. On each Advance Date:

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

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

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

(d) As of the Closing Date or any other Advance date, both before and after giving pro forma effect to such Advance, the 25% Revenue Limitation shall not be exceeded; and

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

(f) For any Advance made after the Closing Date, but subject to the last sentence of Section 2.2(b)(ii), Borrower shall have paid the Facility Charge with respect thereto, the amount of which Facility Charge may be deducted from such Advance.

4.3[Reserved.]

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

SECTION 5. REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower represents and warrants that:

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

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

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

5.4Material Adverse Effect. No event that has had or could reasonably be expected to have a Material Adverse Effect has occurred and is continuing. Borrower is not aware of any event or circumstance that is likely to occur that is reasonably expected to result in a Material Adverse Effect.

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

5.6Laws.

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

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

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

else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

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

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

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

5.10Intellectual Property.

(a) Except as described on Schedule 5.10, Borrower has all material rights with respect to intellectual property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower. Without limiting the generality of the foregoing, except for restrictions that are unenforceable under Division 9 of the UCC or otherwise permitted under this Agreement with respect to Licenses, Borrower has the right, to the extent required to operate Borrower's business, to freely transfer, license or assign Intellectual

Property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower, without condition, restriction or payment of any kind (other than license payments in the ordinary course of business) to any third party, and Borrower owns or has the right to use, pursuant to valid licenses, all software development tools, library functions, compilers and all other third-party software and other items that are material in the operation or conduct of Borrower's business and used in the design, development, promotion, sale, license, manufacture, import, export, use or distribution of Borrower Products except customary covenants in inbound license agreements and equipment leases where Borrower is the licensee or lessee. Except as disclosed on Schedule 5.10, Borrower is not a party to, nor is it bound by, any Restricted License.

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

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

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

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

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

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

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

5.16Regulatory Matters.

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

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

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

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

tests or trials, has commenced, or to the knowledge of Borrower, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, delay or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by or on behalf of Borrower or any Subsidiary.

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

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

SECTION 6. INSURANCE; INDEMNIFICATION

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

6.2Certificates. Borrower shall deliver to Agent certificates of insurance that evidence Borrower's compliance with its insurance obligations in Section 6.1 and the obligations contained in this Section 6.2. Borrower's insurance certificate shall reflect Agent (shown as "Hercules Capital, Inc., as Agent, and its successors and/or assigns") is an additional insured for commercial general liability, a lenders loss payable for all risk property damage insurance, subject to the insurer's

approval, and a lenders loss payable for property insurance and additional insured for liability insurance for any future insurance that Borrower may acquire from such insurer. Attached to the certificates of insurance will be additional insured endorsements for liability and lender's loss payable endorsements for all risk property damage insurance. All certificates of insurance will provide for a minimum of thirty (30) days advance written notice to Agent of cancellation (other than cancellation for non-payment of premiums, for which ten (10) days' advance written notice shall be sufficient) or any other change adverse to Agent's interests. Any failure of Agent to scrutinize such insurance certificates for compliance is not a waiver of any of Agent's rights, all of which are reserved. Borrower shall provide Agent with copies of each insurance policy, and upon entering or amending any insurance policy required hereunder, Borrower shall provide Agent with copies of such policies and shall promptly deliver to Agent updated insurance certificates with respect to such policies.

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

SECTION 7. COVENANTS OF BORROWER

Borrower agrees as follows:

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

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

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

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

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

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

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

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

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

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

(j) promptly (without duplication of any notices, reports and documents otherwise required to be delivered under the Loan Documents) (i) all notices, reports and documents, required to be delivered by Borrower to the holders of any Permitted Convertible Debt (or the agent thereof) under the Permitted Convertible Debt Documents, including, without limitation, all financial compliance certificates delivered pursuant to Permitted Convertible Debt Documents, concurrently with its delivery of each such notice, report and/or document the holders of such Permitted

Convertible Debt (or the agent thereof) of such Permitted Convertible Debt, (ii) at the same time as the same is provided to, or promptly after received from the holders of any Permitted Convertible Debt (or the agent thereof), copies of each material notification to Borrower by such holders or agent (including notices pertaining to a default or reservation of rights under any such Permitted Convertible Debt Document or to the exercise of remedies in connection therewith), and (iii) promptly after execution thereof, copies of final executed versions of any material amendment, supplement, forbearance, waiver or other modification with respect to any Permitted Convertible Debt Document;

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

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

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

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

The executed Compliance Certificate, and all Financial Statements required to be delivered hereunder shall be sent via e-mail to financialstatements@htgc.com with a copy to lmcguire@htgc.com; joleary@htgc.com; cbarnes@htgc.com; mmcmahon@htgc.com; and sperkins@htgc.com; provided, that if e-mail is not available or sending such Financial Statements via e-mail is not possible, they shall be faxed to Agent at: (650) 473-9194, attention Account Manager: Heron Therapeutics.

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

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

7.3Further Assurances. Borrower shall, and shall cause each other Loan Party to, from time to time execute, deliver and file, alone or with Agent, any financing statements, security agreements, collateral assignments, notices, control agreements, promissory notes or other documents to perfect, give the highest priority to Agent's Lien on the Collateral or otherwise evidence Agent's rights herein. Borrower shall from time to time procure any instruments or documents as may be reasonably requested by Agent, and take all further action that may be necessary, or that Agent may reasonably request, to perfect and protect the Liens granted hereby or pursuant to applicable Loan Documents. In addition, and for such purposes only, Borrower hereby authorizes Agent to execute and deliver on behalf of Borrower and to file such financing statements (including an indication that the financing statement covers "all assets or all personal property" of Borrower in accordance with Section 9504 of the UCC), collateral assignments, notices, control agreements, security agreements and other documents without the signature of Borrower either in Agent's name or in the name of Agent as agent and attorney-in-fact for Borrower. Borrower shall protect and defend Borrower's title to the Collateral and Agent's Lien thereon against all Persons claiming any interest adverse to Borrower or Agent other than Permitted Liens.

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

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

fractional shares) shall only be allowed if the Redemption Conditions are satisfied in respect of such payment and at all times after such payment.

7.5Collateral. Borrower shall at all times (a) keep the Collateral and all other property and assets used in Borrower's business or in which Borrower now or hereafter holds any interest free and clear from any legal process or Liens whatsoever (except for Permitted Liens), and (b) shall give Agent prompt written notice of any legal process adversely affecting the Collateral, such other property and assets, or any Liens thereon, provided however, that the Collateral and such other property or assets may be subject to Permitted Liens. Borrower shall not agree with any Person other than Agent or Lenders not to encumber its property other than in connection with Permitted Liens. Borrower shall not enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Borrower to create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, to secure its obligations under the Loan Documents to which it is a party other than (i) this Agreement and the other Loan Documents, (ii) any agreements governing any purchase money Liens or capital lease obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (iii) customary restrictions on the assignment of leases, licenses and other agreements, (iv) customary restrictions on cash collateral securing Permitted Liens, (v) customary restrictions under asset sale agreements otherwise permitted hereunder and (vi) customary restrictions and conditions contained in agreements governing joint ventures in the ordinary course of business. Borrower shall cause its Subsidiaries to protect and defend such Subsidiary's title to its assets from and against all Persons claiming any interest adverse to such Subsidiary, and Borrower shall cause its Subsidiaries at all times to keep such Subsidiary's property and assets free and clear from any legal process or Liens whatsoever (except for Permitted Liens), and shall give Agent prompt written notice of any legal process affecting such Subsidiary's assets.

7.6Investments. Borrower shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries to do so, other than Permitted Investments.

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

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

7.8Transfers. Except for Permitted Transfers, Borrower shall not, and shall not permit any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey ("Transfer") any equitable, beneficial or legal interest in any material portion of its

assets (including, without limitation, pursuant to a Division); provided, that, in no event shall Borrower or any of its Subsidiaries Transfer any royalty interest in any of its or their respective assets.

7.9Mergers and Consolidations. Borrower shall not, nor will it permit any Subsidiary to, merge, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than (x) mergers or consolidations of (a) a Subsidiary which is not a Loan Party into another Subsidiary or into a Loan Party or (b) a Loan Party into another Loan Party (provided that a Borrower may only be merged or consolidated into another Borrower) or (y) dissolutions or liquidations of any Subsidiary; provided that (i) all assets of a Subsidiary which is not a Loan Party are transferred to another Subsidiary or a Loan Party upon such dissolution or liquidation or (ii) all assets of a Loan Party are transferred to another Loan Party upon such dissolution or liquidation (provided that any assets of a Borrower may only be transferred to another Borrower)).

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

7.11Corporate Changes.

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

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

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

(d) If Borrower intends to add any new offices or business locations, including warehouses, containing any portion of Borrower's assets or property valued, individually or in the aggregate, in excess of Five Hundred Thousand Dollars ($500,000), then Borrower will cause the landlord of any such new offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance satisfactory to Agent.

(e) If Borrower intends to deliver any portion of Borrower's assets or property valued, individually or in the aggregate, in excess of Five Hundred Thousand Dollars ($500,000) to a bailee, and Agent and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will cause such bailee to execute and deliver a bailee agreement in form and substance satisfactory to Agent.

(f) The Borrower will not, and will not permit any Subsidiary to, engage to any material extent in any business other than those businesses conducted by the Borrower and its Subsidiaries

on the date hereof or any business reasonably related or incidental thereto or representing a reasonable expansion thereof.

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

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

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

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

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

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

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

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

7.18[Reserved.]

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

7.20Compliance with Laws.

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

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

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

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

7.21Minimum Cash.

(a) Beginning on the Closing Date and at all times thereafter during which Market Capitalization is less than or equal to Four Hundred Million Dollars ($400,000,000), Borrower shall maintain Qualified Cash in an amount not less than Eight Million Five Hundred Thousand Dollars ($8,500,000).

(b) If Borrower makes a redemption or any other cash payment in respect of Permitted Convertible Debt, subject to satisfaction of the Redemption Conditions, Borrower shall, at all times

thereafter, maintain Qualified Cash in the amount required by the defined term "Redemption Conditions".

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

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

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

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

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

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

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

Notwithstanding anything to the contrary in this Section 7, none of Section 7.4, 7.6, 7.7 nor 7.8 shall not prohibit the repurchase, exchange or inducement of the conversion of Permitted Convertible Debt by delivery of shares of common stock and/or a different series of Permitted Convertible Debt and/or by payment of cash (in an amount that does not exceed the proceeds received by Borrower from the substantially concurrent issuance of common stock and/or such different series of Permitted Convertible Debt minus the net cost of any Permitted Bond Hedge Transactions and/or Permitted Warrant Transactions plus the net cash proceeds, if any, received by Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, pursuant to the immediately following proviso); provided that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Permitted Convertible Debt that is so repurchased, exchanged or converted, Borrower shall exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, corresponding to such Permitted Convertible Debt that are so repurchased, exchanged or converted.

SECTION 8. RIGHT TO INVEST

8.1Borrower shall use commercially reasonable efforts to grant the Lenders (or their Affiliates, assignees or other nominees) the option to invest in any Subsequent Financing in an aggregate amount of up to Three Million Dollars ($3,000,000) on the same terms, conditions and pricing afforded to others participating in any such Subsequent Financing. This Section 8.1, and all rights and obligations provided for hereunder, shall terminate upon the date on which the Secured Obligations (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement) have been paid in full and this Agreement has been terminated.

SECTION 9. EVENTS OF DEFAULT

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

9.1Payments. A Loan Party fails to pay any amount due under this Agreement or any of the other Loan Documents on the due date; provided, however, that an Event of Default shall not

occur on account of a failure to pay due solely to an administrative or operational error of Agent or Lenders or Borrower's bank if Borrower had the funds to make the payment when due and makes the payment within three (3) Business Days following Borrower's knowledge of such failure to pay; or

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

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

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

9.5Insolvency. (a) A Loan Party or any of its Subsidiaries fails to be solvent as described under Section 5.15 hereof; (b) a Loan Party or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against a Loan Party or any of its Subsidiaries and is not dismissed or stayed within thirty (30) days (but no Advances shall be made while any of the conditions described in clause (a) exist or until any Insolvency Proceeding is dismissed); or

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

9.7Attachment; Levy; Restraint on Business.

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

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

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

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

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

SECTION 10. REMEDIES

10.1General. Upon the occurrence and continuance of any one or more Events of Default, Agent may, and at the direction of the Required Lenders shall, accelerate and demand payment of all or any part of the outstanding Secured Obligations together with a Prepayment Charge and declare them to be immediately due and payable (provided, that upon the occurrence of an Event of Default of the type described in Section 9.5, all of the Secured Obligations (including, without limitation, the Prepayment Charge and the End of Term Charge) shall automatically be accelerated and made due and payable, in each case without any further notice or act). Borrower hereby irrevocably appoints Agent as its lawful attorney-in-fact to: (a) exercisable following the occurrence of an Event of Default, (i) sign Borrower's name on any invoice or bill of lading for any account or drafts against account debtors; (ii) demand, collect, sue, and give releases to any account debtor for monies due, settle and adjust disputes and claims about the accounts directly with account debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Agent's or Borrower's name, as Agent may elect); (iii) make, settle, and adjust all claims under Borrower's insurance policies; (iv) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (v) transfer the Collateral into the name of Agent or a third party as the UCC permits; and (vi) receive, open and dispose of mail addressed to Borrower; and (b) regardless of whether an Event of Default has occurred, (i) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; and (ii) notify all account debtors to pay Agent directly. Borrower

hereby appoints Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Secured Obligations have been satisfied in full and the Loan Documents (other than the Warrant) have been terminated. Agent's foregoing appointment as Borrower's attorney in fact, and all of Agent's rights and powers, coupled with an interest, are irrevocable until all Secured Obligations (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement) have been fully repaid and performed and the Loan Documents have been terminated. Agent may, and at the direction of the Required Lenders shall, exercise all rights and remedies with respect to the Collateral under the Loan Documents (other than the Warrant) or otherwise available to it under the UCC and other applicable law, including the right to release, hold, sell, lease, liquidate, collect, realize upon, or otherwise dispose of all or any part of the Collateral and the right to occupy, utilize, process and commingle the Collateral. All Agent's rights and remedies shall be cumulative and not exclusive.

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. MISCELLANEOUS

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

11.2Notice. Except as otherwise provided herein, any notice, demand, request, consent, approval, declaration, service of process or other communication (including the delivery of Financial Statements) that is required, contemplated, or permitted under the Loan Documents or with respect to the subject matter hereof shall be in writing, and shall be deemed to have been validly served, given, delivered, and received upon the earlier of: (i) the day of transmission by electronic mail or hand delivery or delivery by an overnight express service or overnight mail delivery service; or (ii) the third calendar day after deposit in the United States of America mails, with proper first class postage prepaid, in each case addressed to the party to be notified as follows:

(a) If to Agent:

HERCULES CAPITAL, INC.
Legal Department
Attention: Chief Legal Officer and Lake McGuire
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
email: legal@htgc.com; lmcguire@htgc.com
Telephone: 650-289-3060

(b) If to Lenders:

HERCULES CAPITAL IV L.P.
Legal Department
Attention: Chief Legal Officer and Lake McGuire
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
email: legal@htgc.com; lmcguire@htgc.com
Telephone: 650-289-3060

(c) If to Borrower:

HERON THERAPEUTICS, INC.

Attention: Chief Financial Officer
4242 Campus Point Court, Suite 200
San Diego, CA 92121
email: iduarte@herontx.com
Telephone: 858-251-4400

With a copy to:

Attention: Legal Department
4242 Campus Point Court, Suite 200
San Diego, CA 92121
email: legal@herontx.com
Telephone: 858-251-4400

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

11.3Entire Agreement; Amendments.

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

(b) Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 11.3(b). The Required Lenders and Loan Parties party to the relevant Loan Document may, or, with the written consent of the Required Lenders, Agent and Loan Parties party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of Lenders or of Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan Advance, reduce the stated rate of any interest (or fee payable hereunder) or extend the scheduled date of any payment thereof, in each case without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 11.3(b) without the written consent of such Lender; (C) reduce any percentage specified in the definition of Required Lenders, consent to the assignment or transfer by Loan Parties of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release a Loan Party from its obligations under the Loan Documents, in each case without the written consent of all Lenders; or (D) amend, modify or waive any provision of Section 11.18 or Addendum 3 without the written consent of Agent. Any such waiver and any such amendment, supplement or modification shall apply equally to each Lender and shall be binding upon the applicable Loan Parties, Lenders, Agent and all future holders of the Loans.

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

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

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

11.7Successors and Assigns. The provisions of this Agreement and the other Loan Documents shall inure to the benefit of and be binding on Borrower and its permitted assigns (if any). No Loan Party shall assign its obligations under this Agreement or any of the other Loan Documents without Agent's express prior written consent, and any such attempted assignment shall be void and of no effect. Agent and Lenders may assign, transfer, or endorse its rights hereunder and under the other Loan Documents without prior notice to Borrower, and all of such rights shall inure to the benefit of Agent's and Lenders' successors and assigns; provided that as long as no Event of Default has occurred and is continuing, neither Agent nor any Lender may assign, transfer or endorse its rights hereunder or under the Loan Documents to any party that is a direct competitor of Borrower (as reasonably determined by Agent), it being acknowledged that in all cases, any transfer to an Affiliate of any Lender or Agent shall be allowed. Notwithstanding the foregoing, (x) in connection with any assignment by a Lender as a result of a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Agent and Lenders may assign, transfer or endorse its rights hereunder and under the other Loan Documents to any Person or party and (y) in connection with a Lender's own financing or securitization transactions, the restrictions set forth herein shall not apply and Agent and Lenders may assign, transfer or endorse its rights hereunder and under the other Loan Documents to any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such assignee as Agent reasonably shall require. Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of Lender(s), and the Term Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Agent and Lender(s) shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all

purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

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

11.9Governing Law. This Agreement and the other Loan Documents have been negotiated and delivered to Agent and Lenders in the State of California, and shall have been accepted by Agent and Lenders in the State of California. Payment to Agent and Lenders by Borrower of the Secured Obligations is due in the State of California. This Agreement and the other Loan Documents (other than the Warrant) shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

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

11.11Mutual Waiver of Jury Trial / Judicial Reference.

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

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

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

11.12Professional Fees. Borrower promises to pay Agent's and Lenders' reasonable and documented fees and expenses necessary to finalize the Loan Documents, including but not limited to reasonable attorneys' fees, UCC searches, filing costs, and other miscellaneous expenses. In addition, Borrower promises to pay any and all reasonable attorneys' and other professionals' fees (including allocated costs of in-house counsel incurred after the Closing Date) and expenses incurred by Agent and Lenders after the Closing Date in connection with or related to: (a) the Loan; (b) the administration, collection, or enforcement of the Loan; (c) the amendment or modification of the Loan Documents; (d) any waiver, consent, release, or termination under the Loan Documents; (e) the protection, preservation, audit, field exam, sale, lease, liquidation, or disposition of Collateral or the exercise of remedies with respect to the Collateral; (f) any legal, litigation, administrative, arbitration, or out of court proceeding in connection with or related to Borrower or the Collateral, and any appeal or review thereof; and (g) any bankruptcy, restructuring, reorganization, assignment for the benefit of creditors, workout, foreclosure, or other action related to Borrower, the Collateral, the Loan Documents, including representing Agent or Lenders in any adversary proceeding or contested matter commenced or continued by or on behalf of Borrower's estate, and any appeal or review thereof.

11.13Confidentiality. Agent and Lenders acknowledge that certain items of Collateral and non-public information provided to Agent and Lenders by Borrower are confidential and proprietary information of Borrower, if, and to the extent, such information either (x) is marked as confidential by Borrower at the time of disclosure, or (y) should reasonably be understood to be confidential (the "Confidential Information"). Accordingly, Agent and Lenders agree that any Confidential Information it may obtain in the course of acquiring, administering, or perfecting Agent's security interest in the Collateral shall not be disclosed to any other Person or entity in any manner whatsoever, in whole or in part, without the prior written consent of Borrower, except that Agent

and Lenders may disclose any such information: (a) to its Affiliates and its partners, investors, lenders, directors, officers, employees, agents, advisors, counsel, accountants, representative and other professional advisors if Agent or Lenders in their sole discretion determines that any such party should have access to such information in connection with such party's responsibilities in connection with the Loan or this Agreement and, provided that such recipient of such Confidential Information either (i) agrees to be bound by the confidentiality provisions of this Section or (ii) is otherwise subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information; (b) if such information is generally available to the public or to the extent such information becomes publicly available other than as a result of a breach of this Section or becomes available to Agent or any Lender, or any of their respective Affiliates on a non-confidential basis from a source other than Borrower; (c) if required or appropriate in any report, statement or testimony submitted to any Governmental Authority having or claiming to have jurisdiction over Agent or Lenders and any rating agency; (d) if required or appropriate in response to any summons or subpoena or in connection with any litigation, to the extent permitted or deemed advisable by Agent's or Lenders' counsel; (e) to comply with any legal requirement or law applicable to Agent or Lenders or demanded by any Governmental Authority; (f) to the extent reasonably necessary in connection with the exercise of, or preparing to exercise, or the enforcement of, or preparing to enforce, any right or remedy under any Loan Document (including Agent's sale, lease, or other disposition of Collateral after the occurrence of a Default), or any action or proceeding relating to any Loan Document; (g) to any participant or assignee of Agent or Lenders or any prospective participant or assignee, provided, that such participant or assignee or prospective participant or assignee is subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information; (h) to any investor or potential investor (and each of their respective Affiliates or clients) in Agent or Lenders (or each of their respective Affiliates); provided that such investor, potential investor, Affiliate or client is subject to confidentiality obligations with respect to the Confidential Information; (i) otherwise to the extent consisting of general portfolio information that does not identify Borrower; or (j) otherwise with the prior consent of Borrower; provided, that any disclosure made in violation of this Agreement shall not affect the obligations of Borrower or any of its Affiliates or any guarantor under this Agreement or the other Loan Documents. Agent's and Lenders' obligations under this Section 11.13 shall supersede all of their respective obligations under the Non-Disclosure Agreement.

11.14Assignment of Rights. Borrower acknowledges and understands that Agent or Lenders may, subject to Section 11.7, sell and assign all or part of its interest hereunder and under the Loan Documents to any Person or entity (an "Assignee"). After such assignment the term "Agent" or "Lender" as used in the Loan Documents shall mean and include such Assignee, and such Assignee shall be vested with all rights, powers and remedies of Agent and Lenders hereunder with respect to the interest so assigned; but with respect to any such interest not so transferred, Agent and Lenders shall retain all rights, powers and remedies hereby given. No such assignment by Agent or Lenders shall relieve Borrower of any of its obligations hereunder. Lenders agree that in the event of any transfer by it of the promissory note(s) (if any), it will endorse thereon a notation as to the portion of the principal of the promissory note(s), which shall have been paid at the time of such transfer and as to the date to which interest shall have been last paid thereon.

11.15Revival of Secured Obligations. This Agreement and the Loan Documents shall remain in full force and effect and continue to be effective if any petition is filed by or against Borrower for liquidation or reorganization, if Borrower becomes insolvent or makes an assignment for the benefit of creditors, if a receiver or trustee is appointed for all or any significant part of Borrower's assets, or if any payment or transfer of Collateral is recovered from Agent or Lenders. The Loan Documents and the Secured Obligations and Collateral security shall continue to be effective, or shall be revived or reinstated, as the case may be, if at any time payment and performance of the Secured Obligations or any transfer of Collateral to Agent, or any part thereof is

rescinded, avoided or avoidable, reduced in amount, or must otherwise be restored or returned by, or is recovered from, Agent, Lenders or by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment, performance, or transfer of Collateral had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, avoided, avoidable, restored, returned, or recovered, the Loan Documents and the Secured Obligations shall be deemed, without any further action or documentation, to have been revived and reinstated except to the extent of the full, final, and indefeasible payment to Agent or Lenders in Cash.

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

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

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

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

11.20[Reserved.]

11.21[Reserved.]

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

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

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, Borrower, Agent and Lenders have duly executed and delivered this Working Capital Facility Agreement as of the day and year first above written.

BORROWER:

HERON THERAPEUTICS, INC.

By: /s/ Ira Duarte

Name: Ira Duarte

Title: Executive Vice President, Chief Financial Officer

Accepted in Palo Alto, California:

AGENT:

HERCULES CAPITAL, INC.

By: /s/ Prentis Robinson III

Name: Prentis Robinson III

Title: Associate General Counsel

LENDERS:

HERCULES CAPITAL, INC.

By: /s/ Prentis Robinson III

Name: Prentis Robinson III

Title: Associate General Counsel

HERCULES CAPITAL IV, L.P.,

a Delaware limited partnership

By: Hercules Technology SBIC

Management, LLC, its General Partner

By: Hercules Capital, Inc., its Manager

By: /s/ Prentis Robinson III

Name: Prentis Robinson III

Title: Associate General Counsel

HERCULES PRIVATE GLOBAL VENTURE GROWTH FUND I L.P.

By: Hercules Adviser LLC, its Investment Adviser

By: /s/ Prentis Robinson III

Name: Prentis Robinson III

Title: Authorized Signatory

Table of Addenda, Exhibits and Schedules

Addendum 1: Taxes; Increased Costs

Addendum 2: SBA Provisions

Addendum 3: Agent and Lender Terms

Exhibit A: Advance Request
Attachment to Advance Request

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

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

Exhibit D: Borrower’s Deposit Accounts and Investment Accounts

Exhibit E: Compliance Certificate

Exhibit F: Joinder Agreement

Exhibit G: [Reserved.]

Exhibit H: ACH Debit Authorization Agreement

Exhibit I: [Reserved.]

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

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

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

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

Schedule 1.1 Commitments
Schedule 1 Subsidiaries
Schedule 1A Existing Permitted Indebtedness
Schedule 1B Existing Permitted Investments
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Schedule 5.8 Tax Matters
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Schedule 5.14 Capitalization
Schedule 5.17 Commercial Tort Claims

Schedule 7.23 Affiliate Transactions

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EXHIBIT 31.1

SECTION 302 CERTIFICATION

I, Craig Collard, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Heron Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2023

/s/ Craig Collard
Craig Collard
Chief Executive Officer
(As Principal Executive Officer)

EXHIBIT 31.2

SECTION 302 CERTIFICATION

I, Ira Duarte, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Heron Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2023

/s/ Ira Duarte

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

EXHIBIT 32.1

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

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

- the Quarterly Report of the Registrant on Form 10-Q for the quarter ended June 30, 2023 (the "Report"), which accompanies this certification, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

- the information contained in the Report fairly presents, in all material respects, the financial condition of the Registrant at the end of such quarter and the results of operations of the Registrant for such quarter.

Dated: August 14, 2023

/s/ Craig Collard
Craig Collard
Chief Executive Officer
(As Principal Executive Officer)

/s/ Ira Duarte
Ira Duarte
Executive Vice President, Chief Financial Officer
(As Principal Financial Officer)

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

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