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

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**FORM 8-K**

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**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): May 12, 2025

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**CLEARPOINT NEURO, INC.**

(Exact name of Registrant as Specified in Its Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-34822**  
(Commission File Number)

**58-2394628**  
(IRS Employer  
Identification No.)

**120 S. Sierra Ave., Suite 100**  
**Solana Beach, California**  
(Address of Principal Executive Offices)

**92075**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: 888 287-9109**

(Former Name or Former Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

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

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

Emerging growth company ☐

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

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### Item 1.01 Entry into a Material Definitive Agreement.

On May 12, 2025, ClearPoint Neuro, Inc. (the “Company”) entered into a stock purchase agreement (the “SPA”) with certain investors (the “Investors”) relating to the purchase and sale in a registered direct offering of an aggregate of 275,808 shares of Company’s common stock, par value \$0.01 per share at a price of \$12.69 per Share, based on the trailing 30-trading day volume-weighted average price of the Company’s common stock (the “Shares”). In addition, pursuant to the SPA, the Company granted the Investors, from the closing date and until December 31, 2026, a right to participate in any equity offerings consummated by the Company in an amount up to \$1.5 million, subject to certain limitations and exclusions set out in the SPA. The aggregate gross proceeds to the Company from the offering are expected to be approximately \$3.5 million before deducting estimated offering expenses payable by the Company.

The closing of the offering is expected to occur on or about May 12, 2025, subject to customary closing conditions. The Company intends to use the proceeds from the offering for general corporate purposes, which may include capital expenditures, working capital and general and administrative expenses.

The SPA contains customary representations, warranties and agreements by the Company, and customary conditions to closing. The representations and warranties in the SPA were made only for purposes of the SPA and as of a specific date, were solely for the benefit of the parties to the SPA, and may be subject to limitations agreed upon by such parties.

The offering is being made pursuant to the Company’s registration statement on Form S-3 (File No. 333-275476), filed with the U.S. Securities and Exchange Commission (the “SEC”) on November 9, 2023, and declared effective by the SEC on November 20, 2023, and a prospectus supplement thereunder.

Contemporaneously with the SPA, the Company entered into a note purchase agreement (the “NPA”) with CALW SA LLC, an affiliate of Oberland Capital Management LLC, as Purchaser Agent, and certain funds managed by Oberland Capital Management LLC, as purchasers (the “Oberland Funds” and, together with other purchasers party thereto from time to time, the “Purchasers”), pursuant to which the Company may sell to the Purchasers, and the Purchasers may buy from the Company, notes (each a “Note” and collectively, the “Notes”) in an aggregate principal amount not to exceed \$105.0 million, consisting of the following three tranches of Notes:

- an initial sale of \$30.0 million principal amount of Notes;
- at the option of the Company, a second sale (the “Second Sale”) of \$25.0 million principal amount of Notes, in up to two increments of \$12.5 million each, at any time prior to December 31, 2026, subject to certain customary conditions precedent; and
- at the option of the Company and the Purchasers, a third sale (the “Third Sale”) of up to \$50.0 million principal amount of Notes, at any time prior to December 31, 2026, subject to certain customary conditions precedent.

The purchase price of the Notes is, in each case, 98% of the principal amount thereof. The outstanding principal amount of the Notes bears interest at a rate per annum equal to the sum of (i) the greater of the Term SOFR (as defined in the NPA) and 4.30%, and (ii) 3.95%, with a minimum rate of 8.25% and a cap of 9.50%, payable quarterly in arrears until the sixth anniversary of the Closing Date or the date on which all amounts owing to the Purchasers under the NPA have been paid in full (the “Maturity Date”). For the first six (6) quarters (the “Initial PIK Period”) following the purchase date for each sale of Notes (each, a “Purchase Date”), 50% of the interest due shall be paid-in-kind and added to the then-outstanding principal balance of the Notes, which Initial PIK Period may be extended by two (2) quarters at the Company’s option. Upon the occurrence and during the continuance of an Event of Default (as defined in the NPA) under the NPA, the then-applicable interest rate on all outstanding obligations will increase by 4.00%.

Beginning on January 1, 2027 and continuing until the Maturity Date, the Purchasers will receive 0.375% (the “Revenue Participation Percentage”) of Net Revenue (as defined in the NPA) for any fiscal quarter (of up to \$50,000,000 of Net Revenue for each fiscal year), payable quarterly, with the Revenue Participation Percentage increasing pro rata in the event of a Second Sale or Third Sale of Notes. The outstanding principal amount of the Notes, interest accrued thereon and any other amounts owing to the Purchasers under the NPA, will be due and payable on the Maturity Date.

All of the Notes may be redeemed prior to the Maturity Date at the option of the Company, subject to payment of the Repayment Amount (as defined in the NPA). The Purchasers may demand redemption of the Notes prior to the Maturity Date in the event of a Change of Control (as defined in the NPA) of the Company or an Event of Default (as defined in the NPA), subject to payment of the

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Repayment Amount. The Repayment Amount will be: (a) if redemption occurs before the first anniversary of the date of issuance of a Note, 117.5% of the principal amount of such Note; (b) if redemption occurs after the first anniversary and prior to the second anniversary of the date of issuance of a Note, 125% of the principal amount of such Note; (c) if redemption occurs after the second anniversary and prior to the third anniversary of the date of issuance of a Note, 135% of the principal amount of such Note; (d) if redemption occurs after the third anniversary and prior to the fourth anniversary of date of issuance of a Note, an amount that would generate an internal rate of return to the Purchasers of such Note of 11.50%; (e) if redemption occurs after the fourth anniversary of the date of issuance of a Note and prior to the sixth anniversary of the date of issuance of a Note, an amount that would generate an internal rate of return to the Purchasers of such Note of 10.50%; (f) if redemption occurs on the sixth anniversary of the date of issuance of a Note, an amount that would generate an internal rate of return to the Purchasers of such Note of 9.50%, minus, in each case, the sum of regularly scheduled interest paid in cash, payments of proceeds of insurance policies pursuant to the terms of the NPA, and payments of revenue participation in cash prior to such redemption date, and assuming, in each case, that all PIK interest was added to the original principal amount of a Note on the date of issuance of such Note.

The NPA contains no financial covenants. The Company's obligations under the NPA are subject to customary covenants, including limitations on the Company's ability to dispose of assets, undergo a change of control, merge with or acquire other entities, incur debt, incur liens, pay dividends or other distributions to holders of its capital stock, repurchase stock and make investments, in each case subject to certain exceptions. The Company's obligations under the NPA are secured by a security interest on substantially all of the Company's assets, including its intellectual property.

A copy of the SPA is filed as exhibit 10.1, and a copy of the NPA is filed as exhibit 10.2. The foregoing descriptions of the terms of the SPA and NPA, respectively, are qualified in their entirety by reference to exhibit 10.1 or exhibit 10.2, as applicable. A copy of the opinion of Sheppard, Mullin, Richter & Hampton LLP relating to the legality of the issuance and the sale of the Shares is filed as Exhibit 5.1.

This report shall not constitute an offer to sell or the solicitation of an offer to buy any securities of the Company, nor shall there be any offer, solicitation, or sale of the Company's securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

#### Item 8.01 Other Events.

On May 12, 2025, the Company issued a press release announcing the offering, a copy of which is attached as Exhibit 99.1 and is incorporated herein by reference.

#### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description of Exhibit
5.1	<a href="#">Opinion of Sheppard, Mullin, Richter &amp; Hampton LLP</a>
10.1	<a href="#">Form of Stock Purchase Agreement</a>
10.2	<a href="#">Form of Note Purchase Agreement</a>
23.1	<a href="#">Consent of Sheppard, Mullin, Richter &amp; Hampton LLP</a> (incorporated into Exhibit 5.1)
99.1	<a href="#">Press release dated May 12, 2025</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

## SIGNATURES

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

**CLEARPOINT NEURO, INC.**

Date: May 12, 2025

By: /s/ Danilo D'Alessandro  
Danilo D' Alessandro  
Chief Financial Officer

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Sheppard, Mullin, Richter & Hampton LLP 12275 El Camino Real, Suite 100  
San Diego, CA 92130-4092  
858-720-8900 main  
www.sheppardmullin.com

May 12, 2025

**VIA EDGAR**

ClearPoint Neuro, Inc.  
120 S Sierra Ave. Suite 100  
Solana Beach, California 92075

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to ClearPoint Neuro, Inc. (the “Company”), a Delaware corporation, in connection with the offering for sale of 275,808 shares (the “Shares”) of common stock of the Company, par value \$0.01 per share (the “Common Stock”), pursuant to the Registration Statement (as defined below) and the Prospectus (as defined below). Unless defined herein, capitalized terms have the meanings given to them in that certain Stock Purchase Agreement (the “Stock Purchase Agreement”), dated May 12, 2025, by and among the Company and the investors identified on the signature pages thereto (the “Investors”), relating to the issuance and sale by the Company of the Shares.

This opinion is being furnished in accordance with the requirements of Item 601(b)(5)(i) of Regulation S-K. In connection with this opinion, we have reviewed and relied upon the following:

- the Registration Statement (including any documents incorporated by reference therein, the “Registration Statement”) on Form S-3 (File No. 333-275476) initially filed with the Securities and Exchange Commission (the “Commission”) on November 9, 2023 under the Securities Act of 1933, as amended (the “Securities Act”), and the related prospectus included in such Registration Statement at the time it became effective on November 20, 2023 (the “Base Prospectus”);
- the prospectus supplement, which includes the Base Prospectus, filed on May 12, 2025 pursuant to Rule 424(b) under the Securities Act, which is referred to as the “Prospectus”;
- the Stock Purchase Agreement;
- the Amended and Restated Certificate of Incorporation of the Company (as amended) in effect on the date hereof;
- the Fourth Amended and Restated Bylaws of the Company in effect on the date hereof;
- the resolutions of the Board of Directors of the Company, adopted on May 12, 2025, authorizing the execution and delivery of the Stock Purchase Agreement, the issuance and sale of the Shares, the preparation and filing of the Prospectus, and other actions with regard thereto; and
- such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this opinion.

In our examination, we have assumed the genuineness of all signatures, including endorsements, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photocopy, and the authenticity of the originals of such copies. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials.

SMRH:4904-4447-0848.6

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Based upon the foregoing and subject to the qualifications and assumptions stated herein, we are of the opinion that the Shares have been duly authorized by all requisite corporate action on the part of the Company under the Delaware General Corporation Law (the “DGCL”) and, when the Shares are delivered to and paid for by the Investors in accordance with the terms of the Stock Purchase Agreement, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion letter as an exhibit to the Company’s Current Report on Form 8-K being filed on the date hereof and incorporated by reference into the Registration Statement. We also hereby consent to the reference to our firm under the caption “Legal Matters” in the Prospectus. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act, the rules and regulations of the Commission promulgated thereunder or Item 509 of Regulation S-K.

We express no opinion as to matters governed by any laws other than the DGCL.

We disclaim any obligation to advise you of facts, circumstances, events or developments that hereafter may be brought to our attention and that may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company or the Shares.

Respectfully submitted,

/s/ SHEPPARD, MULLIN, RICHTER & HAMPTON LLP





## STOCK PURCHASE AGREEMENT

This **STOCK PURCHASE AGREEMENT** (this “*Agreement*”), is made and entered into as of May 12, 2025 (the “*Execution Date*”), by and between (i) **TPC INVESTMENTS III LP**, a Delaware limited partnership (the “*Investor*”) and (ii) **CLEARPOINT NEURO, INC.**, a Delaware corporation (the “*Company*”). The Investor and the Company are referred to herein, collectively, as the “*Parties*” and each, individually, as a “*Party*”.

### RECITALS

**WHEREAS**, contemporaneously with the execution of this Agreement, each of the Parties (or their respective Affiliates (as defined in the Note Purchase Agreement)) have executed that certain Note Purchase Agreement with each of the other signatories thereto (the “*Note Purchase Agreement*”);

**WHEREAS**, capitalized terms used herein and not otherwise defined will have the meanings ascribed to them in the Note Purchase Agreement; and

**WHEREAS**, in consideration of and in connection with the Note Purchase Agreement, pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “*Securities Act*”) and the rules and regulations of the Securities and Exchange Commission (the “*Commission*”) thereunder, the Company desires to sell, and the Investor desires to purchase, shares of the Company’s common stock, par value \$0.01 per share (“*Common Stock*”), pursuant to the terms and conditions set forth herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and the covenants set forth herein, the Parties agree as follows:

#### **Section 1 Purchase and Sale of Shares.**

(a) Subject to the terms and conditions of this Agreement, the Investor agrees to purchase, and the Company agrees to sell and issue to the Investor, at the Closing (as defined below) that number of shares of Common Stock set forth opposite the Investor’s name on **Exhibit A**, at a purchase price of \$12.69 per share for an aggregate purchase price of \$3,500,003.52 (the “*Purchase Price*”). The shares of Common Stock issued to the Investor at the Closing pursuant to this **Section 1** shall be referred to in this Agreement as the “*Shares*.”

(b) The purchase and sale of Shares pursuant to this **Section 1** shall take place remotely via the exchange of documents and signatures on the date of this Agreement at such time as is mutually agreed upon, orally or in writing, by the Company and the Investor (which time and place are designated as the “*Closing*”).

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(c) At the Closing, the Company shall deliver to the Investor a certificate or evidence of book-entry position (as determined by the Investor) with the Company's transfer agent representing the Shares being purchased by the Investor at the Closing against payment of the purchase price therefor by wire transfer to an account designated by the Company in immediately available funds.

#### **Section 2 Participation Rights.**

(a) From the Execution Date and until December 31, 2026, if the Company proposes to undertake an offering of shares of Common Stock, or any instruments convertible into shares of Common Stock, which, when considered as part of any broader related transaction or transactions, as applicable, is primarily for capital raising purposes (excluding any issuances of Common Stock or instruments convertible into shares of Common Stock made (i) in connection with a collaboration, technology license, development or other similar agreement or strategic acquisition or partnership, or (ii) pursuant to an at the market offering program, including pursuant the At-The-Market Equity Offering Sales Agreement, dated November 7, 2024, by and between the Company and Stifel, Nicolaus & Company (such proposed offering, an "**Offering**"), the Company shall, within a reasonable period of time preceding the consummation of the Offering, provide written notice to the Investor of such Offering, including the material proposed terms of such offering (the "**Offer Notice**").

(b) The Investor will be granted the opportunity, but not the obligation, to purchase shares of Common Stock, or such instruments convertible into shares of Common Stock, as applicable, to be sold in such Offering (without regard to the exercise of any over-allotment option) at the same price per security at which the securities offered in the offering are being offered to Investor, before excluding underwriters' discounts and commissions or placement agent fees, as applicable (the "**Offering Price**") and otherwise on terms at least as favorable as those granted to any other participant in the Offering, that would in the aggregate (and collectively among all Investor) equal a purchase price of up to \$1.5 million (such right, the "**Offering Participation Right**"). The Offering Participation Right shall terminate and expire on the earlier to occur of: (i) December 31, 2026 and (ii) the date on which the Offering Participation Right has been exercised in full.

(c) If an Investor desires to exercise its Offering Participation Right, then the Investor must provide a written notice to the Company by not later than 4:00 p.m. (New York City time) on the fifth (5th) business day following its receipt of the Offer Notice, stating the dollar amount of the Investor's elected participation. If the Company receives no such notice from the Investor within the time period set forth herein, the Investor shall be deemed to have notified the Company that it does not elect to exercise its Offering Participation Right and the Company shall be free to sell such securities in the Offering. The Offer Notice shall describe in reasonable detail the proposed terms of such Offering, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Offering is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(d) Notwithstanding the foregoing, in the event that (i) the Company is advised by the Commission, the Financial Industry Regulatory Authority ("FINRA"), any securities exchange on which the Company's shares are traded or any other regulatory body (or any of their staffs), or (ii) outside legal counsel for the Company reasonably determines, after consulting with legal counsel to the Investor, that the offering or sale of such securities to the Investor as described in this Section 2 would violate any applicable federal or state securities laws or the applicable rules or regulations of the Commission, FINRA, such securities exchange, or any other applicable regulatory body, then no Investor shall be entitled to exercise its Offering Participation Right with respect to such Offering.

(e) The Company and the Investor hereby acknowledge that: (i) all offers to be made to the Investor pursuant to this Agreement shall be conducted in compliance with all federal and state securities laws and regulations and all applicable rules, regulations and policies of the Commission, any securities exchange on which the Company's shares are traded, or any other regulatory body; (ii) nothing in this Section 2 constitutes an offer or the commitment by any person to purchase any securities in any offering, and (iii) the rights of the Investor under this Section 2 to purchase securities in an offering will be conditioned upon the completion of any such Offering.

### **Section 3 Closing Deliverables.**

(a) At or prior to the Closing, the Company shall deliver or cause to be delivered to the Investor the following:

(i) this Agreement duly executed by the Company;

(ii) the Prospectus Supplement (as defined below) (which may be delivered in accordance with Rule 172 under the Securities Act);

(iii) a copy of the irrevocable instructions to the transfer agent of the Company instructing the transfer agent to deliver the Shares to the Investor;

(iv) a certificate, dated as of the date of the Closing, duly executed and delivered by an authorized officer of the Company, certifying that the condition to the Closing set forth in Section 3(a)(i) of this Agreement have been fulfilled;

(v) a certificate, dated as of the date of the Closing, duly executed and delivered by the Secretary of the Company, as to (A) resolutions of the board of directors of the Company authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby; (B) the incumbency and signatures of the Company's officers authorized to act with respect to this Agreement and (C) the full force and validity of the Company's certificate of incorporation and bylaws, each as amended to date, and copies thereof;

(vi) a copy of a good standing certificate of the Company, dated as of a date reasonably close to the date of the Closing;

(vii) a legal opinion of Company Counsel substantially in the form reasonably acceptable to the Investor;

(viii) the Company's wire instructions; and

(ix) the Shares.

(b) At or prior to the Closing, the Investor will deliver to the Company (i) this Agreement duly executed by the Investor and (ii) the portion of the Purchase Price set forth opposite the Investor's name on Exhibit A hereto.

**Section 4** **Representations and Warranties of the Company.** The Company hereby represents and warrants to the Investor as of the Execution Date and the Closing that:

(a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a Material Adverse Change;

(b) This Agreement has been duly authorized, validly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the enforcement of creditors' rights generally or (ii) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies;

(c) The Shares have been duly authorized and reserved for issuance and when issued, sold and delivered in accordance with the terms of this Agreement, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than liens or encumbrances created by or imposed by an Investor (if any), and the issuance of the Shares is not subject to any preemptive or similar rights, except as have been validly waived or complied with in connection with the offering of the Shares. The Company has prepared and filed a registration statement on Form S-3 (File No. 333-275476) (the "**Registration Statement**") in conformity with the requirements of the Securities Act, which became effective on November 20, 2023, including the base prospectus included therein (including all information, documents and exhibits filed with or incorporated by reference into such base prospectus, the "**Prospectus**"), and such amendments and supplements thereto as may have been required to the date of this Agreement. The Company was at the time of the filing of the Registration Statement eligible to use Form S-3. The Registration Statement is effective under the Securities Act, and no stop order preventing or suspending the effectiveness of the Registration Statement or suspending or preventing the use of the Prospectus therein has been issued by the Commission, and no proceedings for that purpose have been instituted or, to the knowledge of

the Company, are threatened by the Commission. The Company shall file a prospectus supplement with respect to the Shares sold hereunder (the “**Prospectus Supplement**”) with the Commission pursuant to Rule 424(b). At the time the Registration Statement and any amendments thereto became effective, at the date of this Agreement and at the Closing, the Registration Statement and any amendments thereto conformed and will conform in all material respects to the requirements of the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading; and the Prospectus and any amendments or supplements thereto, at the time the Prospectus or any amendment or supplement thereto was issued and at the Closing, conformed and will conform in all material respects to the requirements of the Securities Act and did not and will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(d) The issuance and sale of the Shares and the compliance by the Company with this Agreement will not (i) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, mortgage, deed of trust, indenture, note, bond, license, lease agreement, instrument or obligation to which the Company or any of its subsidiaries is a party or by which such any of their properties or assets are bound; (ii) result in any violation of the provisions of the Company’s certificate of incorporation or bylaws; or (iii) result in any violation of any federal, state, local or foreign statute or any judgment, order, rule or regulation of any court or Governmental Authority (as defined in the Note Purchase Agreement), domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets, except, in the case of clauses (i) and (iii) for such defaults, breaches, or violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change;

(e) Other than (i) as may be required under the Securities Act of 1933, as amended (the “**Securities Act**”), the rules of FINRA or state securities or blue sky laws, (ii) the filing of one or more Current Reports on Form 8-K, and (iii) the filing of a notice of change with Nasdaq, if required,

no notice to, registration, declaration or filing with, exemption or review by, or authorization, order, consent or approval of any Governmental Authority or stock exchange, nor expiration or termination of any statutory waiting period, is necessary for the execution, delivery or performance by the Company of or under this Agreement or the Note Documents (as defined in the Note Purchase Agreement) or the consummation by the Company of the transactions contemplated by this Agreement or the Note Documents, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change;

(f)The Common Stock is registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and listed on Nasdaq. The Company is in compliance in all material respects with applicable Nasdaq continued listing requirements and the Company has taken no action designed to and has no knowledge of any facts that would have the effect of or reasonably be expected to lead to delisting of the Common Stock from Nasdaq or the termination of the registration of the Common Stock under the Securities Exchange Act of 1934, as amended, and, other than as disclosed in the SEC Filings (as defined below), has not received any notification that the Commission or Nasdaq is contemplating such delisting or termination;

(g)Since January 1, 2024, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Exchange Act (collectively, the “**SEC Filings**”). At the time of filing thereof, the SEC Filings complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder;

(h)The representations and warranties being made by the Company and the other Obligors (as defined in the Note Purchase Agreement) in the Note Purchase Agreement are true and correct in all respects (except for any representation that is qualified by materiality, in which case such representation is true and correct in all material respects); and

(i)Except as otherwise disclosed to the Investor or sales in connection with the payment or withholding of income taxes due to the vesting/settlement of equity awards, the Company is not aware of any pending, planned or contemplated significant sale or other disposition of

shares of Common Stock by any of the Company's Affiliates, including any of its Section 16 officers and directors and their family members or Affiliates.

**Section 5 Representations and Warranties of the Investor.** The Investor hereby represents and warrants to the Company as of the Execution Date and the Closing that:

(a)(i) At the time it was offered the Shares, it was, and as of the date hereof it is an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), (a)(12) or (a)(13) under the Securities Act, (ii) it is acquiring the Shares as principal for its own account and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Shares (this representation and warranty not limiting the Investor's right to sell the Shares pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws), (iii) it is acquiring the Shares hereunder in the ordinary course of its business, (iv) it has had such opportunity as it has deemed adequate to ask questions of the Company and its representatives and to otherwise obtain from the Company such information regarding the Company, along with copies of all information from the Company that it deems necessary to permit it to evaluate the merits of entering into this Agreement, and (v) it has such knowledge, sophistication and experience in business and financial matters to be able to evaluate the merits, risks and other considerations relating to the transactions contemplated by this Agreement;

(b) It acknowledges that it has had the opportunity to review the this Agreement and any other documents or agreements executed in connection with the transactions contemplated hereunder (including all exhibits and schedules thereto), the Registration Statement, the Prospectus and the SEC Filings and has been afforded, (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Shares and the merits and risks of investing in the Shares; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can



acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment;

(c) It is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement and performance by the Investor of the transactions contemplated hereby have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of the Investor. This Agreement has been duly executed by the Investor, and when delivered by the Investor in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Investor, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law;

(d) The execution, delivery and performance by the Investor of this Agreement do not (a) contravene (i) the certificate of incorporation or bylaws or other organizational or constitutive documents of the Investor or the organizational documents of any of its subsidiaries, (ii) any court decree or order binding on or affecting the Investor or any of its subsidiaries or (iii) any law or governmental regulation binding on or affecting the Investor or any of its subsidiaries; or (b) result in a default under any contract, agreement, or instrument binding on or affecting the Investor or any of its subsidiaries;

(e) No authorization or approval, clearance or other action by, and no notice to or filing with, any Governmental Authority or other person (other than those that have been, or as of the Closing will be, duly obtained or made and which are, or as of the Closing will be, in full force and effect) is required for the due execution, delivery or performance by the Investor of this Agreement; and

(f) Other than consummating the transactions contemplated hereunder, it has not, nor has any Person acting on behalf of or pursuant to any understanding with it, directly or indirectly executed any purchases or sales, including short sales, of the securities of the Company during the period commencing as of the time that the Investor first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material pricing terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Other than to other Persons party to this Agreement or to the Investor's representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates, the Investor has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

#### **Section 6 Covenants of the Parties.**

(a) The Company covenants that the Shares, when issued, sold and delivered in accordance with the terms set forth in this Agreement, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than liens or encumbrances created by or imposed by the Investor.

(b) The Company shall use its reasonable best efforts to maintain listing of Common Stock on each securities exchange on which the Common Stock is listed on the Execution Date. The Company shall apply to list or quote all of the Shares on such securities exchange and promptly secure the listing of all of the Shares on such securities exchange. The Company will comply in all respects with the Company's reporting, filing and other obligations under its bylaws or rules of such securities exchange.

(c) The Investor and the Company shall each take all actions as may be reasonably necessary to consummate the transactions contemplated by this Agreement, including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate.

(d) The Investor covenants that neither it nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including short sales of any of the Company's securities

during the period commencing with the Execution Date and ending at the open of trading on May 15, 2025. The Investor covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company, the Investor will maintain the confidentiality of the existence and terms of this Agreement and the transactions contemplated hereby.

**Section 7 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) at the time of transmission if sent by facsimile or e-mail (with confirmation of transmission); or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 7**).

If to the Investor:

CALW SA LLC  
c/o Oberland Capital Management LLC  
1700 Broadway, 37th Floor  
New York, NY 10019  
Attention: Kristian Wiggert  
Telephone: (202) 257-5850  
Email: kwiggert@oberlandcapital.com

If to the Company:

ClearPoint Neuro, Inc.  
120 S Sierra Ave. Suite 100  
Solana Beach, California 92075  
Attn: Ellisa Cholanpranee  
Telephone: 858-306-9428  
E-mail: echolanpranee@clearpointneuro.com

**Section 8 Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 9 Successor and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. The Company may not assign (including through a merger) or transfer any of its rights or obligations under this Agreement without the prior written consent of the Investor. The Investor may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Company, except that the Investor may assign any of its rights or obligations under this Agreement (i) to any Affiliate of the Investor or any fund or investment vehicle managed by the Investor or an Affiliate of the Investor or under common management with the Investor and (ii) after the occurrence and during the continuance of an Event of Default (as defined in the Note Purchase Agreement), to any Person. Any assignment or transfer in violation of this **Section 9** shall be null and void ab initio.

**Section 10 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

**Section 11 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 12 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by the Company and the Investor. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 13 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term

or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 14 Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in New York City, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

**Section 15 Waiver of Jury Trial.** Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no representative of any other Party has represented, expressly or otherwise, that such other Party would not seek to enforce the foregoing waiver in the event of a legal action; (b) such Party has considered the implications of this waiver; (c) such Party makes this waiver voluntarily; and (d) such Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this **Section 15**.

**Section 16 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which

shall together be deemed to be one and the same agreement. This Agreement may also be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com), each of which will have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 17 No Strict Construction.** The Parties 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 will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**Section 18 [Reserved].**

**Section 19 Termination.** This Agreement shall terminate concurrently with and upon the termination of the Note Purchase Agreement pursuant to Section 9.1 thereof. Nothing contained in this **Section 19** shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any Party to compel specific performance by any other party of its obligations under this Agreement.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Stock Purchase Agreement on the Execution Date.

**TPC INVESTMENTS III LP**

By: /s/ David Dubinsky  
Name: David Dubinsky  
Title: Authorized Signatory

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**IN WITNESS WHEREOF**, the Parties hereto have executed this Stock Purchase Agreement on the Execution Date.

**CLEARPOINT NEURO, INC.**,  
a Delaware corporation

By: /s/ Danilo D'Alessandro  
Name: Danilo D'Alessandro  
Title: Chief Financial Officer

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**EXHIBIT A**

<b>Name of Investor</b>	<b>Shares Purchased</b>	<b>Total Purchase Price (\$)</b>
<b>TPC INVESTMENTS III LP</b>	<b>275,808</b>	<b>\$3,500,003.52</b>

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**NOTE PURCHASE AGREEMENT**

dated as of May 12, 2025

among

**CLEARPOINT NEURO, INC.**

as Issuer,

**THE OTHER OBLIGORS PARTY HERETO,**

**THE PURCHASERS PARTY HERETO,**

and

**CALW SA LLC**  
as Purchaser Agent

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## NOTE PURCHASE AGREEMENT

**This Note Purchase Agreement** (as the same may from time to time be amended, modified, supplemented or restated, this “**Agreement**”) is made and dated as of May 12, 2025 (the “**Effective Date**”) among the Purchasers listed on Schedule 1.1 hereto or otherwise a party hereto from time to time (each a “**Purchaser**” and collectively, the “**Purchasers**”), CALW SA LLC, a Delaware limited liability company, as agent for the Purchasers (in such capacity, “**Purchaser Agent**”), ClearPoint Neuro, Inc., a Delaware corporation (“**Issuer**”), and the other Obligors from time to time party hereto. The parties agree as follows:

### ARTICLE I ACCOUNTING AND OTHER TERMS

Except as specifically provided otherwise in this Agreement, all accounting terms used herein that are not specifically defined have the meanings given to them in accordance with GAAP, as in effect from time to time, provided that if Issuer notifies Purchaser Agent that Issuer requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding the foregoing, any obligations of a Person that are or would have been treated as operating leases for purposes of GAAP, prior to the adoption of FASB ASC 842 shall continue to be accounted for as operating leases for purposes of all financial definitions, calculations and covenants for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 to be treated as a Capital Lease (or finance lease) obligations in accordance with GAAP; provided that any financial statements of the Obligors shall be prepared under GAAP, consistently applied, including in accordance with FASB ASC 842.

Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Article XV. All other capitalized terms contained in this Agreement that are not defined in this Agreement, unless otherwise indicated, shall have the meaning provided by the UCC to the extent such terms are defined therein.

All references to “**Dollars**” or “**\$**” are United States Dollars, unless otherwise noted. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Any notice or delivery to Purchasers shall be satisfied by notice or delivery, as applicable, to Purchaser Agent. Unless the context otherwise requires, references herein to: (x) Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement and (y) an agreement, instrument or other document means such agreement, instrument or other document as amended, amended and restated, supplemented and modified from time to time to the extent permitted by the provisions thereof.

**ARTICLE II**  
**NOTES; TERMS OF PAYMENT; REVENUE PARTICIPATION**

**Section 2.1 Purchase and Sale of Notes.**

(a) Subject to the terms and conditions of this Agreement (including the conditions precedent set forth in Sections 3.1, 3.2, and 3.5), on the First Purchase Date, the Purchasers agree, severally and not jointly, to purchase Notes from Issuer, and Issuer agrees to issue and sell Notes to each Purchaser, in an aggregate principal amount of \$30,000,000 in one (1) purchase according to each Purchaser's Commitment as set forth on Schedule 1.1 hereof for a purchase price equal to 98% of the principal amount thereof (the "**First Purchase**").

(b) Subject to the terms and conditions of this Agreement (including the conditions precedent set forth in Sections 3.1, 3.3 and 3.5), on a Second Purchase Date, at the option of Issuer, the Purchasers agree, severally and not jointly, to purchase one or more Notes from Issuer, and Issuer agrees to issue such Notes to each Purchaser, in an aggregate principal amount not to exceed \$25,000,000, in no more than two (2) increments of \$12,500,000, according to each Purchaser's Purchase Percentage, in each case for a purchase price equal to 98% of the principal amount thereof (each, a "**Second Purchase**").

(c) Subject to the terms and conditions of this Agreement (including the conditions precedent set forth in Sections 3.1, 3.4 and 3.5), on a Third Purchase Date, at the option of Issuer and subject to the approval of each Purchaser agreeing to participate therein, in its sole discretion, one or more Purchasers may, severally and not jointly, purchase Notes from Issuer, and Issuer agrees to issue Notes to each such Purchaser, in an aggregate principal amount not to exceed, \$50,000,000, according to each Purchaser's Purchase Percentage, in each case for a purchase price equal to 98% of the principal amount thereof (each, a "**Third Purchase**"; together with the First Purchase and any Second Purchases, each, individually, a "**Purchase**" and collectively the "**Purchases**").

Notwithstanding anything to the contrary herein, (A) each Purchaser's Commitments shall expire on the applicable Commitment Termination Date, (B) no Purchaser shall be committed to purchase any Notes as part of any Third Purchase, (C) the Purchasers' aggregate Commitments shall not exceed \$55,000,000, and (D) the aggregate principal amount (excluding, for the avoidance of doubt, any PIK Interest) of Notes to be issued pursuant to this Agreement will not exceed \$105,000,000.

**Section 2.2 Payments of Repayment Amount and Revenue Participation Payments.**

(a) **Repayment.** The Repayment Amount, together with any accrued and unpaid default interest and Reimbursable Expenses, if any, shall be due and payable in full on the earlier of (i) the Maturity Date and (ii) the date that all outstanding Obligations are accelerated and become due and payable pursuant to Section 9.1 or otherwise. To the extent redeemed or otherwise repaid, the Notes may not be re-issued and the principal amount thereunder may not be re-borrowed.

(b) **Repurchase of the Notes.** Issuer shall have the option to repurchase all, but not less than all, of the outstanding Notes, provided Issuer provides at least three (3) Business Days' advance written notice to Purchaser Agent of the date of such redemption and payment. On the applicable date, Issuer shall repurchase the Notes and pay all other Obligations by paying the Repayment Amount, plus all accrued and unpaid default interest, Reimbursable Expenses, if any, and all other Obligations (other than inchoate indemnity or reimbursement obligations for which no claim has been made) to the Purchasers. Notwithstanding anything to the contrary contained in this Agreement, Issuer may rescind any notice of full repurchase and payment pursuant to this Section 2.2(b) if such repurchase would have been made in

connection with a refinancing of the Obligations or a Change of Control, which refinancing or Change of Control shall not be consummated or shall otherwise be delayed; provided that Issuer must provide Purchaser Agent with a new notice at least one (1) Business Day prior to any repurchase date if Issuer has rescinded the prior notice. Upon repurchase of the Notes pursuant to this Section 2.2(b), the Purchasers' remaining Commitments shall immediately and irrevocably terminate.

(c) **[Reserved]**.

(d) **Revenue Participation Payments.**

(i) With respect to each fiscal quarter during the Revenue Participation Period, Issuer shall pay to the Purchasers a Revenue Participation Payment in cash on the first Payment Date immediately following such fiscal quarter.

(ii) With respect to each fiscal quarter, the relevant amount payable in respect of the Revenue Participation Payment for such fiscal quarter shall be calculated based on Issuer's and its Subsidiaries' actual Net Revenue for such fiscal quarter; provided that all payments in respect of any fiscal quarter shall be subject to reconciliation based on the final Net Revenue for the applicable fiscal year in which such fiscal quarter occurs based on the audited financial statements for such fiscal year, in each case with such reconciliation to be included in the Revenue Report to be delivered pursuant to Section 6.2(b) for such fiscal year. With respect to each reconciliation, any overpayments shall be credited against, and any underpayments shall be added to, the immediately subsequent payment in respect of the Revenue Participation Payments. For the avoidance of doubt, the Purchasers shall not be required to refund any Revenue Participation Payments.

(iii) All Revenue Participation Payments and other payments pursuant to this Section 2.2(d) shall be made to each Purchaser in accordance with its Pro Rata Share.

(e) **Change of Control.** In the event of any Change of Control, Issuer shall provide at least ten (10) Business Days' prior written notice of the anticipated date of such Change of Control to Purchaser Agent and the Purchasers. In connection with any Change of Control, the Required Purchasers in their sole discretion may require Issuer to repurchase the outstanding Notes (if any). If the Required Purchasers elect to require Issuer to repurchase the outstanding Notes, the Required Purchasers (or Purchaser Agent on behalf of the Required Purchasers) shall provide written notice thereof no later than five (5) Business Days after receipt of Issuer's notice of a Change of Control. If the Required Purchasers have elected to require Issuer to repurchase the Notes (if any), Issuer shall make such repurchase and payment immediately prior to, or concurrently with, the consummation of such Change of Control transaction (or on such later date as is acceptable to the Required Purchasers in their sole discretion) by paying the Repayment Amount, plus all accrued and unpaid default interest, Reimbursable Expenses and all other Obligations (other than inchoate indemnity or reimbursement obligations for which no claim has been made) to the Purchasers.

### **Section 2.3 Payments of Interest; Default Rate.**

(a) **Interest Payments.** Issuer shall make quarterly payments of interest on each outstanding Note and any other Obligations commencing on the first (1<sup>st</sup>) Payment Date following the First Purchase Date and continuing on each successive Payment Date thereafter through and including the Payment Date immediately preceding the Maturity Date; provided that, with respect to each Note, (i) commencing on the first (1<sup>st</sup>) Payment Date following the applicable Purchase Date for such Note and continuing through, and including, the sixth (6<sup>th</sup>) Payment Date following such Purchase Date (such period

for such Note, the “**PIK Period**”), 50% of the interest owed for each applicable period in respect of such Note shall be payable in kind by capitalizing and adding such interest to the outstanding principal amount on such Payment Date (“**PIK Interest**”) and (ii) Issuer may, at its option, irrevocably elect to extend the PIK Period for any Note for up to an additional two (2) Interest Periods by providing written notice to the Purchaser Agent no later than 3:00 p.m. Eastern time one (1) Business Day prior to the seventh (7<sup>th</sup>) and/or the eighth (8<sup>th</sup>) Payment Dates, as applicable. Notwithstanding the foregoing, the Purchaser Agent may, by written notice to Issuer, elect to terminate or suspend, or refuse to permit the extension of, the PIK Period for any Note upon the occurrence and during the continuance of a Default or Event of Default, in which case any PIK Interest for the applicable Interest Periods shall be payable in cash on the applicable Payment Date.

(b) **Interest Rate.** Subject to Section 2.3(c), the principal amount outstanding under the Notes and any other Obligations shall accrue interest at per annum rate equal to the Applicable Rate, which interest shall be payable quarterly in arrears in accordance with Sections 2.3(a) and 2.3(g). Interest shall accrue on each Note commencing on, and including, the Purchase Date of such Note, and shall accrue on the principal amount outstanding under such Note through and including the day on which such Note is paid in full. Interest shall accrue on all other Obligations commencing on, and including, the date that such Obligations are due, and shall accrue on the unpaid amount of such Obligations through and including the day on which such Obligations are paid in full.

(c) **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, all outstanding Obligations shall accrue interest at a floating per annum rate equal to the rate that is otherwise applicable thereto plus four percentage points (4.00%) (the “**Default Rate**”). Payment or acceptance of the increased interest rate provided in this Section 2.3(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Purchaser Agent or any Purchaser.

(d) **360-Day Year.** Interest shall be computed on the basis of a three hundred sixty (360) day year, and the actual number of days elapsed.

(e) **Inability to Determine Rates; Illegality; Benchmark Replacement.**

(i) **Inability to Determine Rates.** If, on or prior to the first day of any Interest Period (an “**Affected Interest Period**”), Purchaser Agent determines in consultation with Issuer (which determination shall be conclusive and binding on Issuer and the other Obligors) that the then current Benchmark cannot be determined pursuant to the definition thereof, Purchaser Agent will promptly so notify Issuer. For each Affected Interest Period thereafter, until Purchaser Agent provides written notice that the then current Benchmark is available for the Interest Period immediately following the date of such notice, all Notes shall bear interest at the Applicable Rate using the following adjustments:

(1) the Prime Rate shall replace the then current Benchmark and the Prime Rate Floor shall replace the then applicable Floor; and

(2) the Applicable Margin shall be adjusted to equal (1) 4.30% minus (2) the difference between the Prime Rate and the then current Benchmark in effect as of the immediately preceding Interest Period.

(ii) **Illegality.** If Purchaser Agent or any Purchaser determines that any applicable law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Purchaser or its applicable lending office to purchase or hold Notes whose interest is determined by

reference to the then current Benchmark, or to determine or charge interest rates based upon the then current Benchmark, then, upon notice thereof by Purchaser Agent to Issuer, any obligation of the Purchasers to purchase or hold Notes whose interest is determined by reference to the then current Benchmark shall be suspended until Purchaser Agent notifies Issuer that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice that it is illegal for any Purchaser to make or maintain loans whose interest is determined by reference to the then current Benchmark, all Notes shall thereafter bear interest at the Applicable Rate subject to the adjustments provided pursuant to Section 2.3(e)(i)(1) and Section 2.3(e)(i)(2).

(iii) Benchmark Transition.

(1) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Note Document, upon the occurrence of a Benchmark Transition Event, Purchaser Agent may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Purchaser Agent has posted such proposed amendment to all affected Purchasers and Issuer so long as Purchaser Agent has not received, by such time, written notice of objection to such amendment from Purchasers comprising the Required Purchasers. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.3(e)(iii) will occur prior to the applicable Benchmark Transition Start Date.

(2) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, Purchaser Agent will have the right, in consultation with Issuer, to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Note Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(3) Notices; Standards for Decisions and Determinations. Purchaser Agent will promptly notify Issuer and the Purchasers of (1) any occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date and Benchmark Transition Start Date, (2) the implementation of any Benchmark Replacement, (3) the effectiveness of any Benchmark Replacement Conforming Changes and (4) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Purchaser Agent or Purchasers pursuant to this Section 2.3(e)(iii), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.3(e)(iii).

(4) Benchmark Unavailability Period. Upon Issuer's receipt of notice of the commencement of a Benchmark Unavailability Period, all Notes shall bear interest at the Applicable Rate subject to the adjustments provided in Sections 2.3(e)(i)(1) and 2.3(e)(i)(2).

(f) **Debit of Accounts.** At any time during the continuance of an Event of Default, Purchaser Agent and each Purchaser may debit (or ACH) the Designated Deposit Account for the principal and interest payments or any other amounts Issuer owes the Purchasers under the Note Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(g) **Payments.** Except as otherwise expressly provided herein, all payments by Issuer under the Note Documents shall be made to the respective Purchaser to which such payments are owed (or in the case of any Obligations owed to Purchaser Agent, to Purchaser Agent), at such Purchaser's office (or if applicable, Purchaser Agent's office) in immediately available funds on the date specified herein. Payments received after 2:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next preceding Business Day. All payments to be made by Issuer or any Guarantor hereunder or under any other Note Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

**Section 2.4 Form of Notes; Note Record.** The Notes shall be substantially in the form attached as Exhibit D hereto, and the terms of this Agreement shall be incorporated by reference into the Notes as if set forth therein; provided that in the event of any conflict between the terms of this Agreement and the Notes, the terms of this Agreement shall control. Issuer irrevocably authorizes each Purchaser to make or cause to be made, on or about the Purchase Date of any Notes or at the time of receipt of any payment of principal or capitalization of PIK Interest on such Purchaser's Note, an appropriate notation on such Purchaser's Note Record reflecting the purchase of such Notes, the receipt of such payment or the capitalization of such PIK Interest, as the case may be. The outstanding amount of each Note set forth on such Purchaser's Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Purchaser, but the failure to record, or any error in so recording, any such amount on such Purchaser's Note Record shall not limit or otherwise affect the obligations of Issuer under any Note or any other Note Document to make payments of principal or of interest on, or the Repayment Amount in respect of, any Note when due. Upon receipt of an affidavit of an officer of a Purchaser as to the loss, theft, destruction, or mutilation of its Note, Issuer shall issue, in lieu thereof, a replacement Note in the same principal amount thereof and of like tenor.

**Section 2.5 Reimbursable Expenses.** Issuer shall pay, or reimburse Purchaser Agent for, all Reimbursable Expenses (including documented out-of-pocket attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, except as set forth in Section 3.1(d) and Section 3.2(j), within ten (10) Business Days of the delivery of an invoice therefor, or if later, when due. It is the intention of the parties hereto that Issuer shall pay Reimbursable Expenses directly. In the event Purchaser Agent or any Purchaser pays any of such expenses directly, Issuer will promptly reimburse Purchaser Agent or such Purchaser for such expenses following written notice to Issuer of such expenses (such notice to be accompanied by applicable invoices).

### **ARTICLE III CONDITIONS PRECEDENT**

**Section 3.1 Conditions Precedent to the Effective Date.** The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent, the satisfaction or performance of which may be waived by the Required Purchasers in their sole discretion:

- (a) this Agreement, duly executed by Issuer;
- (b) an irrevocable Purchase Notice in respect of the First Purchase;
- (c) a completed (i) Perfection Certificate and (ii) Disclosure Letter, in each case, for Issuer and each of its Subsidiaries;

(d) Issuer shall have paid all Reimbursable Expenses then due and payable to the extent invoiced at least one (1) Business Day prior to the Effective Date; and

(e) a waiver in form and substance satisfactory to the Purchaser Agent duly executed by the Issuer and PTC Therapeutics, Inc.

**Section 3.2 Conditions Precedent to the First Purchase Date.** The obligation of each Purchaser to make the First Purchase is subject to the satisfaction of the following conditions precedent, the satisfaction or performance of which may be waived by the Required Purchasers in their sole discretion:

(a) UCC-1 financing statements in proper form for filing against Issuer in Delaware;

(b) short-form security agreements for Intellectual Property in proper form for filing against Issuer with the United States Patent and Trademark Office or the United States Copyright Office, as applicable;

(c) insurance certificates in favor of Purchaser Agent and in form and substance satisfactory to Purchaser Agent with respect to all property and general liability insurance policies of Issuer;

(d) (i) the Operating Documents of Issuer, certified by the secretary or an assistant secretary, director or appropriate Responsible Officer, as applicable, of Issuer, and (ii) a good standing certificate of Issuer certified by the Secretary of State of the State of Delaware, dated as of a recent date prior to the First Purchase Date;

(e) certified copies of resolutions duly approved by the Issuer's board of directors, authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Note Documents to which it is a party;

(f) customary lien searches, as Purchaser Agent shall request, dated as of a recent date prior to the First Purchase Date, accompanied by written evidence (including any UCC termination statements) that the Liens revealed from such searches either constitute Permitted Liens or have been or, in connection with Notes issued on the First Purchase Date, will be terminated or released;

(g) duly executed legal opinions of Covington & Burling LLP, counsel to the Issuer, dated as of the First Purchase Date and in form and substance satisfactory to Purchaser Agent;

(h) an ACH or other debit authorization with respect to the Designated Deposit Account in form and substance satisfactory to Purchaser Agent;

(i) a bailee waiver or landlord consent in form and substance satisfactory to Purchaser Agent, executed in favor of Purchaser Agent in respect of the properties at (i) 120 S. Sierra Ave., Suite 100, Solana Beach, CA 92075, USA and (ii) 6349 Paseo Del Lago, Carlsbad, CA 92011, USA; and

(j) Issuer shall have paid all Reimbursable Expenses then due and payable to the extent invoiced at least one (1) Business Day prior to the First Purchase Date.

**Section 3.3 Conditions Precedent to any Second Purchase Date.** The obligation of each Purchaser to make a Second Purchase is subject to the satisfaction of the following conditions precedent, the satisfaction or performance of which may be waived by the Required Purchasers in their sole discretion:

(a) the First Purchase shall have occurred; and

(b) the applicable Second Purchase Date shall occur on or prior to the Commitment Termination Date.

**Section 3.4 Conditions Precedent to any Third Purchase Date.** The Third Purchase is subject to the approval of each participating Purchaser in its sole discretion, and each Third Purchase Date shall occur on or prior to December 31, 2026 (or such later date as specified in writing by the Required Purchasers in their sole discretion). It is understood and agreed that the making of any Third Purchase shall be at each participating Purchaser's sole discretion.

**Section 3.5 Conditions Precedent to all Note Purchases.** The obligation of each Purchaser to make any Purchase is subject to the following conditions precedent, the satisfaction or performance of which may be waived by the Required Purchasers in their sole discretion:

(a) within the time period required by Section 3.8 (or such shorter period as agreed in writing by Purchaser Agent and the Purchasers), receipt by Purchaser Agent of an executed Purchase Notice in the form of Exhibit B attached hereto;

(b) the representations and warranties in Article V hereof shall be true, accurate and complete in all material respects on the date of the Purchase Notice and on the Purchase Date of each purchase of Notes; provided that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date,

(c) no Default or Event of Default shall have occurred and be continuing or result from the purchase of Notes;

(d) (i) since December 31, 2024, there has not been any event or circumstance, either individually or in the aggregate, that has resulted in or could reasonably be expected to result in a Material Adverse Change and (ii) there has not been any material adverse deviation from the projections of Issuer presented to and accepted by Purchaser Agent and each Purchaser prior to the Effective Date;

(e) Purchasers shall have received duly executed Notes, in number and form as attached as Exhibit D, and in favor of each Purchaser with respect to the Notes purchased by such Purchaser in such Purchase;

(f) Issuer shall have provided updates to the information in the Perfection Certificate and the Disclosure Letter since the Effective Date or the most recent update thereto, in each case; and

(g) payment of Reimbursable Expenses then due as specified in Section 2.5 hereof.

**Section 3.6 Post-Closing Items.** Following the First Purchase Date, Issuer agrees to:

(a) no later than 15 days following the Effective Date, deliver to the Purchaser Agent a duly executed Control Agreement, in form and substance satisfactory to Purchaser Agent, with respect to the Collateral Accounts maintained by Issuer with California Bank of Commerce;

(b) no later than 30 days following the Effective Date, deliver to the Purchaser Agent a duly executed Control Agreement, in form and substance satisfactory to Purchaser Agent, with respect to the Collateral Accounts maintained by Issuer with Citibank, N.A.;



(c) no later than 30 days following the Effective Date, deliver to the Purchaser Agent additional insured and lenders' loss payee endorsements in favor of Purchaser Agent and in form and substance satisfactory to Purchaser Agent with respect to all property and general liability insurance policies of the Obligor; and

(d) use commercially reasonable efforts to obtain a consent from Koninklijke Philips N.V. ("**Philips**") to the grant of a security interest pursuant to the Note Documents in, and the collateral assignment of, that certain License Agreement, by and between Philips and the Issuer, originally dated as of February 1, 2020, as amended.

**Section 3.7 Covenant to Deliver.** Issuer agrees to promptly deliver to Purchaser Agent and the Purchasers each document required to be delivered to Purchaser Agent under this Article III as a condition precedent to any purchase of Notes. Issuer expressly agrees that a purchase of Notes made prior to the receipt by Purchaser Agent or any Purchaser of any such document shall not, unless expressly waived in writing, constitute a waiver by Purchaser Agent or any Purchaser of Issuer's obligation to deliver such document, and any such purchase of Notes in the absence of a required document shall be made in each Purchaser's sole discretion.

**Section 3.8 Procedures for Issuance and Purchase.** Subject to the prior satisfaction of all other applicable conditions to the purchase of Notes set forth in this Agreement, to issue Notes, with respect to each Purchase, Issuer shall notify the Purchasers (which notice shall be irrevocable) by electronic mail or telephone by 12:00 noon Eastern time twelve (12) Business Days (or such shorter periods as agreed in writing by Purchaser Agent and the Purchasers) prior to the date the Notes are to be issued; provided that with respect to the First Purchase, one (1) Business Day's advance notice shall suffice. Together with any such electronic or telephonic notification, Issuer shall deliver to the Purchasers by electronic mail a completed Purchase Notice executed by a Responsible Officer of Issuer or his or her designee. The Purchasers may rely on any telephone notice given by a person whom a Purchaser reasonably believes is a Responsible Officer of Issuer or designee. On each Purchase Date, each Purchaser shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to the purchase price of the Notes purchased by such Purchaser on such Purchase Date.

#### **ARTICLE IV CREATION OF SECURITY INTEREST**

**Section 4.1 Grant of Security Interest.** Each Obligor hereby grants Purchaser Agent, for the benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations, a continuing security interest in all of such Obligor's right, title and interest in, to and under the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Each Obligor represents, warrants, and covenants that, upon the granting of security pursuant to the preceding sentence and the taking of the actions contemplated by Schedule 4.1 to the Disclosure Letter (as updated from time to time after the First Purchase Date in respect of assets acquired or Obligors acquired or formed after the First Purchase Date), the security interests granted herein are and shall at all times thereafter continue to be a first priority (subject to Permitted Priority Liens) perfected security interest in the Collateral. If any Obligor shall acquire a Commercial Tort Claim (as defined in the UCC) asserting damages in excess of \$500,000, such Obligor shall promptly notify Purchaser Agent in a writing signed by Issuer, as the case may be, of the general details thereof (and further details as may be required by Purchaser Agent) and, on or after the First Purchase Date, grant to Purchaser Agent, for the benefit of the Secured Parties, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Purchaser Agent.

If this Agreement is terminated, Purchaser Agent's Lien in the Collateral shall continue until Payment in Full. Upon Payment in Full, Purchaser Agent's security interest in the Collateral shall automatically terminate and all rights therein shall revert to the applicable Obligor with no further action on the part of any Person, and Purchaser Agent shall, at the sole cost and expense of the Obligors, return all possessory collateral on hand to the Obligors and deliver such UCC termination statements and take such actions and deliver such other documentation as shall be reasonably requested by any Obligor to effect the termination and release of Purchaser Agent's Lien.

Upon any Transfer (other than a lease or a license) of Collateral expressly permitted pursuant to Section 7.1 to any Person that is not an Obligor (or is not required to become an Obligor pursuant to Section 6.11 after giving effect to such Transfer) and otherwise permitted pursuant to this Agreement, Purchaser Agent's security interest in such Collateral so Transferred shall automatically be released and all rights therein shall revert to the applicable Obligor with no further action on the part of any Person and Purchaser Agent, at the request and sole cost and expense of such Obligor, shall promptly execute and deliver to such Obligor all releases and other documents, and take such other action, reasonably necessary for the release of the Liens created hereby or by any other Note Document on such Collateral.

In the case of any Permitted License, Purchaser Agent agrees to enter into any non-disturbance agreement to the extent reasonably requested by any Licensee party to such Permitted License, in form and substance reasonably acceptable to Purchaser Agent and any such licensee (a "**Non-Disturbance Agreement**").

**Section 4.2 Authorization to File Financing Statements.** Each Obligor hereby authorizes Purchaser Agent, at Issuer's or such Obligor's sole cost and expense, to file financing statements, make any registration or take any other action, without notice to any Obligor, with all appropriate jurisdictions (as determined by Purchaser Agent in its sole discretion) to perfect or protect Purchaser Agent's interest or rights under the Note Documents.

#### **Section 4.3 Pledged Collateral.**

(a) Effective on the First Purchase Date, each Obligor hereby pledges, assigns and grants to Purchaser Agent, for the benefit of the Secured Parties, a security interest in all Shares and any other investment property, documents, instruments, tangible chattel paper or promissory notes owned by the Obligors, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations.

(b) On the First Purchase Date, or, to the extent not certificated or owned by any Obligor as of the First Purchase Date, each Obligor shall:

(i) within ten (10) days of the certification or acquisition of any Equity Interests, (A) deliver to the Purchaser Agent the certificate or certificates for such Equity Interests, accompanied by an instrument of assignment or stock transfer form duly executed in blank by the applicable Obligor (provided that, for the avoidance of doubt, this sentence shall not apply to marketable equity securities held in Controlled Accounts) and (B) to the extent required by the terms and conditions governing any such Shares, cause (or, with respect to the Equity Interests of any entity that is minority owned by the Obligors, use commercially reasonable efforts to cause) the books of each entity whose Equity Interests are part of the Collateral and any transfer agent to reflect the pledge of such Equity Interests;

(ii) (A) promptly following the acquisition thereof, (x) provide written notice to the Purchaser Agent of and (y) upon request, deliver to the Purchaser Agent physical possession of, any investment property and payment intangibles to the extent that such investment property or payment intangibles are evidenced by a document, instrument, promissory note or chattel paper (other than any document, instrument, promissory note or chattel paper with a principal amount not exceeding \$1,000,000 individually or in the aggregate) and (B) not deliver physical possession of any such documents, instruments, promissory notes or chattel paper to any creditor of such Obligor other than the Purchasers or the Purchaser Agent.

(c) Upon the occurrence and during the continuance of an Event of Default hereunder, Purchaser Agent may effect the transfer of any securities included in the Collateral (including but not limited to all investment property, any documents, instruments, chattel paper or promissory notes) into the name of Purchaser Agent and cause new (as applicable) records or certificates representing such all investment property, any documents, instruments, chattel paper or promissory notes, as applicable, to be issued in the name of Purchaser Agent or its transferee. Subject to Section 6.11(b), each Obligor will execute and deliver such documents, and take or cause to be taken such actions as Purchaser Agent may reasonably request to perfect or continue the perfection of Purchaser Agent's security interest in all investment property, any documents, instruments, chattel paper or promissory notes, as applicable. Unless an Event of Default shall have occurred and be continuing, and unless Purchaser Agent has provided written notice of such Event of Default to Issuer, each Obligor shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon delivery of such written notice from Purchaser Agent but shall be reinstated upon such Event of Default ceasing to exist.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

Each Obligor represents and warrants to Purchaser Agent and the Purchasers, as of the Effective Date, the First Purchase Date, each Second Purchase Date, and each Third Purchase Date, as follows:

**Section 5.1 Due Organization, Authorization: Power and Authority.** Issuer and each of its Subsidiaries is duly existing and, to the extent such concept is recognized in the applicable jurisdiction, in good standing as a Registered Organization in its jurisdictions of organization, incorporation or formation and Issuer and each of its Subsidiaries is qualified and licensed to do business and, to the extent such concept is recognized in the applicable jurisdictions, is in good standing (if such concept exists under the relevant jurisdiction) in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to result in a Material Adverse Change. In connection with this Agreement, Issuer on behalf of itself and each other Obligor has delivered to Purchaser Agent a completed perfection certificate signed by an officer of Issuer (as updated from time to time (without retroactive effect), pursuant to Section 3.5(f) and/or Section 6.2(a)(iv), the "**Perfection Certificate**"). Each Obligor represents and warrants that (a) such Obligor's exact legal name is that which is indicated on the Perfection Certificate and on the signature page of each Note Document to which it is a party; (b) each Obligor is an organization of the type and is organized or incorporated in the jurisdiction set forth on the Perfection Certificate; (c) the Perfection Certificate accurately sets forth each Obligor's organizational or company identification number or accurately states that such Obligor has none; (d) the Perfection Certificate accurately sets forth each Obligor's place of business, or, if more than one, its chief executive office or principal place of business, as applicable, as well as each Obligor's mailing address (if different than its chief executive office); (e) except as noted in the

Perfection Certificate, each Obligor (and each of its respective predecessors) has not, in the past five (5) years, changed its jurisdiction of organization or incorporation, organizational structure or type, or any organizational or company number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to the Obligors and the Subsidiaries, is accurate and complete in all material respects.

The execution, delivery and performance by each Obligor of the Note Documents to which it is a party have been duly authorized, and do not (i) conflict with such Obligors' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable material order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Issuer or such Obligor, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect and except for appropriate security interest filings to be made in any applicable jurisdiction) or are being obtained pursuant to Section 6.1(c), or (v) constitute a breach, default or event of default under any Material Agreement by which Issuer or any of such Obligor, or their respective properties, is bound except, in the case of the foregoing clause (v), as could not, individually or in the aggregate, be reasonably expected to (x) result in a Material Adverse Change or (y) give rise to a termination right of a counterparty to such Material Agreement. No Obligor is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to result in a Material Adverse Change.

#### **Section 5.2 Collateral.**

(a) Each Obligor has good title to, or has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Note Documents, free and clear of any and all Liens except Permitted Liens, and no Obligor has any Deposit Accounts, Securities Accounts, Commodity Accounts or other bank or investment accounts other than the Collateral Accounts and the Excluded Accounts, if any, described in the Perfection Certificate delivered to Purchaser Agent in connection herewith with respect of which Issuer or such Obligor has given Purchaser Agent notice and, other than with respect to the Excluded Accounts, taken such actions as are necessary to give Purchaser Agent a perfected security interest therein.

(b) Except as disclosed on the Perfection Certificate the Collateral is not in the possession of any third party bailee (such as a warehouse), with possession of Collateral in excess of \$750,000.

(c) To the knowledge of the Issuer, the Inventory owned by the Issuer and its Subsidiaries is in all material respects of good and marketable quality, free from material defects.

(d) Except as disclosed to Purchaser Agent in writing, no Obligor is a party to, nor is bound by, any Restricted Agreement the termination or breach of which could reasonably be expected to result in a Material Adverse Change.

(e) As of the Effective Date, except as noted on the Perfection Certificate, neither Issuer nor any of its Subsidiaries owns or has title to or interest in, any real property, except for leasehold interest in the real property leased by it as is necessary or desirable to the conduct of its business.

(f) None of the Obligors owns any electronic chattel paper.

**Section 5.3 Litigation.** Except as disclosed (i) in the Perfection Certificate delivered on or prior to the Effective Date or (ii) in accordance with Section 6.9(a) hereof, there are no actions, audits, suits, investigations, or proceedings (including any Environmental Claims) pending or, to the knowledge of any Obligor, threatened in writing by or against Issuer or any of its Subsidiaries involving more than \$500,000. Except as disclosed on the Perfection Certificate delivered on or prior to the Effective Date, there are no actions, audits, suits, investigations or proceedings (including any Environmental Claims) pending or threatened in writing by or against Issuer or any of its Subsidiaries, which, if adversely determined, could reasonably be expected to result in a Material Adverse Change.

**Section 5.4 No Material Deterioration in Financial Condition; Financial Statements.**

(a) All consolidated financial statements for Issuer and its Subsidiaries and the consolidated financial statements for each Subsidiary for the periods prior to the acquisition thereof by Issuer delivered to Purchaser Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Issuer and its Subsidiaries or such Subsidiary, as applicable, and the consolidated results of operations of Issuer and its Subsidiaries or such Subsidiary, as applicable. Since December 31, 2024, there has not been a Material Adverse Change or any event or circumstance that could reasonably be expected to have a Material Adverse Change.

(b) Since December 31, 2024, (A) there has not been any Transfer by Issuer or any Subsidiary of any material part of the business or property of Issuer or such Subsidiary and (B) there has been no Investment or acquisition of any business or material property by Issuer or any Subsidiary, in each case, (i) as of the Effective Date, that has not been reflected in the most recent consolidated financial statements of Issuer delivered to Purchaser Agent or otherwise disclosed on Schedule 5.4 to the Disclosure Letter or (ii) as of each Purchase Date, that is not permitted pursuant to the terms of this Agreement or that has not been disclosed in writing to the Purchaser Agent.

**Section 5.5 Solvency.** Issuer is, and will be, after giving effect to the issuance of the Notes, Solvent. The Obligors, taken as a whole, are, and will be, after giving effect to the issuance of the Notes, Solvent.

**Section 5.6 Compliance with Laws.**

(a) Issuer, its Subsidiaries and, to the knowledge of Issuer or any of its Subsidiaries, their respective licensors relating to each Product and Service and their respective Licensees are in compliance with, and at all times during the past six (6) years prior to the Effective Date have complied with, all Requirements of Law applicable to Issuer or any Subsidiary and by which any property or any asset of Issuer or any Subsidiary is bound, except as could not reasonably be expected to result in a Material Adverse Change. None of Issuer, any Subsidiary or, to the knowledge of Issuer or any of its Subsidiaries, their respective licensors relating to each Product and Service and their respective Licensees, have violated any Requirement of Law which violation could reasonably be expected to result in a Material Adverse Change. Neither Issuer nor any Subsidiary nor, to the knowledge of Issuer or any of its Subsidiaries, any licensor relating to each Product and Service or any Licensee has, in the last three (3) years, received notice of any alleged or actual material violation of any Requirement of Law. No investigation or review is pending or, to the knowledge of Issuer or any of its Subsidiaries, threatened by any Governmental Authority with respect to any alleged material violation by Issuer or any Subsidiary of any Requirement of Law.

(b) Neither Issuer nor any of its Subsidiaries is an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Neither Issuer nor any of its Subsidiaries is engaged as one of its important activities in extending

credit for Margin Stock. None of the proceeds of the Notes will be used, directly or indirectly, for the purpose of purchasing or carrying Margin Stock.

(c) Neither Issuer 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 Issuer’s nor any of its Subsidiaries’ properties or assets has been used by Issuer or such Subsidiary or, to the knowledge of Issuer or any of its Subsidiaries, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws, except as could not reasonably be expected to result in a Material Adverse Change. Issuer 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.

(d) None of Issuer, any of its Subsidiaries, or any of their controlled Affiliates or, to the knowledge of Issuer or any of its Subsidiaries, 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 Sanctions, Anti-Terrorism Law or Anti-Corruption Laws, (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 Sanctions, Anti-Terrorism Law or Anti-Corruption Laws, or (iii) a Sanctioned Person. None of Issuer, any of its Subsidiaries or any of their controlled Affiliates or, to the knowledge of Issuer or any of its Subsidiaries, any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) directly or indirectly conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person in violation of Sanctions, (y) directly or indirectly deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked or sanctioned pursuant to any Sanctions (including Executive Order No. 13224, any similar executive order), or Anti-Terrorism Law, or (z) has directly or indirectly paid, made, offered, promised, authorized, solicited, or accepted any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other improper payment to or from any Person in order to obtain or retain business, for any improper advantage, or otherwise in violation of Anti-Corruption Laws.

(e) In the past six (6) years, neither Issuer nor any of its Subsidiaries, nor any of their respective officers, directors, employees (each in their capacity as such) nor, to the knowledge of Issuer or any of its Subsidiaries, any of their respective independent contractors or agents have violated, as and to the extent applicable thereto: (A)(i) except as could not reasonably be expected to result in a Material Adverse Change, the U.S. federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq) and its implementing regulations; (ii) the civil False Claims Act found at 31 U.S.C. §§3729 et seq; (iii) the criminal False Claims Act found at 42 U.S.C. §1320a-7b(a); (iv) the Civil Monetary Penalties Law found at 42 U.S.C. §1320a-7a; or (v) the federal anti-kickback statute found at 42 U.S.C. §1320a-7b(b); or (B)(i) the federal prohibitions on physician self-referrals found at 42 U.S.C. § 1395nn, and analogous state self-referral prohibitions; (ii) any of the provisions of 42 U.S.C. § 1320a-7, which are, as applicable, cause for mandatory or permissive exclusion from Medicare, Medicaid, or any other State health care program or federal health care program as defined in 42 U.S.C. § 1320a-7b(f); (iii) the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, in each case as amended, and the regulations promulgated thereunder; (iv) the healthcare fraud provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder (collectively, “HIPAA”); (v) except as could not reasonably be expected to result in a Material Adverse Change, the Eliminating Kickbacks in Recovery Act of 2018 (18 U.S.C. § 220); or (vi) except as could not reasonably be expected to result in a Material Adverse Change, any other federal, state or local Requirement of Law or regulation of general applicability to health care fraud, governing or

regulating pharmaceutical or device manufacturers and distributors or reimbursement for any Products, including but not limited to, all applicable Medicare and Medicaid statutes and regulations, good laboratory practice requirements, good clinical practice requirements, and quality management system requirements, or any analogous law of any other Governmental Authority (collectively, “**Healthcare Laws**”).

**Section 5.7 Investments.** Neither Issuer nor any of its Subsidiaries owns any Equity Interests except for Permitted Investments.

**Section 5.8 Tax; Pension Contributions.**

(a) Issuer and each of its Subsidiaries has timely filed all required U.S. federal income and other material tax returns and reports, and Issuer and each of its Subsidiaries, has timely paid all U.S. federal income and other material foreign, state, provincial and local taxes, assessments, deposits and contributions owed by Issuer and such Subsidiaries, in all jurisdictions in which Issuer or any such Subsidiary is subject to taxes, including the United States and Canada, unless such taxes are being contested in good faith through appropriate proceedings.

(b) Except as disclosed in the Perfection Certificate, neither Issuer nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Issuer’s or such Subsidiaries’ prior tax years which could result in additional taxes becoming due and payable by Issuer or any of its Subsidiaries.

(c) Issuer and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Issuer nor any of its Subsidiaries have withdrawn from participation in, permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in material liability of Issuer or its Subsidiaries, including, without limitation, any liability to the Pension Benefit Guaranty Corporation (other than for any required PBGC premiums) or its successors or any other Governmental Authority.

**Section 5.9 [Reserved].**

**Section 5.10 Shares.** Each Obligor has full power and authority to create a first lien on the Shares pledged by it pursuant to the Note Documents and no disability or contractual obligation exists that would prohibit such Obligor from pledging the Shares pursuant to the Note Documents. As of the Effective Date, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will be duly authorized and validly issued, and are fully paid and, to the extent applicable, non-assessable.

**Section 5.11 Intellectual Property.**

(a) Schedule 5.11(a) to the Disclosure Letter sets forth, as of the Effective Date, an accurate, true and complete list of all (i) Patents, including the jurisdiction and patent number and indicating which Patents claim which Products, whether such Patent is owned by Issuer or any of its Subsidiaries or in-licensed (and, if in-licensed, the owner of such Patent, and under which In-License such Patent was in-licensed), (ii) Trademarks, (iii) registered Copyrights or applications for registered Copyrights, (iv) domain name registrations and websites and (v) any material software Developed or Commercialized by Issuer or any of its Subsidiaries, in each case with respect to clauses (i), (ii), (iii) and (iv) above in this clause (a) that constitute Product/Services Intellectual Property owned by or exclusively licensed to Issuer or any of its Subsidiaries. Except as disclosed therein, (A) each issued Patent and Trademark listed on Schedule 5.11(a)

to the Disclosure Letter is, subsisting and has not lapsed, expired, been cancelled or become abandoned, and to the knowledge of Issuer, is valid and enforceable, and (B) each pending Patent listed on Schedule 5.11(a) to the Disclosure Letter is subsisting and has not lapsed, expired, been cancelled or become abandoned, except, in the case of clauses (A) and (B) above, in the ordinary course of business or where it could not reasonably be expected to result in a Material Adverse Change.

(b) Except for Product/Services Intellectual Property owned by or licensed to Issuer or any of its Subsidiaries or as could not reasonably be expected to result in a Material Adverse Change, no other Intellectual Property is necessary for the Issuer to Develop, Manufacture, Commercialize and/or otherwise exploit the Products or provide Services. Except as could not reasonably be expected to result in a Material Adverse Change, the Development, Manufacture, Commercialization and/or other exploitation by Issuer and its Subsidiaries of the Products or the provision of Services does not and will not infringe any Patents or misappropriate any other Intellectual Property that is owned or controlled by a Third Party. To the knowledge of Issuer, there are no pending patent applications in the United States or any other jurisdiction owned or controlled by a Third Party that, if granted, would be infringed by the Development, Manufacture, Commercialization, and/or other exploitation of the Products or the provision of Services by Issuer and its Subsidiaries.

(c) There are no unpaid maintenance, annuity or renewal fees currently overdue for all material Patents, including (A) Patents that claim any aspect or use of (i) SmartFrame OR, ClearPoint Prism Neuro Laser Therapy System, ClearPoint Maestro Brain Model, ClearPoint Navigation System, SmartFrame Array, ClearPoint Pre-Clinical Orchestra Frame, SmartFlow Neuro Cannula, ClearPoint Navigation System, or ClearPoint Array Platform or (ii) a successor, improvement, replacement or extension of any product described in clause (i) (other than, in the case of clause (i) and (ii) above, one-off prototypes that are not further reproduced), and (B) Patents that are necessary to the conduct of the business from time to time and that are owned or controlled by an Obligor or any of its Subsidiaries (collectively, such material Patents, the “**Material Patents**”). None of the Obligors, nor any of their Subsidiaries nor, to the knowledge of Issuer or any of its Subsidiaries, any prior owner of such Patent, or any of their respective agents or representatives, has engaged in any conduct, or omitted to perform any necessary act (except, in each case, Transfers explicitly permitted by Section 7.1(j)) the result of which would invalidate or render unpatentable or unenforceable any claims of any Material Patents.

(d) Except as set forth on Schedule 5.11(d) to the Disclosure Letter, or as could not reasonably be expected to result in a Material Adverse Change, there is no product or other technology of any third party that infringes a Material Patent or would infringe a Material Patent upon commercialization of such product or technology. Except as set forth on Schedule 5.11(d) to the Disclosure Letter, or as could not reasonably be expected to result in a Material Adverse Change, (i) there is no, nor has there been any, infringement or misappropriation by any Person of any of the Product/Services Intellectual Property owned by or exclusively licensed to Issuer or any of its Subsidiaries or any of the rights therein, and (ii) there is no, nor has there been any, infringement or misappropriation by any Person of any of the Product/Services Intellectual Property owned by or exclusively licensed to Issuer or any of its Subsidiaries or any of the subject matter thereof.

(e) Except as set forth on Schedule 5.11(e) to the Disclosure Letter or, other than on the Effective Date, as could not reasonably be expected to result in a Material Adverse Change, there is, and has been, no pending or threatened in writing, decided or settled opposition, interference proceeding, reexamination proceeding, cancellation proceeding, injunction, claim, lawsuit, declaratory judgment, administrative post-grant review proceeding, other administrative or judicial proceeding, hearing, investigation, complaint, arbitration, mediation, International Trade Commission investigation, decree, or any other filed claim (collectively referred to hereinafter as “**Disputes**”) related to any of the Material



Patents, nor has any such Dispute been threatened in writing challenging the legality, validity, enforceability or ownership of any such Material Patents. There are no Disputes by any Person or Third Party against Issuer or its Subsidiaries and neither Issuer nor any Subsidiary has received any written notice or claim of any such Dispute as pertaining to the Products, the Services or Product/Services Intellectual Property, which other than on the Effective Date, could reasonably be expected to result in a Material Adverse Change.

(f) Except as set forth on Schedule 5.11(f) to the Disclosure Letter, as of the Effective Date there are no settlements, covenants not to sue, consents, judgments, orders or similar obligations which: (i) restrict the rights of any Obligor or any Subsidiary to use any Product/Services Intellectual Property relating to any aspect of the research, Development, Manufacture, or Commercialization of any Product or Service, or (ii) permit any third parties to use any Product/Services Intellectual Property.

(g) Issuer and its Subsidiaries have taken commercially reasonable measures and precautions to protect and maintain the (i) confidentiality of all trade secrets with respect to any Product and Service that it owns or exclusively licenses and (ii) the value of all material Intellectual Property related to any Product or Service, except where such failure to take action, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change. No material trade secret owned or controlled by Issuer, any of its Subsidiaries with respect to any material Product or Service has been published or disclosed to any Person except pursuant to a written agreement requiring such Person to keep such trade secret confidential.

(h) Except as could not reasonably be expected to result in a Material Adverse Change, (i) the Patents included in the Product/Services Intellectual Property have all been assigned by the inventors to the Obligors (either directly or through their Subsidiaries) (“**Assigned Patents**”) or, to the knowledge of Issuer or any of its Subsidiaries, to the applicable licensor listed on Schedule 5.11(a) to the Disclosure Letter (“**Licensed Patents**”); (ii) either Issuer, or one of its Subsidiaries, or, to the knowledge of Issuer or any of its Subsidiaries, the applicable licensor is currently recorded (for applications that have been filed at the United States Patent and Trademark Office), or will be recorded (for applications that are to be filed at the United States Patent and Trademark Office at National Phase entry) at the United States Patent and Trademark Office as the sole assignee of such Assigned Patents or Licensed Patents; (iii) to the knowledge of Issuer or any of its Subsidiaries, there are no currently asserted or unasserted claims of any persons disputing the inventorship or ownership of any of such Patents; (iv) and there are no liens, security interests or encumbrances that have been filed against any of such Patents.

(i) With respect to the Patents that constitute Product/Services Intellectual Property, except as set forth on Schedule 5.11(i) to the Disclosure Letter or as could not reasonably be expected to result in a Material Adverse Change:

(i) to the knowledge of Issuer, all information and prior art material to such Patents was adequately disclosed, to the extent such disclosure is required, to the relevant patent office or, to the knowledge of Issuer or any of its Subsidiaries, considered by the respective patent offices during prosecution of such Patents;

(ii) subsequent to the issuance of such Patents, no Obligor nor any Subsidiary nor any of their respective predecessors-in-interest, has filed any disclaimer (except for terminal disclaimers filed in response to non-statutory double patenting rejections and which did not reduce the patent term) or made or permitted any other voluntary reduction in the scope of the inventions claimed in such Patents;

(iii) subsequent to the issuance of such Patents, no Obligor nor any Subsidiary is aware of any prior use, prior sale, or prior art that would be material to patentability that was not cited to the USPTO during prosecution;

(iv) other than prior art disclosed to the relevant patent office, no Obligor nor any Subsidiary is aware of any facts that would form a reasonable basis for invalidation of the Patents;

(v) no Obligor nor any Subsidiary is aware of any material deficiencies or inaccuracies on the experimental data that support the patentability of Material Patents and no Obligor or any Subsidiary is aware of any facts that would form a reasonable basis for invalidation of any such Material Patent;

(vi) no subject matter designated allowable or allowed by the U.S. Patent and Trademark Office of such Patents is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any Third Party and have not been the subject of any interference, and such Patents are not and have not been the subject of any re-examination, opposition or any other post-grant proceedings, and neither Issuer nor any of its Subsidiaries has knowledge of any basis for any such interference, re-examination, opposition, inter partes review, post grant review, or any other post-grant proceedings;

(vii) if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(viii) neither any Obligor nor any Subsidiary has received an opinion from counsel, whether preliminary in nature or qualified in any manner, which concludes that a challenge to the validity or enforceability of any Patents is more likely than not to succeed; and

(ix) (A) neither any Obligor nor any Subsidiary, nor, to the knowledge of Issuer or any of its Subsidiaries, any of their respective agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any Patent and (B) to the knowledge of Issuer or any of its Subsidiaries, no prior owner of any Patent of any Obligor or any Subsidiary, nor any of such prior owner's agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any Patent.

## **Section 5.12 Privacy**

(a) In connection with the collection, storage, use, disclosure and/or other Processing of Personal Data by or on behalf of Issuer or its Subsidiaries, Issuer and its Subsidiaries are and have been in material compliance with Privacy Laws and are and have been in compliance in all material respects with (i) Issuer's privacy policies and public written statements regarding Issuer's or any of its Subsidiaries privacy or data security practices, and (ii) the requirements of any contractual obligations regarding Processing of Personal Data by which the Issuer or any of its Subsidiaries is bound. Neither Issuer nor any Subsidiary is a covered entity or a business associate under HIPAA.

(b) Issuer and its Subsidiaries maintain and have maintained reasonable physical, technical, and administrative security measures and policies designed to protect all Personal Data owned, stored, used, maintained or controlled by or on behalf of the Issuer and its Subsidiaries from and against unlawful, accidental or unauthorized acquisition, access, loss, compromise, destruction, damage,

disclosure, encryption, corruption or alteration or misuse. Issuer and its Subsidiaries are and have been in compliance in all material respects with all laws relating to data breach notification obligations. To the knowledge of Issuer or any of its Subsidiaries, except as could not be material in any respect to the business of Issuer or any Subsidiary, there has been no occurrence of (i) unlawful, accidental or unauthorized acquisition, access, loss, compromise, destruction, damage, disclosure, encryption, corruption or alteration or misuse (by any means) of Personal Data owned, stored, used, maintained or controlled by or on behalf of Issuer or any of its Subsidiaries such that Privacy Laws require or required Issuer or any of its Subsidiaries to notify government authorities, affected individuals or other parties of such occurrence or (ii) unauthorized access to or disclosure of the Issuer's or any of its Subsidiaries confidential information or trade secrets.

### **Section 5.13 Regulatory Approvals.**

(a) Issuer has made available to Purchaser Agent any material written reports or other written communications received by Issuer, its Subsidiaries from a Governmental Authority that would indicate that any Regulatory Authority (i) is likely to revise or revoke any current Regulatory Approval granted by any Regulatory Authority with respect to any Product or Service or (ii) is likely to pursue any material compliance actions against any Obligor.

(b) Issuer and its Subsidiaries possess all material Regulatory Approvals issued or required by any Regulatory Authority, which Regulatory Approvals are necessary to conduct the business relating to the Products and the Services as of the Effective Date, including the Commercialization and the Development of Products and the commercialization of the Services (but not, for the avoidance of doubt, including Regulatory Approvals necessary for third parties to conduct current Clinical Trials relating to the Products), and neither Issuer nor any Subsidiary, has received any notice of proceedings relating to, and, to the knowledge of the Issuer, there are no facts or circumstances that would reasonably be expected to lead to, the revocation, suspension, termination or material modification of any such Regulatory Approvals. To the knowledge of Issuer, none of Issuer or any of its Subsidiaries has (i) made an untrue statement of material fact or fraudulent statement to any Regulatory Authority or failed to disclose a material fact required to be disclosed to a Regulatory Authority; or (ii) made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (September 10, 1991).

(c) Except as could not reasonably be expected to result in a Material Adverse Change (i) non-clinical investigations and Clinical Trials conducted by Issuer or any of its Subsidiaries were conducted in compliance with applicable laws, including Healthcare Laws, and in accordance with experimental protocols, procedures and controls pursuant to, where applicable, accepted professional and scientific standards, (ii) the descriptions and the results of such non-clinical investigations and Clinical Trials provided by Issuer to Purchaser Agent are, if conducted by Issuer or any of its Subsidiary, accurate, and (iii) neither Issuer nor any Subsidiary have received any written notices, correspondence or written communication from any Regulatory Authority or comparable authority requiring or recommending the termination, suspension, material modification or partial or full clinical hold of any Clinical Trials conducted by or on behalf of such Persons with respect to any Product.

(d) As of the Effective Date, neither Issuer nor any Subsidiary have received any notices from, or had any written or oral communications with any Governmental Authority that have resulted in, or would reasonably be expected to result in, any non-coverage decision in respect of, material reduction in the expected pricing of, or material reduction in expected reimbursement or recoupment of reimbursement with respect to, the Products.

(e) Except as could not reasonably be expected to result in a Material Adverse Change, all manufacturing operations conducted by or on behalf of Issuer and its Subsidiaries have been and are being conducted in compliance with current good manufacturing practices set forth in 21 C.F.R. Part 820 and ISO 13485. Neither Issuer nor any Subsidiary of Issuer has experienced any significant failures in the manufacturing of any Product for commercial sale that has had or could reasonably be expected to have, if such failure occurred again, a Material Adverse Change. As of the Effective Date, to the knowledge of Issuer and its Subsidiaries, (x) the Obligors or their suppliers have sufficient manufacturing capacity to supply on an annual basis each Product in a volume equal to at least the volume of each such Product supplied during the immediately preceding twelve-month period, and (y) there are no shortages of materials or component parts which would lead to a material delay in the supply of any Product.

(f) Except, other than on the Effective Date, as could not reasonably be expected to result in a Material Adverse Change, neither Issuer nor any Subsidiary has received from the FDA a warning letter, Form FDA-483, untitled letter, "It Has Come to Our Attention" letter, or similar written correspondence or notice alleging violations of laws and regulations enforced by the FDA, or any comparable correspondence from any other Governmental Authority with regard to any Product or the manufacture, processing, packaging or holding thereof, the subject of which communication is unresolved.

(g) Except, other than on the Effective Date, as could not reasonably be expected to result in a Material Adverse Change, (i) there have been no field notifications, safety warnings, "dear doctor" letters, investigator notices, safety alerts or other notices of action required by the FDA or other Regulatory Authority relating to an alleged lack of safety or regulatory compliance of any Product or Service (collectively, "**Safety Notices**"), (ii) to the knowledge of Issuer and its Subsidiaries, there are no unresolved product complaints with respect to the Products or Services, (iii) to the knowledge of Issuer and its Subsidiaries, there are no facts that would be reasonably likely to result in (A) a Safety Notice with respect to the Products or Services, (B) a change in the current or expected labeling or instructions for use of any of the Products, and (iv) neither Issuer nor any Subsidiary has initiated or otherwise engaged in any recall of any Product.

(h) Except, other than on the Effective Date, as could not reasonably be expected to result in a Material Adverse Change (i) in the past six (6) years, none of Issuer, any Subsidiary, any of their officers, directors (in their capacity as such) have been convicted of, or pled nolo contendere to, a Medicare, Medicaid or state health program related criminal offense or a violation of federal or state law related to fraud, theft, embezzlement, bribery, breach of fiduciary responsibility, false claims for reimbursement or financial misconduct, (ii) none of Issuer, any Subsidiary or, to the knowledge of Issuer, any of Issuer's or any Subsidiary's officers, or directors, are currently charged with or are currently being investigated for a Medicare, Medicaid or state health program related criminal offense or a violation of federal or state law related to fraud, theft, embezzlement, bribery, breach of fiduciary responsibility, false claims for reimbursement, financial misconduct, or obstruction of an investigation of controlled substances, and (iii) none of Issuer, any Subsidiary, any of their respective officers, or directors, have been (1) debarred, excluded, suspended or otherwise limited from participation in Medicare, Medicaid or any other state health care program or any federal health care program as defined in 42 U.S.C. § 1320a-7b(f), (2) convicted of any crime for which debarment is mandated by 21 U.S.C. 335a(a) or authorized by 21 U.S.C. 335a(b), or exclusion is required pursuant to 42 U.S.C. 1320a-7b and related regulations, nor, to the knowledge of Issuer, is any such debarment or exclusion pending.

(i) Except, other than on the Effective Date, as could not reasonably be expected to result in a Material Adverse Change (i) none of Issuer or any Subsidiary has offered, made or received, or solicited or offered, on behalf of Issuer or any Subsidiary, any illegal payment or contribution in cash or in kind, directly or indirectly, including kickbacks, bribes, rebates, payments, gifts or gratuities, to any Person

(including any United States or foreign national or state or local government official, employee or agent or candidate therefor). In the past six (6) years, there have been no false or fictitious entries made in the Books of Issuer or any Subsidiary relating to any payment prohibited by applicable law, and Issuer and its Subsidiaries have not established or maintained any fund for use in making any such payments.

(j) Neither Issuer nor any Subsidiary is subject to a “Deferred Prosecution Agreement”, a “Corporate Integrity Agreement”, “Certification of Compliance Agreement” or similar government-mandated consent agreement or compliance program with the U.S. Department of Justice or Office of Inspector General of the Department of Health and Human Services or other Governmental Authority, nor has any reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority.

(k) Each of Issuer and its Subsidiaries (other than any such Person that has no employees) has established, and maintains, a corporate compliance program that addresses applicable Requirements of Law and the material laws of each applicable Governmental Authority having jurisdiction of Issuer’s and/or any of its Subsidiaries’ material business and operations. As of the Effective Date, neither Issuer nor any of its Subsidiaries, to the knowledge of Issuer and its Subsidiaries, have made any voluntary or involuntary self-disclosure to any Governmental Authority or representative thereof regarding any potential material non-compliance with any Requirement of Law applicable to Issuer’s and/or any of its Subsidiaries’ business and operations.

(l) Except, other than on the Effective Date, as could not reasonably be expected to result in a Material Adverse Change, (i) Issuer and each of its Subsidiaries has timely complied with all obligations under applicable Requirements of Law requiring transparency with respect to their financial relationships with health care providers, including without limitation the U.S. federal Physician Payments Sunshine Act and related implementing regulations, and (ii) Issuer and each of its Subsidiaries has complied with all other obligations under applicable Requirements of Law with respect to their interactions with health care providers, including without limitation, laws and regulations regarding corporate practice of health care professions, professional licensure, and fee-splitting.

(m) Issuer, each Subsidiary and, to the knowledge of Issuer and its Subsidiaries, each of their respective officers, employees and agents, have advertised, promoted, marketed and distributed each Product and each Service in compliance in all material respects with all applicable Requirements of Law.

(n) Each Obligor and Subsidiary has maintained records relating to the research, development, testing, manufacture, recall, production, handling, labeling, packaging, storage, supply, promotion, distribution, marketing, commercialization, import, export and sale of Products in compliance in all material respects with applicable Requirements of Law and has submitted to the FDA (or foreign equivalents) and other Governmental Authorities in a timely manner all notices and reports required to be made, including adverse experience reports required to be made for Products, except to the extent that could not reasonably be expected to have a materially adverse impact on such Obligor’s or Subsidiary’s rights in respect of the applicable Product.

**Section 5.14 Material Agreements.** Issuer has made available to Purchasers true, correct and complete copies of all Material Agreements. Except as could not reasonably be expected to (x) result in a Material Adverse Change or (y) in the case of breaches by Issuer or any of its Subsidiaries, give rise to right of termination in favor of a counterparty to any Material Agreement, neither Issuer nor any of its Subsidiaries is in breach of any Material Agreement or in default under any Material Agreement. Schedule 5.14 to the Disclosure Letter sets forth, as of the Effective Date, an accurate, true and complete list of all

Material Agreements. Except, other than as of the Effective Date, as could not reasonably be expected to result in a Material Adverse Change, there is no event or circumstance that with notice or lapse of time, or both, would reasonably be expected to (a) constitute a material breach or default by Issuer and/or any of its Subsidiaries or (to the knowledge of Issuer or any of its Subsidiaries) any other party under any Material Agreement, (b) give any Person the right to receive or require a rebate, chargeback, penalty or change in delivery schedule under any Material Agreement other than in the ordinary course of business of Issuer and its Subsidiaries, (c) give any Person the right to accelerate the maturity or performance of any Material Agreement or (d) give any Person the right to cancel, terminate or modify any Material Agreement. Except, other than on the Effective Date, as could not reasonably be expected to result in a Material Adverse Change, neither Issuer nor any of its Subsidiaries has received any notice or, to the knowledge of Issuer or any of its Subsidiaries, any threat of termination of any such Material Agreement. To the knowledge of Issuer or any of its Subsidiaries, no other party to a Material Agreement is in material breach of or in default under such Material Agreement, except as, other than as of the Effective Date, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change. All Material Agreements are valid and binding on Issuer and its Subsidiaries and, to the knowledge of Issuer or any of its Subsidiaries, on each other party thereto, and are in full force and effect. There exists no actual or, to the knowledge of Issuer or any of its Subsidiaries, threatened (in writing) termination, cancellation or limitation of, or modification to or change in, the business relationship between (i) any Obligor, on the one hand, and any customer or any group thereof, on the other hand, or (ii) any Obligor, on the one hand, and any supplier or any group thereof, on the other hand, in either case, which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. There are no Affiliate Agreements other than those identified on Schedule 7.8 to the Disclosure Letter or entered into after the date hereof in compliance with Section 7.8. Each Affiliate Agreement was entered into on an arm's length basis on fair, customary and reasonable terms that are no less favorable to the Obligors than would be obtained in an arm's length transaction with a non-affiliated Person.

**Section 5.15 Broker Fees.** There are no brokerage commissions payable by Issuer or any of its Subsidiaries in connection with the financing described in this Agreement and the services of a broker have not been engaged by Issuer or any of its Subsidiaries or any of their respective controlled Affiliates in connection with the financing described in this Agreement.

**Section 5.16 Full Disclosure.** The Obligors have disclosed to the Purchasers all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. No report, financial statement, certificate or other information furnished (whether written or oral) by or on behalf of Issuer or its Subsidiaries to the Purchasers in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Note Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case taken together with all other such reports, financial statements, certificates and other information; provided, that, with respect to financial projections, estimates, budgets or other forward-looking information, Issuer and its Subsidiaries represent only that such information was prepared in good faith based upon assumptions believed by the Obligors to be reasonable at the time such information was prepared (it being understood that such information is as to future events and is not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of Issuer and its Subsidiaries, that no assurance can be given that any particular projection, estimate, budget or forecast will be realized and that actual results during the period or periods covered by any such projections, estimate, budgets or forecasts may differ significantly from the projected results and such differences may be material).

**Section 5.17 Insurance.** All policies of insurance maintained by or on behalf of such Obligor and its Subsidiaries are in full force and effect and are of a nature and provide such coverage as is customarily carried by businesses of the size and character of such Obligor and its Subsidiaries. All policies of insurance maintained by Issuer and its Subsidiaries are correctly set forth in the Perfection Certificate.

**Section 5.18 ERISA Compliance, Employee and Labor Matters; Pension Matters.**

(a) Except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Change, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of Issuer and its Subsidiaries, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) Within the preceding six (6) years no Pension Plan was sponsored, maintained or contributed to by, or required to be contributed to by, any member of Issuer and its Subsidiaries or any of their respective ERISA Affiliates.

(c) There are no pending or, to the knowledge of Issuer and its Subsidiaries, threatened or contemplated claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Change.

(d) No ERISA Event has occurred, and no Obligor nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan that, either individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Change.

(e) The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount. As of the most recent valuation date for each Multiemployer Plan, the potential liability of any Obligor or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 or Section 4205 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero.

(f) To the extent applicable, each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Requirements of Law and has been maintained, where required, in good standing with applicable regulatory authorities. Neither Issuer nor any of its Subsidiaries has incurred or could reasonably be expected to incur any material obligation in connection with the termination of or withdrawal from any Foreign Plan which could reasonably be expected to result in a Material Adverse Change. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of Issuer or any of its Subsidiaries, as applicable, on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan by a

material amount, and for each Foreign Plan that is not funded, the obligations of such Foreign Plan are properly accrued, except as could not reasonably be expected to result in a Material Adverse Change.

(g) Neither Issuer or any of its Subsidiaries has any liability under ERISA or the Code with respect to any citizen of the United States who performs services outside of the United States.

(h) As of the Effective Date, and except as disclosed to Purchaser Agent in writing after the Effective Date, there are no collective bargaining agreements covering employees of any Obligor or any of its Subsidiaries.

#### **Section 5.19 Environmental Matters.**

(a) Except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, neither such Obligor nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) has knowledge of any basis for any Environmental Liability.

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

**Section 5.20 Definition of “Knowledge.”** For purposes of the Note Documents, whenever a representation or warranty is made as to Issuer’s or a Subsidiary’s knowledge or awareness, to the “best of” Issuer’s or a Subsidiary’s knowledge, or with a similar qualification, “knowledge” or “awareness” means the actual knowledge of the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the Chief Business Officer, and the General Counsel of the Issuer or other officers of Issuer, as applicable, with responsibilities equivalent to those of the foregoing officers, after reasonable investigation within the Issuer and its Subsidiaries.

### **ARTICLE VI AFFIRMATIVE COVENANTS**

Each Obligor shall, and shall cause each of its Subsidiaries, to do all of the following:

#### **Section 6.1 Government Compliance.**

(a) Maintain its and all its Subsidiaries’ legal existence (except as permitted pursuant to the first proviso in Section 7.3) and, to the extent such concept is recognized in the applicable jurisdiction, good standing in their respective jurisdictions of organization or incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to result in a Material Adverse Change.

(b) Comply with all Requirements of Law, including all Healthcare Laws, the noncompliance with which, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

(c) Obtain and keep in full force and effect, all of the material Governmental Approvals, including, without limitation, those from or by the FDA, the Notified Body with respect to the



EU MDR, the MHRA or Health Canada, necessary for the performance by Issuer and its Subsidiaries of their respective businesses and obligations under the Note Documents and the grant of a security interest to Purchaser Agent for the benefit of the Secured Parties, in all of the Collateral.

## **Section 6.2 Financial Statements, Reports, Certificates.**

(a) Deliver to Purchaser Agent and each Purchaser:

(i) as soon as available, but no later than forty-five (45) days after the last day of each of the first three calendar quarters of each fiscal year, a company prepared unaudited consolidated balance sheet, statement of operations and comprehensive income or loss and statement of cash flows covering the consolidated operations of Issuer and its Subsidiaries for such quarter certified by a Responsible Officer of Issuer, all prepared in accordance with GAAP, subject to normal year-end audit adjustments and the absence of disclosures normally made in footnotes, together with a duly completed Compliance Certificate signed by a Responsible Officer of Issuer;

(ii) as soon as available, but no later than ninety (90) days after the last day of Issuer's fiscal year, audited consolidated financial statements prepared in accordance with GAAP, consistently applied, together with a report and opinion on the financial statements and on internal controls and procedures, if available, from Cherry Bekaert LLP, the Issuer's current independent auditor, another independent certified public accounting firm of nationally recognized standing, or any other independent certified public accounting firm acceptable to Purchaser Agent in its reasonable discretion (which report and opinion shall be prepared in accordance with GAAP and shall not be subject to any qualification, emphasis of matter or statement as to "going concern" or scope of audit, except for qualifications relating to (x) changes in accounting principles or practices reflecting changes in GAAP and required or approved by Issuer's independent certified public accountants or (y) any such exception, qualification or explanatory paragraph that arises solely due to the scheduled maturity, within the twelve months following the applicable audit date, of the Notes issued in the last to occur Purchase, provided such maturity falls more than six months after such audit date), together with a duly completed Compliance Certificate signed by a Responsible Officer of Issuer;

(iii) promptly following the end of each calendar quarter, but in any event no later than forty-five (45) days after the end of each fiscal quarter, as applicable, the Intellectual Property Updates;

(iv) promptly following the end of each fiscal year, but in any event no later than ninety (90) days after the end of such fiscal year, as applicable, updates to the Perfection Certificate to reflect any amendments, modifications and updates, if any, to the information in the Perfection Certificate since the Effective Date or the most recent update thereto (to the extent not covered in the Intellectual Property Update);

(v) as soon as available after approval thereof by Issuer's board of directors, but no later than ninety (90) days after the last day of each of Issuer's fiscal years, Issuer's annual financial projections, business plan and budget for Issuer and its Subsidiaries for the entire current fiscal year as approved by Issuer's board of directors, which such annual financial projections, business plan and budget shall be set forth in a quarter-by-quarter format (such annual financial projections, business plan and budget as originally delivered to Purchaser Agent are referred to herein as the "**Annual Projections**"); provided that any revisions of the Annual Projections approved by Issuer's board of directors shall be delivered promptly to Purchaser Agent and in any event no later than five (5) Business Days after such approval;

(vi) promptly and in any event no later than seven (7) Business Days after each regularly-scheduled meeting of Issuer's board of directors, the board kit (or board pack) and other materials delivered to the directors in connection with any such meeting; provided that, no more than two (2) times prior to Payment in Full, any inadvertent failure to timely comply with this clause (a)(vi) will not result in an Event of Default so long as Issuer delivers such board kit or other materials no later than nine (9) Business Days after such regularly scheduled meeting;

(vii) without limiting the generality of the above clause (vi), promptly after any reasonable request by the Purchaser Agent, copies of any detailed audit reports, management letters or recommendations submitted to the Issuer's board of directors (or the audit committee of the board of directors) by independent accountants in connection with the accounts or books of Issuer or any Subsidiary, or any audit of any of them;

(viii) concurrently with the delivery of quarterly financial statements pursuant to Sections 6.2(a)(i) and 6.2(a)(ii), (i) copies of any amendments of or other changes to the Operating Documents of Issuer or any of its Subsidiaries, and (ii) copies of any new Material Agreement or any material amendment to a Material Agreement, as applicable;

(ix) prompt notice (and in any event within ten (10) Business Days) following (A) any serious adverse event (as defined under the EU MDR) potentially attributable to any Product or any Product failures, and (B) any material failure to comply with any Regulatory Approval or Healthcare Law;

(x) prompt notice (and in any event no later than ten (10) Business Days) of (A) knowledge of Issuer of any material infringement or misappropriation by any Third Party of any Product/Services Intellectual Property or any material infringement or misappropriation by a Third Party of any other Intellectual Property material to the conduct of the business of Issuer and its Subsidiaries, (B) receipt of any written notice from a Third Party alleging or claiming that the making, having made, using, importing, offering for sale, or selling of any Product or providing any Service infringes or misappropriates any Intellectual Property of such Third Party (which notice shall include a copy of such notice received), and (C) to the extent permitted by Requirements of Law, receipt by any Obligor or any Subsidiary of any written notice, claim or demand challenging the legality, validity, enforceability or ownership of any Intellectual Property of such Obligor or Subsidiary or pursuant to which any Third Party commences or threatens any action, suit or other proceeding against such Obligor or Subsidiary and relating to a Product or Service (which notice shall furnish a copy of such notice, claim or demand);

(xi) prompt notice (and in any event no later than ten (10) Business Days) of (A) the termination (other than expiration or non-renewal in accordance with its terms or replacements in the ordinary course of business) of any Material Agreement and (B) the receipt by Issuer or any of its Subsidiaries of notice of any breach, default or event of default under any Material Agreement, or otherwise obtaining Knowledge of any material breach, default or event of default under any Material Agreement;

(xii) as soon as possible, and in any event within ten (10) Business Days after the occurrence of any ERISA Event that, either individually or together with any other ERISA Events, could reasonably be expected to result in liability of the Issuer and its Subsidiaries in an aggregate amount exceeding \$1,000,000;

(xiii) as soon as possible, and in any event within ten (10) Business Days after receipt thereof, true and correct copies of all FDA Form 483s, notices of adverse finding, warning letters, untitled letters, "It Has Come to Our Attention" letters, Safety Notices, full or partial clinical holds,

complete response letters, and other materially adverse written correspondence or written notices from the FDA, the Notified Body with respect to the EU MDR, the MHRA, Health Canada or any other Governmental Authority having jurisdiction over the facilities, the Products, the Services or business of Issuer or any of its Subsidiaries;

(xiv) promptly (and in any event no later than ten (10) Business Days) following receipt thereof, copies of all non-privileged written environmental reports submitted to a Governmental Authority, whether prepared by personnel of any Obligor or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Facility that could be reasonably expected to result in a Material Adverse Change or with respect to any Environmental Claims that could be reasonably expected to result in a Material Adverse Change;

(xv) to the extent not delivered pursuant to Sections 6.2(a)(xiii) and (a)(xiv) above, within ten (10) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to the Obligors' business or otherwise could reasonably be expected to result in a Material Adverse Change; and

(xvi) other information as may be reasonably requested by Purchaser Agent.

Notwithstanding the foregoing, the obligations in this Section 6.2(a)(i) and (ii) may be satisfied with respect to financial information of the Issuer and the Subsidiaries by filing the Form 10-K, 10-Q or 8-K, as applicable, of the Issuer with the Securities Exchange Commission and documents required to be delivered pursuant to the terms hereof may be delivered electronically and, if so satisfied or delivered, shall be deemed to have been delivered on the date on which (A) Issuer posts such documents, or provides a link thereto, on Issuer's website on the internet at Issuer's website address, (B) such documents are posted on Issuer's behalf on the internet or an intranet website, if any, to which Purchaser Agent and the Purchasers have access, or (C) such documents are posted on the Securities Exchange Commission's website on the internet at [www.sec.gov](http://www.sec.gov). Any documents or other information required to be delivered pursuant to the terms of this Agreement may be redacted by Issuer to protect individually identifiable health information (as defined under HIPAA) or personal data (as defined under Privacy Laws).

(b) Concurrently with the delivery of the financial statements pursuant to Sections 6.2(a)(i) and (a)(ii) during the Revenue Participation Period, deliver to Purchaser Agent a reasonably detailed written report (the "**Revenue Report**") setting forth (i) the calculation of the Revenue Participation Payments payable to the Purchasers for such fiscal quarter and each other prior fiscal quarter in the same fiscal year identifying Net Revenue and the calculation of all deductions from gross revenues to determine Net Revenue; (ii) quarterly and the year-to-date Revenue Participation Payments as of the end of such fiscal quarter; and (iii) the difference of (x) the amount the Purchasers have received with respect to such fiscal quarter (and each other prior fiscal quarter in such fiscal year) in payments from Issuer under Section 2.2(d) in respect of such fiscal quarter and fiscal year, minus (y) the actual Revenue Participation Payments owed to the Purchasers.

(c) After delivery of the financial statements pursuant to Section 6.2(a) at the request of Purchaser Agent, Issuer shall cause its chief financial officer to participate in conference calls with Purchaser Agent and the Purchasers to discuss, among other things, the financial condition of each Obligor, any financial or earnings reports and the other reports delivered pursuant to this Section 6.2; provided that such conference calls shall be held during normal business hours upon reasonable advance notice and, so long as no Event of Default has occurred and is continuing, not more frequently than once per fiscal quarter.

(d) Keep proper books of record and account in accordance with GAAP in all material respects. Issuer shall, and shall cause each of its Subsidiaries to (i) maintain effective disclosure controls and procedures, and (ii) maintain a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorizations, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (C) access to assets or incurrence of liability is permitted only in accordance with management's general or specific authorization and (D) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any differences.

(e) Allow, at the sole cost of the Obligors, Purchaser Agent or any Purchaser, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its Books, to conduct a collateral audit and analysis of its operations and the Collateral and to conduct an audit of Net Revenue. Such audits shall be conducted no more often than once every year unless (and more frequently if) an Event of Default has occurred and is continuing. All such visits and examinations pursuant to this Section 6.2(e) shall comply with Issuer's or its Subsidiaries' policies and protocols for safety for visitors to its facilities, including visits to any manufacturing areas, as provided to Purchaser Agent prior to the Effective Date and updated from time to time as necessary to comply with applicable Requirements of Law.

(f) Purchaser Agent hereby notifies Issuer and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws and Anti-Corruption Laws, and Purchaser Agent's policies and practices, Purchaser Agent is required to obtain, verify and record certain information and documentation that identifies Issuer and each of its Subsidiaries and their principals, which information includes the name and address of Issuer and each of its Subsidiaries and their principals and such other information that will allow Purchaser Agent to identify such party in accordance with Anti-Terrorism Laws and/or Anti-Corruption Laws.

(g) Notwithstanding anything set forth above to the contrary, during any MNPI Notice Period, if any notice or report required is to be furnished pursuant to Section 6.2 (any such notice, a "**6.2 Notice**"), the Obligors, instead of delivering such 6.2 Notice to the Purchaser Agent and Purchasers, shall promptly deliver such 6.2 Notice to Oberland Capital Management LLC (at [kwiggert@oberlandcapital.com](mailto:kwiggett@oberlandcapital.com), attention: Kristian Wiggert (or such other person as specified by Purchaser Agent in writing from time to time)) that the Obligors desire to deliver to the Purchaser Agent and Purchasers a 6.2 Notice. Within five (5) Business Days of receipt of such notification, the Purchaser Agent or a Purchaser may either (i) refuse the delivery of such 6.2 Notice, in which case the Obligors' obligations under Section 6.2 with respect to such 6.2 Notice shall be deemed satisfied as to the Purchaser Agent or such Purchaser, as applicable, or (ii) direct the delivery of such 6.2 Notice to the Purchaser Agent pursuant to procedures acceptable to the Purchaser Agent (which may be designed to comply with the internal procedures of the Purchaser Agent regarding the use of material non-public information).

**Section 6.3 Maintenance of Properties.** (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition (ordinary wear and tear and casualty and condemnation events excepted) and (b) make all necessary repairs thereto and renewals and replacements thereof, except to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Change.

**Section 6.4 Taxes; Pensions.** Timely file and require each of its Subsidiaries to timely file, all required U.S. federal income and other material tax returns and reports and timely pay, and require each

of its Subsidiaries to timely file, all material U.S. federal income and material foreign, state and local taxes, assessments, deposits and contributions owed by Issuer or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

#### **Section 6.5 Insurance.**

(a) Keep Issuer's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Issuer's and its Subsidiaries' industry and location. Insurance policies shall be in form and with coverage amounts (x) not less than the amount of coverage under policies in effect as of the Effective Date and (y) otherwise customary and reasonable for companies in the Issuer's line of business. All property policies shall have a lender's loss payable endorsement showing Purchaser Agent as lender loss payee and waive subrogation against Purchaser Agent, and all liability policies shall show, or have endorsements showing, Purchaser Agent, as additional insured. Purchaser Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Purchaser Agent, that it will give Purchaser Agent thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled; provided that, if any such provider does not agree to provide such notice, then Issuer Purchaser Agent thirty (30) days prior written notice. At Purchaser Agent's written request, the Obligors shall deliver certified copies of policies and evidence of all premium payments.

(b) Proceeds payable under any policy and any other proceeds of an Involuntary Disposition shall, at Purchaser Agent's option, be payable to Purchaser Agent, for the benefit of the Secured Parties, on account of the Obligations. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, the Obligors shall have the option of applying the proceeds of any casualty policy or other proceeds of an Involuntary Disposition toward the replacement or repair of destroyed or damaged property or the acquisition of capital assets used or useful in the business of the Obligors within one hundred eighty (180) days of the date of such Involuntary Disposition; provided that (i) any proceeds of an Involuntary Disposition so reinvested shall be held in a Controlled Account until they are reinvested pursuant to this Section and (ii) any such property or assets shall be deemed Collateral in which Purchaser Agent has been granted a first priority (except to the extent such replaced or repaired property was for property subject to a Permitted Priority Lien) security interest.

(c) If Issuer or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Purchaser Agent and/or any Purchaser may make, at Issuer's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Purchaser Agent or such Purchaser deems prudent.

#### **Section 6.6 Operating Accounts.**

(a) Maintain all of Obligors' Collateral Accounts in Controlled Accounts in accordance with the terms under this Agreement or other Note Documents.

(b) Provide Purchaser Agent ten (10) Business Days' prior written notice before any Obligor establishes any Collateral Account at or with any Person other than the institutions identified to Purchaser Agent in the Perfection Certificate delivered by the Obligors as of the Effective Date.

(c) Maintain the Designated Deposit Account at all times as Issuer's primary operating account and as a Controlled Account, which pursuant to Section 3.2(h) shall be subject to an ACH authorization in favor of Purchaser Agent, located in the United States.

(d) Deliver such bank statements and other information relating to all Deposit Accounts, Securities Accounts and Commodity Accounts of Issuer and its Subsidiaries as Purchaser Agent may request from time to time.

#### **Section 6.7 Regulatory Approvals; Protection of Intellectual Property Rights.**

(a) Maintain, in full force and effect in all material respects, each Regulatory Approval required to conduct their respective businesses as conducted from time to time or as otherwise material to the Issuer.

(b) At its sole expense, use commercially reasonable efforts (including taking legal action to specifically enforce the applicable terms of any License Agreement, to the extent it is commercially reasonable to do so) to (i) prepare, execute, deliver, file and have registered any and all agreements, documents or instruments which are necessary to diligently maintain the Material Patents and any material Trademarks within the Product/Services Intellectual Property, (ii) timely pay all maintenance, annuity or renewal fees for the Material Patents and any material Trademarks within the Product/Services Intellectual Property, (iii) ensure that all patent applications corresponding to the Material Patents are diligently prosecuted with the intent to protect the Products and the Services, and (iv) diligently defend or assert all Product/Services Intellectual Property owned by or licensed to Issuer or any Subsidiary against infringement, misappropriation or interference by any other Persons, and against any claims of invalidity or unenforceability (including, without limitation, by bringing any legal action for infringement or defending any claim of invalidity or action of a Third Party for declaratory judgment of non-infringement or non-enforceability), except in the case of this clause (iv), where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change. No Obligor shall, and each Obligor shall use its commercially reasonable efforts to cause any Licensee not to, disclaim or abandon the Material Patents or any material Trademarks within the Product/Services Intellectual Property, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

(c) In the event that any Obligor or any Subsidiary becomes aware that the Development, Manufacture, Commercialization and/or other exploitation by or on behalf of any Obligor or any Subsidiary of any Product or the provision or Commercialization of any Services infringes, misappropriates and/or violates any Intellectual Property that is owned or controlled by a Third Party, use commercially reasonable efforts to secure the right to use such Intellectual Property on behalf of itself and any affected Licensee, as applicable, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

(d) Take any and all actions and prepare, execute, deliver and file any and all agreements, documents or instruments to secure and maintain, all applicable Regulatory Approvals, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

(e) In the event that any Obligor acquires Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Intellectual Property shall automatically constitute part of the Collateral under this Agreement, without further action by any party, in each case from and after the date of such acquisition (except that any

representations or warranties of any Obligor shall apply to any such Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein). For the avoidance of doubt, this Section 6.7(e) shall not supersede or replace the Obligor's obligation to provide Intellectual Property Updates pursuant to Section 6.2(a)(iii).

**Section 6.8 Litigation Cooperation.** Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Purchaser Agent and the Purchasers, without expense to Purchaser Agent or the Purchasers, each Obligor and each of such Obligor's officers, employees and agents and Books, to the extent that Purchaser Agent or any Purchaser may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Purchaser Agent or any Purchaser with respect to any Collateral or relating to Issuer or any of its Subsidiaries.

**Section 6.9 Notices of Litigation and Default.**

(a) Provide prompt written notice to Purchaser Agent of any litigation or governmental proceedings pending or threatened in writing against Issuer or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Issuer or any of its Subsidiaries of \$500,000 or more or which could reasonably be expected to result in a Material Adverse Change.

(b) Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon any Obligor obtaining Knowledge of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, provide written notice to Purchaser Agent and the Purchasers of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

**Section 6.10 Landlord Waivers; Bailee Waivers.** In the event that any Obligor, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee (other than the delivery of products to hospitals, research institutions, or contract research organizations for trial or evaluations in the ordinary course of business consistent with past practice), in each case in accordance with Section 7.2, then, in the event that the new location is the chief executive office of such Obligor, or the aggregate book value of Collateral at any such new location is valued in excess of \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) in the aggregate, such Obligor shall obtain a bailee waiver or landlord waiver, as applicable, from such bailee or landlord in form and substance reasonably satisfactory to Purchaser Agent. In addition, if Issuer or any Obligor enters into a lease of the location set forth on Schedule 6.10, within 30 days thereof, the Obligors shall deliver to the Purchaser Agent a landlord consent in form and substance satisfactory to Purchaser Agent, executed in favor of Purchaser Agent, in respect of such location.

**Section 6.11 Creation/Acquisition of Subsidiaries.**

(a) In the event (x) any Obligor, or any of its Subsidiaries creates or acquires any Subsidiary or (y) any Subsidiary of an Obligor ceases to be an Excluded Subsidiary, provide prior written notice to Purchaser Agent and each Purchaser of the creation or acquisition of such new Subsidiary or such Subsidiary ceasing to be an Excluded Subsidiary, as the case may be, and promptly (and in any case within thirty (30) days of such formation or acquisition or cessation, as applicable (or within such later date as the Purchaser Agent may consent to in its reasonable discretion)), in each case, (i) take all such action as may be reasonably required by Purchaser Agent or any Purchaser to cause each such Subsidiary (other than an Excluded Subsidiary) to guarantee the Obligations of such Obligor under the Note Documents (including,

without limitation, the execution and delivery of a Guarantee Assumption Agreement, or supplement(s) to any security agreements, pledges, officer's certificate and, if requested by Purchaser Agent, an opinion of counsel), (ii) grant a continuing pledge and security interest in and to any assets of such Subsidiary (other than an Excluded Subsidiary) that constitute Collateral, and (iii) grant and pledge to Purchaser Agent, for the benefit of the Secured Parties, a perfected security interest in the Shares of each such created or acquired Subsidiary.

(b) Notwithstanding the foregoing, no perfection actions in any jurisdiction outside the United States shall be required with respect to the pledge of any Shares in an Immaterial Foreign Subsidiary.

**Section 6.12 Employee and Pension Matters.** No Obligor nor any ERISA Affiliate shall sponsor, establish, maintain, participate in or incur any liability in respect of any Pension Plan.

**Section 6.13 Use of Proceeds.** Use the proceeds of the Notes solely as working capital business purposes not in violation of the provisions of this Agreement, and not (i) for personal, family, household or agricultural purposes or (ii) directly or indirectly, for the purpose of purchasing or carrying Margin Stock.

**Section 6.14 Further Assurances.**

(a) Execute any further instruments and take further action as Purchaser Agent or any Purchaser reasonably requests to grant, perfect or continue Purchaser Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) If any fee interest in real property (including improvements thereto) with a book value or Fair Market Value greater than or equal to \$1,000,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) are acquired by an Obligor after the Effective Date, the Obligors will notify Purchaser Agent thereof within five (5) Business Days, and, if requested by Purchaser Agent, within ninety (90) days (or such longer period as approved by Purchaser Agent in its sole discretion) thereof will cause such assets to be subjected to a Lien securing the Obligations and will take, and cause the other Obligors to take, such actions as shall be necessary or requested by the Purchaser Agent to grant and perfect such Liens, including, without limitation, delivery of mortgages, deeds of trust, title insurance and/or flood insurance policies, surveys and such other deliverables as Purchaser Agent may request, all at the expense of the Obligors.

(c) If Issuer or any of its Subsidiaries is not now a Registered Organization but later becomes one, notify Purchaser Agent of such occurrence and provide Purchaser Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational or company identification number.

(d) No later than 60 days following the date of written request therefor by Purchaser Agent, Issuer shall (i) cause CLPT Canada to (A) guarantee the Obligations by executing and delivering a Guarantee Assumption Agreement, (B) grant a continuing pledge and security interest in and to the assets of CLPT Canada (substantially as described on Exhibit A hereto), and (C) grant and pledge to Purchaser Agent, for the benefit of the Secured Parties a perfected security interest in the Shares owned by CLPT Canada, (ii) deliver to the Purchaser Agent, if applicable, the certificate(s) for the Shares representing Equity Interests in CLPT Canada, duly endorsed in blank, and (iii) take all action as may be reasonably required by Purchaser Agent or any Purchaser to effect each of the foregoing, in each case, subject to customary documentation in form and substance reasonably satisfactory to the Purchaser Agent.



**ARTICLE VII**  
**NEGATIVE COVENANTS**

Each Obligor shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Purchasers:

**Section 7.1 Transfers.** Convey, sell, lease, license (including by way of covenants not to sue), transfer, assign, contribute or otherwise dispose of (collectively, “**Transfer**”), or permit any of its Subsidiaries to Transfer, all or any part of its assets, business or property, or permit any of its Subsidiaries to issue any Equity Interests (other than to an Obligor), except for:

- (a) Transfers of Inventory, including to end users (through wholesalers or other typical sales channels) or to distributors, in the ordinary course of business;
- (b) Transfers of Equipment, Inventory and other Goods that are worn out or obsolete;
- (c) Transfers from a Subsidiary of an Obligor to an Obligor or from one Obligor to another Obligor, provided that any assets so Transferred will continue to be subject to a first priority (subject to Permitted Priority Liens) security interest in favor of Purchaser Agent and Transfers from Full Guarantors to Limited Guarantors shall be for Fair Market Value cash consideration;
- (d) Permitted Liens, Permitted Investments, Permitted Distributions, Permitted Licenses and transactions expressly permitted by Section 7.3;
- (e) leases or subleases of real property or non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) to third parties;
- (f) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged;
- (g) dispositions of equipment to the extent that (A) such equipment is exchanged for credit against the purchase price of similar replacement equipment or (B) the proceeds (determined on an after-tax basis) of such disposition are applied to the purchase price of such replacement;
- (h) Transfers to landlords of improvements or fixtures made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;
- (i) Transfers of receivables in connection with the collection, settlement or compromise thereof, and the forgiveness, release or compromise of any amount owed to Issuer or any Subsidiary in the ordinary course of business;
- (j) dispositions in the ordinary course of business consisting of the abandonment of Intellectual Property (other than Material Patents) which, in the reasonable good faith determination of Issuer, are not material to the conduct of its business;
- (k) any Involuntary Disposition;
- (l) use of Cash in the ordinary course of business or otherwise in transactions permitted hereunder;

(m) the termination of any lease, sublease, license, sublicense, concession or other agreements in accordance with the terms thereof (provided that any termination of a Material Agreement shall comply with Section 7.10); and

(n) other Transfers of Collateral, so long as the fair market value (as reasonably determined in good faith by the Issuer) thereof does not exceed, individually or in the aggregate, \$500,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) per fiscal year.

#### **Section 7.2 Changes in Business, Ownership, or Business Locations.**

(a) Engage in or permit any of its Subsidiaries to engage in any business other than the general business engaged in by Issuer and such Subsidiary, as applicable, as of the Effective Date or any business reasonably related, ancillary or incidental thereto; or (b) liquidate or dissolve (other than as permitted by Section 7.3).

(b) Without at least ten (10) days' prior written notice to Purchaser Agent: (A) change its chief executive office location or add any new offices (other than a new chief executive office location of any of the Obligors) or locations where Collateral is located, including warehouses (unless such new offices or locations contain less than \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) book value in assets or property of Issuer or any of its Subsidiaries or is subject to a landlord or bailee waiver, as applicable, in compliance with Section 6.10) (excluding the delivery of products to hospitals, research institutions, or contract research organizations for trial or evaluations in the ordinary course of business consistent with past practice), (B) change its jurisdiction of organization or incorporation, (C) change its organizational structure or type, (D) change its legal name or (E) change any organizational or company number (if any) assigned by its jurisdiction of organization or incorporation.

(c) Hold or maintain Inventory or Equipment with a book value in excess of \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) (other than the delivery of products to hospitals, research institutions, or contract research organizations for trial or evaluations in the ordinary course of business consistent with past practice) in any jurisdiction outside of the United States where Purchaser Agent does not have a first priority perfected security interest satisfactory to Purchaser Agent in its sole discretion in such Inventory or Equipment.

**Section 7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the Equity Interests or property of another Person; provided that (a) nothing herein shall prohibit any Obligor from effecting such a transaction to the extent it qualifies as a "**Permitted Acquisition**", and (b) an Obligor or a Subsidiary of an Obligor may merge, consolidate, liquidate or dissolve into another Obligor or Subsidiary of an Obligor (provided that (x) if any such Obligor is Issuer, Issuer is the surviving legal entity, (y) if such Subsidiary is an Obligor, the surviving Subsidiary shall be an Obligor, and (z) if such Subsidiary is a Full Guarantor, the surviving Subsidiary shall be a Full Guarantor), in each case so long as no Event of Default is occurring prior thereto or arises as a result therefrom.

**Section 7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, other than Permitted Indebtedness.

**Section 7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except

for Permitted Priority Liens), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Purchaser Agent, for the benefit of the Secured Parties) with any Person which directly or indirectly prohibits or has the effect of prohibiting Issuer, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Collateral, except for Permitted Negative Pledges and as is otherwise permitted in Section 7.1 hereof and the definition of “**Permitted Liens**” herein.

**Section 7.6 Maintenance of Collateral Accounts.** Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

**Section 7.7 Distributions; Investments.** (a) Pay any dividends (other than dividends payable solely in Equity Interests of Issuer) or make any distribution or payment in respect of or redeem, retire or purchase any Equity Interests, in each case, other than Permitted Distributions, or (b) directly or indirectly make any Investment other than Permitted Investments.

**Section 7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any transaction or series of related transactions with any Affiliate of Issuer or any of its Subsidiaries with an aggregate value in excess of \$250,000 (provided that such amount shall increase to \$500,000 from and after the Milestone Event) in the aggregate, except for:

(a) transactions existing on the Effective Date and disclosed to on Schedule 7.8 to the Disclosure Letter (and any amendment thereto or replacement thereof to the extent such an amendment or replacement is not adverse in any material respect to Issuer and its Subsidiaries or Purchasers),

(b) transactions between or among Obligors and Subsidiaries; provided that, except for Permitted Investments pursuant to clause (e)(iii) of the definition thereof, any transactions with Subsidiaries that are not Full Guarantors are in the ordinary course of Issuer’s and the applicable Subsidiary’s (or Subsidiaries’) business, upon fair, customary and reasonable terms,

(c) customary compensation, benefits and indemnification of, and other employment arrangements with, employees, directors, consultants and officers of Issuer and its Subsidiaries, and reimbursements of expenses of current or former employees, directors, consultants and officers, in each case, upon fair, customary and reasonable terms that, with respect to any such arrangements with Affiliates of Issuer or any Subsidiary, are no less favorable to Issuer and its Subsidiaries than would be obtained in an arm’s length transaction with a non-affiliated Person,

(d) the issuance of Equity Interests of Issuer to Affiliates in exchange for cash; provided that the terms of such transaction are no less favorable to Issuer than those that would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate,

(e) any transaction permitted by clause (f) of the definition of “Permitted Investments” and clauses (a) and (c) of the definition of “Permitted Distributions”, and

(f) transactions with PTC Therapeutics, Inc. and its Subsidiaries upon fair, customary and reasonable terms that are no less favorable to Issuer and its Subsidiaries than would be obtained in an arm’s length transaction with a non-affiliated Person and to the extent approved by the independent members of the Issuer’s board of directors (or an independent committee thereof).

## Section 7.9 Compliance with Laws.

(a) Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940, as amended, or undertake as one of its activities extending credit to purchase or carry Margin Stock, or use the proceeds of any issuance of Notes directly or indirectly for that purpose; fail to meet the minimum funding requirements of ERISA, permit a “reportable event” (as defined in ERISA) or “prohibited transaction” (as defined in ERISA) that could reasonably be expected to result in a Material Adverse Change to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change; withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Issuer or any of its Subsidiaries, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

(b) Cause or suffer to exist (a) any event that could result in the imposition of a Lien with respect to any Pension Plan or Multiemployer Plan or (b) any other ERISA Event that, in the aggregate, could reasonably be expected to result in a Material Adverse Change.

(c) (i) Use, or permit any of their Subsidiaries, controlled Affiliates, employees or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement to use, any proceeds of the Notes for the purposes of financing the activities of or involving any Person who is debarred, excluded, suspended or otherwise limited from participation in U.S. state or federal health care program, or (ii) directly or indirectly, enter into any documents, instruments, agreements, contracts with, or otherwise employ a Person who is debarred, excluded, suspended or otherwise limited from participation in U.S. state or federal health care program. Issuer and each of its Subsidiaries shall immediately notify Purchaser Agent if Issuer or any Subsidiary or controlled Affiliate of Issuer, any of their respective officers, directors, employees, or, to the knowledge of the Issuer, any of their respective agents, vendors or independent contractors has been debarred, excluded, suspended or otherwise limited from participation in Medicare, Medicaid or any other state health care program or any federal health care program as defined in 42 U.S.C. § 1320a-7b(f), or convicted of any crime for which debarment is mandated by 21 U.S.C. 335a(a) or authorized by 21 U.S.C. 335a(b), or exclusion is required pursuant to 42 U.S.C. 1320a-7b and related regulations.

(d) Use, or permit any of their controlled Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement to use, any proceeds of the Notes for the purposes of financing the activities of any Sanctioned Person in violation of Sanctions, or permit any controlled Affiliate to, directly or indirectly, enter into any documents, instruments, agreements or contracts with any Sanctioned Person in violation of Sanctions. Issuer and each of its Subsidiaries shall immediately notify Purchaser Agent if Issuer or such Subsidiary, or any Subsidiary or controlled Affiliate of Issuer, is a Sanctioned Person or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Issuer nor any of its Subsidiaries shall, nor shall Issuer or any of its Subsidiaries, permit any controlled Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person in violation of Sanctions, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Sanctioned Person in violation of Sanctions, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked or sanctioned pursuant to any Sanctions (including Executive Order No. 13224 or any similar executive order), other Anti-Terrorism Law or other Anti-Corruption Laws, in violation of Sanctions, 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 any Sanctions (including Executive Order No. 13224 or any similar executive order), other Anti-Terrorism Law or other Anti-Corruption Laws.

(e) Fail to comply, and to cause all other Persons, if any, on or occupying any Facilities to comply, with all Environmental Laws, in each case except to the extent such non-compliance could not reasonably be expected to result in a Material Adverse Change.

(f) Use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not reasonably be expected to result in a Material Adverse Change.

(g) Fail to maintain, or enforce, reasonable policies and procedures designed to ensure that officers, directors, shareholders, employees and agents comply in all material respects with all applicable Privacy Laws, Healthcare Laws and federal and state securities laws when receiving, storing, disseminating and otherwise handling confidential information and material non-public information of business counterparts.

#### **Section 7.10 Material Agreements.**

(a) Fail to comply with any term or condition of, or fail to fulfill any obligation under, any Material Agreement, or take or fail to take any action that, in each case, could result in a right of any counterparty to a Material Agreement to terminate such Material Agreement if such termination could adversely affect in any material respect the interests of Issuer, the Purchaser Agent or the Purchasers or could reasonably be expected to result in a Material Adverse Change.

(b) Upon the occurrence of a material breach of any Material Agreements by any other party thereto, fail to enforce its (or cause its Subsidiaries to enforce their) rights and remedies available to Issuer and its Subsidiaries thereunder, except as would not reasonably be expected to result in a Material Adverse Change.

(c) (i) Enter into any amendment or waiver to or modification of any Material Agreement, or grant any consent thereunder, or terminate any Material Agreement, or agree to do any of the foregoing that, either individually or in the aggregate, could adversely affect in any material respect the interests of Issuer, the Purchaser Agent or the Purchasers or could reasonably be expected to result in a Material Adverse Change or (ii) enter into any Restricted Agreement (other than amendments or modifications to Restricted Agreements existing as of the Effective Date that do not impose any additional restrictions, or amend in a manner adverse to the Purchaser Agent or the Purchasers any existing restrictions as of the Effective Date, of the type referenced in the definition of Restricted Agreement).

**Section 7.11 Accounting Changes.** Change (a) its accounting policies or reporting practices to a standard other than GAAP, or (b) its fiscal year.

### **ARTICLE VIII EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

### **Section 8.1 Payment Default.**

(a) Issuer fails to (i) make any payment of principal on any Notes or of any Repayment Amount on its due date, or (ii) make any payment of interest on the Notes or pay any Revenue Participation Payment within three (3) Business Days of when such payment is due; or

(b) Issuer fails to pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1(a) hereof).

### **Section 8.2 Covenant Default.**

(a) Issuer or any of its Subsidiaries fails or neglects to perform any obligations in Sections 3.6, 6.1(a) (solely as to the existence of the Obligors), 6.2, 6.5, 6.6, 6.9, 6.10, 6.11 or 6.14, or violates any covenant in Article VII; or

(b) Issuer, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Note Documents, and as to any Default (other than those specified in this Article VIII) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the Default within ten (10) Business Days after the occurrence thereof. Grace periods provided under this Section 8.2(b) shall not apply to any covenants set forth in Section 8.2(a) above.

### **Section 8.3 Material Adverse Change.** A Material Adverse Change occurs.

### **Section 8.4 Attachment; Levy; Restraint on Business.**

(a) A notice of lien, levy, or assessment is filed against Issuer or any of its Subsidiaries or their respective assets by any government agency, or any analogous process in any jurisdiction and the same is not, within forty-five (45) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided that, no Notes shall be purchased during any forty-five (45) day cure period; and

(b) (i) Any material portion of Issuer's or any of its Subsidiaries' assets is attached, expropriated, sequestered, seized, levied on, or comes into possession of a trustee or receiver or any analogous process in any jurisdiction, or (ii) any court order enjoins, restrains, or prevents Issuer or any of its Subsidiaries from conducting any material part of its business and such court order is not, within forty-five (45) days after the issuance thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided that no Notes shall be purchased during any forty-five (45) day cure period.

**Section 8.5 Insolvency.** (a) Issuer or any of its Subsidiaries is or becomes Insolvent or shall admit in writing its inability to pay its debts generally; (b) an Insolvency Proceeding is commenced; or (c) a moratorium is declared in respect of any indebtedness of any Obligor and for the avoidance of doubt, if a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

**Section 8.6 Other Agreements.** There is a default in any agreement to which Issuer or any of its Subsidiaries is a party with a third party or parties (a) that could entitle or permit such third party or parties, after the giving of notice or the expiration of any applicable grace periods, to accelerate the maturity of any Indebtedness in an aggregate amount in excess of \$500,000 (provided that such amount shall increase

to \$2,000,000 from and after the Milestone Event) (even if such third party is restricted from accelerating the maturity of such Indebtedness, including pursuant to the terms of a subordination or other similar agreement) or (b) that could reasonably be expected to result in a Material Adverse Change.

**Section 8.7 Judgments.** One or more judgments, orders, decrees or awards (or any settlement of any claim or proceeding) for the payment of money in an amount, individually or in the aggregate, of at least \$500,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) (not covered by independent third-party insurance (other than customary deductibles) as to which liability has not been denied by such insurance carrier) shall be rendered or approved by a court of competent jurisdiction against Issuer or any of its Subsidiaries and shall remain unsatisfied, unvacated or unstayed for a period of forty-five (45) days after the entry thereof.

**Section 8.8 Misrepresentations.** Any representation, warranty or statement made or deemed made by or on behalf of any Obligor in any Note Document, or in any report, certificate, or other document furnished pursuant to or in connection with any Note Document, prove to have been incorrect in any material respect when made or deemed made.

**Section 8.9 Guaranty.** Any Guaranty terminates or ceases for any reason to be in full force and effect (other than a release thereof in accordance with the Note Documents).

**Section 8.10 Governmental Approvals.** Any Governmental Approval 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 Change.

**Section 8.11 Lien Perfection.** Any Lien created hereunder or by any other Note Document shall at any time fail to constitute a valid and perfected Lien on any material portion of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Priority Liens.

**Section 8.12 Adverse Regulatory Event; Medicare/Medicaid Reimbursement.** (i) An Adverse Regulatory Event occurs that, individually or when taken together with each other Adverse Regulatory Event that has occurred since the Effective Date, results in fines, penalties, damages or losses (including lost revenue) in excess of an amount equal to 10% of Issuer's Net Revenue for the most recent four calendar quarter period for which financial statements and reports have been delivered to Agent pursuant to Sections 6.2(a)(i) and (ii) (solely with respect to losses resulting from recalls, after taking into account independent third party insurance coverage as to which liability has not been denied by such insurance carrier), or (ii) Issuer or any Subsidiary is suspended for more than 180 days, debarred, excluded, or otherwise limited in a manner that has a material and adverse impact on the revenues of Issuer and its Subsidiaries from participation in any United States state or federal health care program.

**Section 8.13 Delisting.** The common stock of Issuer are delisted from the Nasdaq Capital Market because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in Issuer's common stock not being listed on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as the Nasdaq Capital Market.

For the avoidance of doubt, a Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly set forth in this Article VIII; and an Event of Default shall

“continue” or be “continuing” until such Event of Default has been waived in writing by the Required Purchasers.

## **ARTICLE IX RIGHTS AND REMEDIES**

### **Section 9.1 Rights and Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, Purchaser Agent may, and at the written direction of Required Purchasers shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Issuer, (ii) by notice to Issuer declare the Repayment Amount and all other Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs the Repayment Amount and all other Obligations shall be immediately due and payable without any action by Purchaser Agent or the Purchasers) or (iii) by notice to Issuer suspend or terminate the Commitments (but if an Event of Default described in Section 8.5 occurs all Commitments shall be immediately terminated without any action by Purchaser Agent or the Purchasers).

(b) Without limiting the rights of Purchaser Agent and the Purchasers set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Purchaser Agent shall have the right at the written direction of the Required Purchasers, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (1) balances and deposits of Issuer that Purchaser Agent or any Purchaser holds or controls, or (2) any amount held or controlled by Purchaser Agent or any Purchaser owing to or for the credit or the account of Issuer;

(iii) commence and prosecute an Insolvency Proceeding or consent to any Obligor commencing any Insolvency Proceeding; and/or

(iv) exercise all of its rights and remedies as provided in any Note Document.

(c) Without limiting the rights of Purchaser Agent and the Purchasers set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Purchaser Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Purchaser Agent considers advisable, notify any Person owing Issuer money of Purchaser Agent’s security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Each Obligor shall assemble the Collateral if Purchaser Agent requests and make it available in a location as Purchaser Agent reasonably designates. Purchaser Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Each Obligor grants Purchaser Agent a license to enter and occupy any of its premises, without charge, to exercise any of Purchaser Agent’s rights or remedies;



(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Purchaser Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, each Obligor and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Purchaser Agent's exercise of its rights under this Section 9.1, each Obligor's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Purchaser Agent, for the benefit of the Secured Parties;;

(iv) place a "hold" on any account maintained with Purchaser Agent or the Purchasers and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of any Obligor's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Issuer or any of its Subsidiaries; and

(vii) subject to Sections 9.1(a) and (b), exercise all rights and remedies available to Purchaser Agent and each Purchaser under the Note Documents or at law or equity, including all remedies provided under the UCC (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence and during the continuance of any Event of Default, Purchaser Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Purchasers following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "**Exigent Circumstance**" is any event or circumstance that, in the reasonable judgment of Purchaser Agent, imminently threatens the ability of Purchaser Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Issuer or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Purchaser Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

For the avoidance of doubt the Repayment Amount shall be due and payable at any time the Obligations become due and payable or are otherwise accelerated hereunder for any reason, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Issuer in accordance with Section 9.1(a), or automatically, in accordance with the parenthetical to Section 9.1(a)(ii)), by operation of law or otherwise (including where bankruptcy filings or the exercise of any bankruptcy right or power, whether in any plan of reorganization or otherwise, results or would result in a payment, discharge, modification or other treatment of the Notes or Note Documents that would otherwise evade, avoid, or otherwise disappoint the expectations of the Purchasers in receiving the full benefit of their bargained-for Repayment Amount). The Obligors acknowledge and agree that none of the Repayment Amount shall constitute unmatured interest, whether under Section 502(b)(2) of the United States Bankruptcy Code or otherwise, but instead is reasonably calculated to ensure that the Purchasers receive the benefit of their bargain under the terms of this Agreement. In the event the Obligations are reinstated in connection with or following any applicable triggering event (whether pursuant to Section 1124 of the United States Bankruptcy Code or otherwise), it is understood and agreed that the Obligations shall include any Repayment Amount payable in accordance with the Note Documents. The

Obligors acknowledge and agree that the Purchasers shall be entitled to recover the full amount of the Repayment Amount in each and every circumstance such amount is due pursuant to or in connection with this Agreement, including in the case of any Insolvency Proceeding affecting Issuer or any of its Subsidiaries, so that the Purchasers shall receive the benefit of their bargain hereunder and otherwise receive full recovery as agreed under every possible circumstance. EACH OBLIGOR HEREBY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF ANY PORTION OF THE FULL REPAYMENT AMOUNT AND ANY DEFENSE TO PAYMENT OF THE FULL REPAYMENT AMOUNT, WHETHER SUCH DEFENSE MAY BE BASED IN PUBLIC POLICY, AMBIGUITY, OR OTHERWISE. The Obligors further acknowledge and agree, and waive any argument to the contrary, that payment of such amounts does not constitute a penalty or an otherwise unenforceable or invalid obligation. Each Obligor acknowledges and agrees that, prior to executing this Agreement, it has had the opportunity to review, evaluate, and negotiate the Repayment Amount and the calculations thereof with its advisors, and that (i) the Repayment Amount is reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Repayment Amount shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) each Obligor shall be estopped hereafter from claiming differently than as agreed to in this Section 9.1, (iv) the Issuer's agreement to pay the Repayment Amount is a material inducement to the Purchaser's agreement to purchase the Notes, and (v) the Repayment Amount represents a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Purchasers and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Purchasers or profits lost by the Purchasers as a result of such any applicable triggering event. Any damages that the Purchasers may suffer or incur resulting from or arising in connection with any breach hereof or thereof by any Obligor shall constitute Obligations owing to the Purchasers.

**Section 9.2 Power of Attorney.** Each Obligor hereby irrevocably appoints Purchaser Agent by way of security as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse such Obligor's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign such Obligor's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Purchaser Agent determines reasonable; (d) make, settle, and adjust all claims under any Obligor's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Purchaser Agent or a third party as the UCC or any applicable law permits. Each Obligor hereby appoints Purchaser Agent as its lawful attorney-in-fact to sign such Obligor's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Purchaser Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until Payment in Full. Purchaser Agent's foregoing appointment as each Obligor's or any of its Subsidiaries' attorney in fact, and all of Purchaser Agent's rights and powers, coupled with an interest, are irrevocable until Payment in Full.

**Section 9.3 Protective Payments.** Solely while an Event of Default has occurred and is continuing, if Issuer or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Issuer or any of its Subsidiaries is obligated to pay under any agreement to which it is bound, Purchaser Agent may obtain such insurance or make such payment, and all amounts so paid by Purchaser Agent are Reimbursable Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Purchaser Agent will make reasonable efforts to provide Issuer with notice of Purchaser Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter.

No such payments by Purchaser Agent are deemed an agreement to make similar payments in the future or Purchaser Agent's waiver of any Event of Default.

**Section 9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) each Obligor irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Purchaser Agent from or on behalf of any Obligor or any of its Subsidiaries of all or any part of the Obligations, and, as between the Obligors on the one hand and Purchaser Agent and Purchasers on the other, Purchaser Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Purchaser Agent may deem advisable notwithstanding any previous application by Purchaser Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Reimbursable Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the Repayment Amount in respect of the Obligations outstanding; and fourth, to any other indebtedness or obligations of the Obligors owing to Purchaser Agent or any Purchaser under the Note Documents. Any balance remaining shall be delivered to applicable Obligor or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Purchasers of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Purchaser Agent, or if applicable, each Purchaser, shall promptly remit to the other Purchasers such sums as may be necessary to ensure the ratable repayment of each Purchaser's portion of any Note and the ratable distribution of interest, fees and reimbursements paid or made by any Obligor. Notwithstanding the foregoing, a Purchaser receiving a scheduled payment shall not be responsible for determining whether the other Purchasers also received their scheduled payment on such date; provided that, if it is later determined that a Purchaser received more than its ratable share of scheduled payments made on any date or dates, then such Purchaser shall remit to Purchaser Agent or other Purchasers such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Purchaser Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Purchaser in excess of its ratable share, then the portion of such payment or distribution in excess of such Purchaser's ratable share shall be received by such Purchaser in trust for and shall be promptly paid over to the other Purchaser for application to the payments of amounts due on the other Purchasers' claims. To the extent any payment for the account of an Obligor is required to be returned as a voidable transfer or otherwise, the Purchasers shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Purchaser shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Purchaser Agent and other Purchasers for purposes of perfecting Purchaser Agent's security interest therein.

**Section 9.5 Liability for Collateral.** So long as Purchaser Agent and the Purchasers comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Purchaser Agent and the Purchasers, Purchaser Agent and the Purchasers shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. The Obligors bear all risk of loss, damage or destruction of the Collateral.

**Section 9.6 Licenses Related to Products.** For the purpose of enabling Purchaser Agent and Purchasers to exercise rights and remedies under this Article 9 and the other Note Documents (including in

order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, license out, convey, transfer or grant options to purchase any Collateral), each Obligor hereby grants to Purchaser Agent an irrevocable, nonexclusive, assignable license (which license may be exercised only upon the occurrence and during the continuance of an Event of Default and for the purposes of, or in connection with, the exercise of remedies under this Article 9 and the other Note Documents), without payment of royalty, return on net sales, revenue share or other compensation to Issuer or any of its Subsidiaries or Affiliates, including the right to practice, use, sublicense or otherwise exploit, solely in connection with the Products and Services or other items in the Collateral, any Intellectual Property owned or controlled by such Person, wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof to the extent that such non-exclusive license is not prohibited by any applicable law. Any license, sublicense or other transaction entered into by Purchaser Agent in accordance with the provisions of this Section 9.6 will be binding upon any applicable Obligor, notwithstanding any subsequent cure of an Event of Default.

**Section 9.7 No Waiver; Remedies Cumulative.** Failure by Purchaser Agent or any Purchaser, at any time or times, to require strict performance by the Obligors of any provision of this Agreement or any other Note Document shall not waive, affect, or diminish any right of Purchaser Agent or any Purchaser thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Purchaser Agent and the Required Purchasers and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Purchaser Agent and the Purchasers under this Agreement and the other Note Documents are cumulative. Purchaser Agent and the Purchasers have all rights and remedies provided under the UCC, any applicable law, by law, or in equity. The exercise by Purchaser Agent or any Purchaser of one right or remedy is not an election, and Purchaser Agent's or any Purchaser's waiver of any Event of Default is not a continuing waiver. Purchaser Agent's or any Purchaser's delay in exercising any remedy is not a waiver, election, or acquiescence.

**Section 9.8 Demand Waiver.** Each Obligor waives, to the fullest extent permitted by law, 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 Purchaser Agent or any Purchaser on which Issuer or any Subsidiary is liable.

## **ARTICLE X NOTICES; SERVICE OF PROCESS**

All notices, consents, requests, approvals, demands or other communication (collectively, "**Communication**") by any party to this Agreement or any other Note Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by email transmission as evidenced by a transmission confirmation sheet or server delivery confirmation notice, as applicable; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, or email address indicated below. Any of Purchaser Agent, the Purchasers or Issuer may change its mailing address or email address by giving the other party written notice thereof in accordance with the terms of this Article X.

If to any Obligor: ClearPoint Neuro, Inc.  
120 S Sierra Ave. Suite 1  
Solana Beach, California 92075  
Attn: Danilo D'Alessandro  
E-mail: ddalessandro@clearpointneuro.com

with a copy (which shall not constitute notice) to: Covington & Burling LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018-1405  
Attn: Peter Schwartz  
Email: pschwartz@cov.com

If to Purchaser Agent: CALW SA LLC  
c/o Oberland Capital Management LLC  
1700 Broadway, 37th Floor  
New York, NY 10019  
Attn: Kristian Wiggert  
Telephone: (212) 257-5863  
E-mail: kwiggert@oberlandcapital.com

with a copy (which shall not constitute notice) to: Cooley LLP  
3 Embarcadero Center 20th Floor  
San Francisco, CA 94111-4004  
Attention: Mischi a Marca  
E-mail: gmamarca@cooley.com

If to any Purchaser As specified on the applicable signature page hereto.

Each party hereto irrevocably consents to service of process in any action or proceeding arising out of or relating to any Note Document, in the manner provided for notices in this Article X. Nothing in this Agreement or any other Note Document will affect the right of any party hereto to serve process in any other manner permitted by applicable laws.

#### **ARTICLE XI CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

This Agreement and the other Note Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Note Document (except as may be expressly otherwise provided in any Note Document) shall be governed by, and construed in accordance with, the law of the State of New York (including Sections 5-1401 and 5-1402 of the New York General Obligations Law, but excluding all other choice of law and conflicts of law rules).

Each Obligor, Purchaser Agent and each Purchaser each submit to the exclusive jurisdiction of the courts of the State of New York sitting in the City and County of New York and of the United States District Court of the Southern District of New York and any appellate court thereof and agrees that all claims in respect of any such action, litigation or proceeding shall be heard and determined in such state court or, to the fullest extent permitted by applicable law, in such federal court; provided that the foregoing shall not

preclude Purchaser Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ARTICLE XI.**

## **ARTICLE XII GUARANTY**

**Section 12.1 The Guaranty.** Each Guarantor hereby jointly and severally with each other Guarantor guarantees to Purchaser Agent and the Purchasers, and their successors and assigns, (i) the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Notes, all fees and other amounts and Obligations from time to time owing to Purchaser Agent and the Purchasers by Issuer and each other Obligor under the Notes, this Agreement or any other Note Document and (ii) the full and prompt performance and observance by Issuer and the other Guarantors of each and all of the covenants, liabilities, obligations and agreements required to be performed or observed by such Obligors under the Notes, this Agreement or any other Note Document, in each case strictly in accordance with the terms hereof and thereof (such obligations being herein collectively called the “**Guaranteed Obligations**”). Each Guarantor hereby further jointly and severally with each other Guarantor agrees that if Issuer or any other Obligor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, such Guarantor will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

**Section 12.2 Obligations Unconditional.** The Guaranteed Obligations are absolute and unconditional, joint and several, independent and irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Issuer under the Notes, this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 12.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Guarantors, the manner, place, time for any payment, performance of or compliance with any of the Guaranteed Obligations shall be extended, amended, modified or waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted or any failure, lack of diligence, omission or delay on the part of Purchaser Agent or any Purchaser to enforce, assert or exercise any right, power or remedy conferred on it thereunder;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(d) any Lien or security interest granted to, or in favor of, Purchaser Agent as security for any of the Guaranteed Obligations shall fail to be perfected or any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Guaranteed Obligations;

(e) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, examinership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to any Obligor or any other guarantor of the Guaranteed Obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(f) any merger or consolidation of any Obligor into or with any entity, or any sale, lease or transfer of any of the assets of any Obligor or any other guarantor of the Guaranteed Obligations to any other person or entity;

(g) any change in the ownership of any Obligor or any change in the relationship between any Obligor or any other guarantor of the Guaranteed Obligations, or any termination of any such relationship;

(h) the existence of any claim, set-off or other right which any Guarantor may have at any time against any Obligor, Purchaser Agent, any Purchaser or any other Person;

(i) any failure by Purchaser Agent or any Purchaser to disclose to the Guarantors any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any Obligor now or hereafter known to Purchaser Agent or any Purchaser;

(j) any obligations or liabilities the Obligors or any other guarantor of the Guaranteed Obligations owed to any Guarantor;

(k) the acceptance or the availability of any other security, collateral or guarantee, or other assurance of payment, for all or any part of the Guaranteed Obligations;

(l) any default, act or omission to act or delay of any kind (willful or otherwise) by any Obligor, Purchaser Agent, any Purchaser or any other Person or any other circumstance whatsoever which might, but for the provisions of this clause, constitute a legal or equitable discharge of the Guarantors'

obligations hereunder (except that the Guarantors may assert the defense of payment in full of the Guaranteed Obligations); or

(m) any notice of any sale, transfer or other disposition of any right, title or interest of Purchaser Agent or any Purchasers under the Notes, this Agreement or any other Note Document.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, notice of acceptance, notice of non-performance, nonpayment, default, acceleration, dishonor, protest and any other notices whatsoever, which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve any rights against the Guarantors with respect to or under the Notes, this Agreement or any other Note Document or any failure on the part of any Obligor, Guarantors or any other guarantor of the Guaranteed Obligations to perform or comply with any covenant, agreement, term or condition of the Notes, this Agreement or any other Note Document. The Guarantors further expressly waive any requirement that Purchaser Agent or any Purchaser exhaust any right, power or remedy or proceed against Issuer under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or against or exhaust any security or collateral for, any of the Guaranteed Obligations.

**Section 12.3 Reinstatement.** The obligations of the Guarantors under this Article XII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Issuer in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantors jointly and severally agree that they will indemnify Purchaser Agent and the Purchasers on demand for all documented out-of-pocket costs and expenses (including documented fees and expenses of outside counsel) incurred by such Persons in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

**Section 12.4 Subrogation.** The Guarantors hereby jointly and severally agree that, until Payment in Full, they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in Section 12.1, whether by subrogation or otherwise, against Issuer or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

**Section 12.5 Remedies.** The Guarantors jointly and severally agree that, as between the Guarantors, on one hand, and Purchaser Agent and the Purchasers, on the other hand, the obligations of Issuer under the Notes, this Agreement and under the other Note Documents may be declared to be forthwith due and payable as provided in Section 9.1 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 9.1) for purposes of Section 12.1 notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Issuer and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Issuer) shall forthwith become due and payable by the Guarantors for purposes of Section 12.1.

**Section 12.6 Instrument for the Payment of Money.** Each Guarantor hereby acknowledges that the guarantee in this Article XII constitutes an instrument for the payment of money, and consents and agrees that Purchaser Agent and the Purchasers, at their sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.



**Section 12.7 Continuing Guarantee.** The guarantee in this Article XII is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

**Section 12.8 Rights of Contribution.** The Guarantors hereby agree, as between themselves, that if any Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Guarantor of any Guaranteed Obligations, each other Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Fair Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Guarantor to any Excess Funding Guarantor under this Section 12.8 shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of this Article XII and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations. For purposes of this Section 12.8, (i) "**Excess Funding Guarantor**" means, in respect of any Guaranteed Obligations, a Guarantor that has paid an amount in excess of its Fair Share of such Guaranteed Obligations, (ii) "**Excess Payment**" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Fair Share of such Guaranteed Obligations and (iii) "**Fair Share**" means, for any Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Guarantor (excluding any shares of stock of any other Guarantor) exceeds the amount of all the debts and liabilities of such Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder and any obligations of any other Guarantor that have been guaranteed by such Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of Issuer and the Guarantors hereunder and under the other Note Documents) of all of the Guarantors, determined (A) with respect to any Guarantor that is a party hereto on the Effective Date, as of the Effective Date, and (B) with respect to any other Guarantor, as of the date such Guarantor becomes a Guarantor hereunder.

**Section 12.9 General Limitation on Guarantee Obligations.** In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 12.1 would otherwise, taking into account the provisions of Section 12.8, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 12.1, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, Purchaser Agent, any Purchaser or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

## **ARTICLE XIII GENERAL PROVISIONS**

### **Section 13.1 Successors and Assigns.**

(a) This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Issuer may not transfer, pledge or assign this Agreement or any rights or obligations under it without Purchaser Agent's and each Purchaser's prior written consent (which may be granted or withheld in Purchaser Agent's and each such Purchaser's sole discretion, subject to Section 13.6). The Purchasers have the right, without the consent of or notice to Issuer, to sell, transfer, assign, pledge, negotiate, or grant

participation in (any such sale, transfer, assignment, negotiation or grant of a participation, a **“Purchaser Transfer”**) all or any part of, or any interest in, the Notes and the Purchasers’ obligations, rights, and benefits under this Agreement and the other Note Documents; provided that any such Purchaser Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Note Documents shall require the prior written consent of the Required Purchasers (such approved assignee, an **“Approved Purchaser”**). Issuer and Purchaser Agent shall be entitled to continue to deal solely and directly with such Purchaser in connection with the interests so assigned until Purchaser Agent shall have received and accepted an effective assignment or transfer agreement in form satisfactory to Purchaser Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Purchaser as Purchaser Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Default or Event of Default has occurred and is continuing, no Purchaser Transfer (other than a Purchaser Transfer in connection with (x) assignments by a Purchaser due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Purchaser’s own financing or securitization transactions) shall be permitted, without Issuer’s consent, to any Person that is not an Eligible Assignee.

(b) Purchaser Agent, acting solely for this purpose as a non-fiduciary agent of Issuer, shall maintain at its office referred to in Article X a copy of each assignment and assumption delivered to it and a register for the recordation of the names and addresses of the Purchasers, and the commitments of, and principal amounts (and stated interest) of the Obligations owing to, each Purchaser pursuant to the terms hereof from time to time (the **“Register”**). The entries in the Register shall be conclusive absent manifest error, and Issuer, Purchaser Agent and each Purchaser shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of the Note Documents. The Register shall be available for inspection by Issuer and each Purchaser, at any reasonable time and from time to time upon reasonable prior notice. For the avoidance of doubt, (i) each Note issued pursuant to this Agreement is a registered obligation, (ii) the right, title and interest of each Purchaser and its assignees in and to such Notes shall be transferable only upon notation of such transfer in the Register and (iii) no assignment thereof or participation therein shall be effective until recorded therein. This Section 13.1(b) shall be construed so that each Note is at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and Section 5f.103-1(c) of the United States Treasury Regulations.

**Section 13.2 Indemnification.** Each Obligor agrees to indemnify, defend and hold Purchaser Agent and the Purchasers and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Purchaser Agent or the Purchasers (each, an **“Indemnified Person”**) harmless against: (a) all obligations, demands, claims, and liabilities (collectively, **“Claims”**) asserted by any other party (including Issuer or any of its Subsidiaries) in connection with, related to, following, or arising from, out of or under, (i) the transactions contemplated by the Note Documents, (ii) any Notes or the use or proposed use of the proceeds therefrom or (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor or any of its Subsidiaries, or any Environmental Liability related in any way to any Obligor or any of its Subsidiaries; and (b) all losses or Reimbursable Expenses incurred, or paid by Indemnified Person in connection with, related to, following, or arising from, out of or under, the transactions contemplated by the Note Documents between Purchaser Agent, and/or the Purchasers and Issuer (including documented attorneys’ fees and expenses of outside counsel), except for Claims and/or losses are determined by a court of competent jurisdiction by final and nonappealable judgment to have directly resulted from such Indemnified Person’s gross negligence or willful misconduct. Issuer hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, documented out-of-pocket expenses and disbursements of any kind or nature

whatsoever (including documented fees and disbursements of outside counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Issuer or any of its Subsidiaries, and the documented out-of-pocket expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Purchaser Agent or Purchasers) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the Notes except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct. For the avoidance of doubt this Section 13.2 shall not apply to Tax matters subject to Article XIV. All amounts due under this Section 13.2 shall be payable not later than five (5) Business Days after demand therefor together with an invoice with respect thereto.

**Section 13.3 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**Section 13.4 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**Section 13.5 Amendments in Writing; Integration.**

(a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Note Document, no approval or consent thereunder, or any consent to any departure by Issuer or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Issuer, Purchaser Agent and the Required Purchasers provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Purchaser's Commitment or Commitment Percentage shall be effective as to such Purchaser without such Purchaser's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Purchaser Agent shall be effective without Purchaser Agent's written consent or signature; and

(iii) no such amendment, waiver or other modification shall, unless signed by all the Purchasers directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Note or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Note; (B) postpone the date fixed for, or waive, any payment of principal of any Note or of interest on any Note (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) reduce the applicable Revenue Participation Payments or Repayment Amount; (D) change the definition of the term "**Required Purchasers**" or the percentage of Purchasers which shall be required for the Purchasers to take any action hereunder; (E) release all or substantially all of the Collateral, authorize the Obligors to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (E), as otherwise may be expressly permitted under this Agreement or the other Note Documents (including in connection with any disposition permitted hereunder); (F) amend, waive or otherwise modify this Section 13.5 or the definitions of the terms used in this Section 13.5 insofar as the

definitions affect the substance of this Section 13.5; (G) consent to the assignment, delegation or other transfer by Issuer of any of its rights and obligations under any Note Document or release Issuer of its payment obligations under any Note Document, except, in each case with respect to this clause (G), pursuant to a merger or consolidation permitted pursuant to this Agreement; (H) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Commitment, Commitment Percentage or that provide for the Purchasers to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (I) subordinate the Liens granted in favor of Purchaser Agent securing the Obligations; or (J) amend any of the provisions of Section 13.9.

(b) Other than as expressly provided for in Sections 13.5(a)(i), (ii) and (iii), Purchaser Agent may, if requested by the Required Purchasers, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Issuer.

(c) This Agreement and the Note Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Note Documents merge into this Agreement and the Note Documents.

**Section 13.6 Counterparts; Effectiveness; Electronic Signature.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other parties hereto. Any counterpart may be executed by facsimile or pdf signature and such facsimile or pdf signature shall be deemed an original. The words ‘execution’, ‘signed’, ‘signature’, ‘delivery’ and words of like import in or relating to any document to be signed in connection with this Agreement or any other Note Document and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries 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, physical delivery thereof 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 New York State Electronic Signatures and Records Act, or any other similar State laws based on the Uniform Electronic Transactions Act; provided, that nothing herein shall require any Person to accept electronic signatures in any form or format without its prior written consent. Without limiting the generality of the foregoing, the parties hereto hereby (a) agree that, for all purposes, including in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Purchasers and the Obligors, electronic images of this Agreement or any other Note Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (b) waive any argument, defense or right to contest the validity or enforceability of the Note Documents based solely on the lack of paper original copies of any Note Documents, including with respect to any signature pages thereto.

**Section 13.7 Survival.** All covenants, representations and warranties made in this Agreement continue in full force and effect until Payment in Full. The obligation of the Obligors in Section 13.2 to indemnify each Purchaser and Purchaser Agent, as well as the confidentiality provisions in Section 13.8 and the obligations under Section 2.5 and under Article XIV, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**Section 13.8 Confidentiality.**

(a) In handling any Confidential Information of (i) the Obligor, in the case of the Purchaser Agent and the Purchasers and (ii) the Purchaser Agent and the Purchasers, in the case of the Obligor (in either case, as applicable, the party receiving Confidential Information, the “**Receiving Party**” and, the party disclosing such Confidential Information, the “**Disclosing Party**”) shall, in each case, exercise the same degree of care that they exercise for their own proprietary information (but in no event less than a reasonable standard of care). The Receiving Party agrees to: (x) hold any Confidential Information received in confidence; (y) use or permit the use of the Confidential Information solely in connection with preparing, amending, executing, negotiating, administering, defending and enforcing the Note Documents (the “**Permitted Purpose**”); and (z) except as otherwise permitted herein, not disclose the Confidential Information to any Person not a party to this Agreement.

(b) Subject to the terms and conditions of this Agreement: (i) either Receiving Party may disclose such Confidential Information (A) to its Affiliates and to the Receiving Party’s and its Affiliates’ directors, officers (including managing members or partners), limited partners, employees, accountants, attorneys, financial advisors or consultants (together, “**Representatives**”) who (1) have a need to know the Confidential Information for the Permitted Purpose, (2) are apprised of the confidential nature of the Confidential Information and (3) are under written or professional obligations of confidentiality, non-disclosure and non-use in respect of Confidential Information at least as stringent as those contained herein or (B) as required by law, regulation, subpoena or court order or otherwise in connection with a judicial, administrative or governmental proceeding, provided that, in the event that the Receiving Party is required or requested to make such disclosure, the Receiving Party shall, to the extent legally permissible, give reasonable notice to the Disclosing Party in advance of the disclosure so as to allow the Disclosing Party an opportunity to seek (at the Disclosing Party’s sole expense) a protective order or other appropriate remedy; provided, further, that such notice and opportunity shall not be required in respect of (x) disclosures required pursuant to the Securities Act, the Exchange Act, or the listing rules of the Nasdaq Capital Market, the Nasdaq Global Select Market, the Nasdaq Global Market or the New York Stock Exchange (or any nationally recognized securities exchange that is a successor to any of the foregoing) on which Issuer’s common stock is listed or (y) disclosures to any regulatory or self-regulatory authority as required by applicable law in connection with an examination, audit, inspection, inquiry, request or general supervisory oversight, and (ii) the Purchaser and Purchaser Agent may disclose such Confidential Information (A) so long as any Persons receiving Confidential Information pursuant to this clause (A) are subject to customary confidentiality obligations, in connection with a Purchaser’s own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction, (B) to prospective transferees (other than those identified in the immediately preceding clause (A)) or purchasers of any interest in the Notes (provided that the Purchasers and Purchaser Agent shall obtain such prospective transferee’s or purchaser’s agreement to the terms of this provision or to similar confidentiality terms), (C) as Purchaser Agent reasonably considers appropriate in exercising remedies under the Note Documents or (D) to any actual or potential investors, co-investors, members, and partners (including limited partners) of Purchaser Agent or any Purchaser or any of their Affiliates so long as such Persons are subject to customary confidentiality obligations. The Receiving Party shall be responsible for any breaches of this Section by its Representatives. For the avoidance of doubt, any disclosure of Confidential Information in compliance with this clause (b) shall not alter the confidential nature of such Confidential Information, or the confidentiality, non-disclosure and non-use obligations applicable thereto, for all other purposes.

(c) Notwithstanding the foregoing, the prohibitions on disclosure in this Section shall not apply to information that the Receiving Party can demonstrate by competent evidence: (i) was in the public domain prior to disclosure to the Receiving Party by the Disclosing Party, or becomes part of the public domain after such, in each case through no act or failure to act by the Receiving Party or its Representatives; (ii) was in the Receiving Party’s rightful non-confidential possession prior to disclosure

to the Receiving Party by the Disclosing Party; or (iii) is disclosed to the Receiving Party by a third party on a non-confidential basis who is known by Receiving Party to be in rightful non-confidential possession thereof and not prohibited from disclosing the information.

(d) Notwithstanding anything herein to the contrary, (i) the Purchasers and Purchaser Agent may use (but not disclose) Confidential Information for the development of client databases, reporting purposes and market analysis, (ii) on or after the Effective Date, Purchaser Agent and any Purchaser may disclose the transaction contemplated by the Note Documents on its or its investment manager's website and in its or its investment manager's marketing materials (which may include use of names and logos of one or more of the Obligor(s)) and (iii) on or after the Effective Date, the Obligor(s) shall issue the Press Release. Except as otherwise provided in this Section, a party may not use the name, likeness or trademarks of the other party or its Representatives for any purpose, including without limitation, to express or imply any relationship or affiliation between the parties, or any endorsement of any product or service, without the other party's prior written consent.

(e) The agreements provided under this Section supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section. For the avoidance of doubt the parties' obligations with respect to Confidential Information received prior to the Effective Date shall continue to be defined by the terms of any prior agreements with respect thereto, but effective as of the Effective Date, obligations in respect of all Confidential Information will be governed by this Section.

**Section 13.9 Right of Set Off.** Each Obligor hereby grants to Purchaser Agent and to each Purchaser, a lien, security interest and right of set off as security for all Obligations to Purchaser Agent and each Purchaser hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Purchaser Agent or the Purchasers or any entity under the control of Purchaser Agent or the Purchasers (including a Purchaser Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Purchaser Agent or the Purchasers may set off the same or any part thereof and apply the same to any liability or obligation of Issuer even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE PURCHASER AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF ANY OBLIGOR ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**Section 13.10 Cooperation of the Obligor(s).** If necessary, each Obligor agrees to execute any documents (including new Notes) reasonably required to effectuate and acknowledge each assignment of a Commitment or Note to an assignee in accordance with Section 13.1. Subject to the provisions of Section 13.8, each Obligor authorizes each Purchaser to disclose to any prospective participant or assignee of a Commitment, any and all information in such Purchaser's possession concerning Issuer and its Subsidiaries and their financial affairs which has been delivered to such Purchaser by or on behalf of any Obligor pursuant to this Agreement, or which has been delivered to such Purchaser by or on behalf of such Obligor in connection with such Purchaser's credit evaluation of such Obligor prior to entering into this Agreement.

**Section 13.11 Representations and Warranties of the Purchasers.** Each Purchaser, severally and not jointly, represents and warrants to Issuer as of the date such Person becomes a Purchaser and as of each Purchase Date, that:

(a) Each of the Notes to be received by such Purchaser hereunder will be acquired for such Purchaser's own account, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act, except pursuant to sales registered or exempted under the Securities Act, and such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the Securities Act without prejudice, however, to such Purchaser's right at all times to sell or otherwise dispose of all or any part of such Notes in compliance with applicable federal and state securities laws.

(b) Such Purchaser can bear the economic risk and complete loss of its investment in the Notes and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

(c) Such Purchaser has had an opportunity to receive, review and understand all information related to Issuer requested by it and to ask questions of and receive answers from Issuer regarding Issuer, its Subsidiaries, its business and the terms and conditions of the offering of the Notes, and has conducted and completed its own independent due diligence.

(d) Based on the information such Purchaser has deemed appropriate, it has independently made its own analysis and decision to enter into the Note Documents.

(e) Such Purchaser understands that the Notes are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from Issuer in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. Such Purchaser understands that no United States federal or state agency, or similar agency of any other country, has reviewed, approved, passed upon, or made any recommendation or endorsement of Issuer or the purchase of the Notes.

(f) Such Purchaser is an "accredited investor" as defined in Regulation D promulgated under the Securities Act.

(g) Such Purchaser did not learn of the investment in the Notes as a result of any general solicitation or general advertising.

#### **Section 13.12 Agency.**

(a) Each Purchaser hereby irrevocably appoints Purchaser Agent to act on its behalf as Purchaser Agent hereunder and under the other Note Documents and authorizes Purchaser Agent to take such actions on its behalf, to exercise such powers as are delegated to Purchaser Agent by the terms hereof or thereof and to act as agent of such Purchaser for purposes of acquiring, holding, enforcing and perfecting all Liens granted by the Obligors on the Collateral to secure any of the Obligations, in each case together with such actions and powers as are reasonably incidental thereto.

(b) Each Purchaser agrees to indemnify Purchaser Agent in its capacity as such (to the extent not reimbursed by the Obligors and without limiting the obligation of the Obligors to do so), according to its respective Pro Rata Share (in effect on the date on which indemnification is sought under this Section 13.12), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time be imposed on, incurred by or asserted against Purchaser Agent in any way relating to or arising out of, the Notes, this Agreement, any of the other Note Documents or any documents contemplated by or referred to herein or

therein or the transactions contemplated hereby or thereby or any action taken or omitted by Purchaser Agent under or in connection with any of the foregoing. The agreements in this Section 13.12 shall survive the payment of the Repayment Amount and all other amounts payable hereunder.

(c) The Person serving as Purchaser Agent hereunder shall have the same rights and powers in its capacity as Purchaser as any other Purchaser and may exercise the same as though it were not Purchaser Agent and the term "Purchaser" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each such Person serving as Purchaser Agent hereunder in its individual capacity.

(d) Purchaser Agent shall have no duties or obligations except those expressly set forth herein and in the other Note Documents. Without limiting the generality of the foregoing, Purchaser Agent shall not:

(i) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing;

(ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Note Documents that Purchaser Agent is required to exercise as directed in writing by any Purchaser; provided that Purchaser Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Purchaser Agent to liability or that is contrary to any Note Document or applicable law; and

(iii) except as expressly set forth herein and in the other Note Documents, have any duty to disclose, and Purchaser Agent shall not be liable for the failure to disclose, any information relating to Issuer or any of its Affiliates that is communicated to or obtained by any Person serving as Purchaser Agent or any of its Affiliates in any capacity.

(e) Purchaser Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Purchasers or as Purchaser Agent shall believe in good faith shall be necessary, under the circumstances or (ii) in the absence of its own gross negligence or willful misconduct.

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

(g) Purchaser Agent may rely, and shall be fully protected in acting, or refraining to act, upon, any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, bond or other paper or document that it has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of cables, telecopies and telexes, to have been sent by the proper party or parties. In the absence of its gross negligence or willful misconduct, Purchaser Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions



expressed therein, upon any certificates or opinions furnished to Purchaser Agent and conforming to the requirements of this Agreement or any of the other Note Documents. Purchaser Agent may consult with counsel, and any opinion or legal advice of such counsel shall be full and complete authorization and protection in respect of any action taken, not taken or suffered by Purchaser Agent hereunder or under any Note Documents in accordance therewith. Purchaser Agent shall have the right at any time to seek instructions concerning the administration of the Collateral from any court of competent jurisdiction. Purchaser Agent shall not be under any obligation to exercise any of the rights or powers granted to Purchaser Agent by this Agreement and the other Note Documents at the request or direction of the Required Purchasers unless Purchaser Agent shall have been provided by the Purchasers with adequate security and indemnity against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction.

(h) Purchaser Agent may resign at any time by delivering notice of such resignation to the Purchasers and Issuer, effective on the date set forth in such notice or, if no such date is set forth therein, upon the thirtieth (30<sup>th</sup>) day following the date such notice is delivered. If Purchaser Agent delivers any such notice, or if Purchaser Agent becomes insolvent or bankrupt, the Required Purchasers shall have the right to appoint a successor Purchaser Agent. If, within 30 days after the retiring Purchaser Agent having given notice of resignation, no successor Purchaser Agent has been appointed by the Required Purchasers that has accepted such appointment, then the retiring Purchaser Agent may, on behalf of the Purchasers, appoint a successor Purchaser Agent from among the Purchasers. Each appointment under this Section 13.12(h) shall be subject to the prior consent of Issuer, which may not be unreasonably withheld, delayed or conditioned but shall not be required during the continuance of an Event of Default. Effective immediately upon its resignation, (i) the retiring Purchaser Agent shall be discharged from its duties and obligations under the Note Documents, (ii) the Purchasers shall assume and perform all of the duties of Purchaser Agent until a successor Purchaser Agent shall have accepted a valid appointment hereunder, (iii) the retiring Purchaser Agent shall no longer have the benefit of any provision of any Note Document other than with respect to any actions taken or omitted to be taken while such retiring Purchaser Agent was, or because such Purchaser Agent had been, validly acting as Purchaser Agent under the Note Documents and (iv) subject to its rights under Section 13.12, the retiring Purchaser Agent shall take such action as may be reasonably necessary to assign to the successor Purchaser Agent its rights as Purchaser Agent under the Note Documents. Effective immediately upon its acceptance of a valid appointment as Purchaser Agent, a successor Purchaser Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Purchaser Agent under the Note Documents.

(i) The Purchasers irrevocably authorize the Purchaser Agent, at its option and in its discretion,

(i) to release any Lien on any Collateral granted to or held by the Purchaser Agent under any Note Document (i) upon Payment in Full, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other Transfer permitted hereunder, or (iii) as approved in accordance with Section 13.5;

(ii) to subordinate or release any Lien on any property granted to or held by the Purchaser Agent under any Note Document to the holder of any Lien on such property that is permitted by clause (c) of the definition of "Permitted Liens";

(iii) to release any Guarantor from its obligations under the Guaranty (i) if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Note Documents or (ii) upon Payment in Full; and

(iv) in connection with any license of Intellectual Property by any Obligor permitted hereunder, to enter into a Non-Disturbance Agreement.

**Section 13.13 Original Issue Discount.** Issuer (i) acknowledges that the Purchasers intend to treat the Notes as indebtedness issued with original issue discount and not as “contingent payment debt instruments” for U.S. federal income tax purposes, (ii) shall make available to the Purchasers the issue price, the amount of original issue discount, if any, the issue date, and the yield to maturity for each Note issued that is treated as a separate “issue” for tax purposes in accordance with the requirements set forth in Treasury Regulation Section 1.1275-3(b) (provided that Issuer shall consult with the Purchasers in the determination thereof and such determinations shall be reasonably acceptable to the Purchasers) and (iii) shall not take any position inconsistent with such treatment of the Notes in any communication or agreement with any taxing authority unless required by a final “determination” within the meaning of Section 1313(a) of the Code.

**Section 13.14 Tax Treatment.** Purchasers and Issuer agree that for United States federal income tax purposes, (a) the Notes shall be treated as debt; and (b) the payments of interest under such debt instrument qualify as “portfolio interest” within the meaning of Section 871(h)(2) of the Code or are exempt from withholding under Article 11 of the income tax treaty between the United States and Ireland. None of the Purchasers nor any Obligor shall take any position inconsistent with such tax treatment of the Notes in any communication or agreement with any taxing authority unless required by a final “determination” within the meaning of Section 1313(a) of the Code.

#### **ARTICLE XIV TAX**

**Section 14.1 Withholding and Gross-Up.** Notwithstanding anything to the contrary in this Agreement, if any Governmental Authority and/or Requirements of Law requires any Obligor to deduct or withhold any amount from, or any Purchaser to pay any present or future Tax, assessment, or other governmental charge on, any payment to any Purchaser (“**Withholding Payment**”), the Obligors will, in addition to paying the applicable Purchaser such reduced payment, simultaneously pay such Purchaser such additional amounts such that such Purchaser receives the full contractual amount of the applicable payment from the Obligors as if no such Withholding Payment had occurred; provided that, the Obligors shall not be required to pay such additional amounts to a particular Purchaser with respect to any Withholding Payment that is attributable to any Excluded Taxes for such Purchaser. The parties shall discuss and cooperate regarding applicable mechanisms for minimizing such Taxes to the extent possible in compliance with Requirement of Law. The Obligors shall deliver to such Purchaser the original or a certified copy of a receipt issued by any Governmental Authority or other document reasonably evidencing the payment of any withholding Tax on such Purchaser’s behalf.

**Section 14.2 Reporting and Documentation.** If any Purchaser is entitled to an exemption from or reduction of a Withholding Payment with respect to payments made under this Agreement, it shall deliver to Issuer, at the time or times reasonably requested by Issuer, such properly completed and executed documentation reasonably requested by Issuer as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, each Purchaser, if reasonably requested by Issuer, shall deliver such other documentation prescribed by Requirement of Law as will enable the Obligors to determine whether or not such Purchaser is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, before the Purchaser becomes a party to this Agreement, the Purchaser shall deliver (i) if the Purchaser is a United States person within the meaning of Section 7701(a)(30) of the Code, IRS Form W-9 certifying that the Purchaser is not subject to backup withholding or (ii), if the Purchaser is not a United States person, IRS Form W-8BEN, IRS Form

W-8BEN-E, IRS Form W-8EXP, IRS Form W-8ECI or IRS Form W-8IMY if applicable, as well as any applicable supporting documentation or certifications, certifying that the Purchaser is exempt from U.S. withholding taxes with respect to payments of interest by the Issuer (as determined for U.S. federal income tax purposes). Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation shall not be required if in such Purchaser's reasonable judgment such completion, execution or submission would subject the Purchaser to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Purchaser and, for clarity, such Purchaser shall be deemed to have complied with its obligations under this Section 14.2 if it has so exercised its reasonable judgment. Each Purchaser agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or notify Issuer in writing of its legal inability to do so, in either case within a reasonable amount of time following Issuer's request for an update.

## **ARTICLE XV DEFINITIONS**

**Section 15.1 Definitions.** As used in this Agreement, the following terms have the following meanings:

**"6.2 Notice"** has the meaning set forth in Section 6.2(g).

**"Account"** means any "account" as defined in the UCC with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to any Obligor.

**"Account Debtor"** means any "account debtor" as defined in the UCC with such additions to such term as may hereafter be made.

**"Acquisition"** means (a) any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets or shares or similar transaction having the same effect as any of the foregoing, (i) acquires any business, product, business line or product line, division or unit of operation of any Person, or all or substantially all of the assets of any business, product, business line or product line, division or other unit of operation of any Person, (ii) acquires control of securities of a Person representing more than 50% of the ordinary voting power for the election of directors or other governing body of such Person if the business affairs of such Person are managed by a board of directors or other governing body or (iii) acquires control of more than 50% of the ownership interest in any Person that is not managed by a board of directors or other governing body and (b) any In-License.

**"Acquisition Cost"** means consideration paid or payable for an Acquisition (including (x) all milestone, maintenance and/or similar payments, earnouts, deferred purchase price and any other contractual commitment, in each case, whether fixed or contingent), but excluding (i) royalties on sales calculated on an arm's length basis and (ii) future sales-based milestones.

**"Adverse Regulatory Event"** means the Issuer or any Subsidiary has received written notice of any of the following events or circumstances: (a) any Regulatory Authority has commenced an enforcement action or investigation (other than routine or periodic regulatory inspections or inquiries), or has issued a warning letter, untitled letter or Safety Notice, with respect to any commercialized Product or Service or any Commercialization, Development, Manufacturing activities with respect thereto, which any such notice requires or causes (or is reasonably likely to require or cause) a cessation or delay in the manufacture or

sale of any Product or Commercialization of any Service that will last (or is reasonably expected to last) in excess of 180 days; (b) any Regulatory Authority commences any criminal, injunctive, seizure, detention, civil penalty or other enforcement action against Issuer or any of its Subsidiaries; (c) Issuer or any of its Subsidiaries enters into any consent decree, plea agreement or other settlement with any Regulatory Authority with respect to any Product or Service or any Commercialization, Development, Manufacturing and/or other exploitation activity performed by Issuer; (d) Issuer or any Subsidiary either (x) recalls any Product, or (y) halts or discontinues the marketing or sale of any Product or Service for a period of 180 consecutive days or longer, other than as a result of replacements or upgrades of a Product in the ordinary course of Issuer's business; or (e) any disruption in the supply of any Product occurs that continues for more than 180 days.

**"Affected Interest Period"** is defined in Section 2.3(e)(i).

**"Affiliate"** of any Person means another Person that owns or Controls directly or indirectly such Person, any Person that Controls or is Controlled by or is under common Control with such Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members. For purposes of this definition, "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and "Controls", "Controlling" and "Controlled" have meanings correlative thereto; provided that, solely for purposes of the definition of "Competitor", "Control" shall instead mean ownership of greater than 50% of the voting equity interests in such Person.

**"Affiliate Agreements"** means any agreement or arrangement between or among Issuer and/or any Subsidiary, on one hand, and any Affiliate (other than Issuer or any Subsidiary), on the other hand, other than employment agreements, indemnification agreements and similar agreements and arrangements with officers or directors of Issuer or any Subsidiary in the ordinary course in connection with their employment or service as a director.

**"Agreement"** is defined in the preamble hereof.

**"Annual Projections"** is defined in Section 6.2(a)(v).

**"Anti-Corruption Laws"** means all laws of any jurisdiction applicable to Issuer or any of its Subsidiaries from time to time prohibiting bribery or corruption, including without limitation: (a) legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997; (b) the United Kingdom Bribery Act 2010; (c) the United States Foreign Corrupt Practices Act of 1977, as amended; and (d) other similar laws, rules and regulations in other jurisdictions.

**"Anti-Terrorism Laws"** means any laws relating to terrorism or money laundering, including, without limitation, (i) the Money Laundering Control Act of 1986 (e.g., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act of 1970 (e.g., 31 U.S.C. §§ 5311 – 5330), as amended by the USA PATRIOT Act, (iii) the laws, regulations and Executive Orders administered by OFAC, (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), (vi) any legislation or regulations applicable to any party to the Note Documents and relating to the fight against money laundering for capital arising from drug-trafficking and the activities of criminal organizations and counter-terrorist financing, or (vii) any similar laws enacted in the United States, United Kingdom, European Union or any other jurisdictions

in which the parties to this agreement operate, and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war.

**“Applicable Margin”** means 3.95%, subject to potential adjustment pursuant to Section 2.3(e).

**“Applicable Rate”** means a rate per annum equal to the sum of (a) the greater of (i) Term SOFR (subject to Term SOFR being replaced with the Prime Rate pursuant to Section 2.3(e)), and (ii) the SOFR Floor (subject to SOFR Floor being replaced with the Prime Rate Floor pursuant to Section 2.3(e)), plus (b) the Applicable Margin; provided that the Applicable Rate shall not be (x) less than 8.25% (including following implementation of a Benchmark Replacement) or (y) greater than 9.50%. If a Benchmark Transition Event has occurred, this definition shall be modified as part of the Benchmark Replacement Conforming Changes.

**“Approved Fund”** means any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Purchaser or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Purchaser, (b) an Affiliate of a Purchaser or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Purchaser.

**“Approved Purchaser”** is defined in Section 13.1(a).

**“Benchmark”** means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.3(e)(iii).

**“Benchmark Replacement”** means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Purchaser Agent in consultation with Issuer giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the then current Benchmark for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than the SOFR Floor, the Benchmark Replacement will be deemed to be the SOFR Floor for the purposes of this Agreement.

**“Benchmark Replacement Adjustment”** means is, with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Purchaser Agent and Issuer giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Prime Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that Purchaser Agent in consultation with Issuer decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Purchaser Agent in a manner substantially consistent with market practice (or, if Purchaser Agent decides that adoption of any portion of such market practice is not administratively feasible or if Purchaser Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as Purchaser Agent decides is reasonably necessary in connection with the administration of this Agreement).

**“Benchmark Replacement Date”** means the earlier to occur of the following events with respect to SOFR: (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the then current Benchmark permanently or indefinitely ceases to provide such Benchmark; or (b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then current Benchmark: (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark announcing that such administrator has ceased or will cease to provide such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark; (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, which states that the administrator of such Benchmark has ceased or will cease to provide such Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark; or (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark announcing that such Benchmark is no longer representative.

**“Benchmark Transition Start Date”** means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

**“Benchmark Unavailability Period”** means the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then current Benchmark for all purposes hereunder in accordance with Section 2.3(e)(iii) and (y) ending at the time that a Benchmark Replacement has replaced the then current Benchmark for all purposes hereunder pursuant to Section 2.3(e)(iii).

**“Books”** means Issuer’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Issuer’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 of the year on which banks are open for business in New York, New York.

**“Capital Lease”** means any lease or similar arrangement which is of a nature that payment obligations of the lessee or obligor thereunder at the time are or should be capitalized and shown as liabilities (other than current liabilities) upon a balance sheet of such lessee or obligor prepared in accordance with GAAP.

**“Capital Lease Obligations”** means, with respect to any Capital Lease, the amount of the obligation of the lessee thereunder that would, in accordance with GAAP appear on a balance sheet of such lessee with respect to such Capital Lease.

**“Cash”** means all cash (including in a demand deposit account in any U.S. or foreign currency) and Cash Equivalents.

**“Cash Equivalents”** means (i) securities issued or unconditionally guaranteed or insured by the United States of America or any agency or instrumentality thereof, backed by the full faith and credit of the United States of America and maturing within one year from the date of acquisition, (ii) commercial paper issued by any Person organized under the laws of the United States of America, maturing within 360 days from the date of acquisition and, at the time of acquisition, having a rating of at least A-1 or the equivalent thereof by Standard & Poor’s Ratings Services or at least P-1 or the equivalent thereof by Moody’s Investors Service, Inc., or F-1 or better by Fitch Investor Services, (iii) time deposits and certificates of deposit maturing within 360 days from the date of issuance and issued by a bank or trust company organized under the laws of the United States of America (or any state thereof), (A) that has combined capital and surplus of at least \$500,000,000 or (B) that has (or is a subsidiary of a bank holding company that has) a long-term unsecured debt rating of at least A or the equivalent thereof by Standard & Poor’s Ratings Services or at least A2 or the equivalent thereof by Moody’s Investors Service, Inc. or A or better by Fitch Investor Services and (iv) money market funds that are SEC registered 2a-7 eligible only, have assets in excess of \$1,000,000,000, offer a daily purchase/redemption feature and seek to maintain a constant share price; provided that, the Obligor will invest only in ‘no-load’ funds which have a constant \$1.00 net asset value target.

**“Change of Control”** means:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), but excluding any employee benefit plan of Issuer or its Subsidiaries (and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becoming the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of more than forty percent (40%) of the Equity Interests of Issuer entitled to vote for members of its board of directors on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) a merger or consolidation of Issuer with any Person in which the stockholders of Issuer immediately prior to such merger or consolidation do not continue to hold immediately following the closing of such merger or consolidation at least fifty-one percent (51%) of the aggregate ordinary voting power entitled to vote for the election of directors of Issuer represented by the issued and outstanding Equity Interests of the entity surviving or resulting from such consolidation;

(c) the Transfer in one or a series of transactions (whether or not related) of more than 51% of the consolidated assets of, or assets generating more than 51% of the consolidated revenues of, Issuer and its Subsidiaries to Persons that are not Full Guarantors; or

(d) the occurrence of a change of control or other similar provision, as defined in any agreement or instrument evidencing any Indebtedness in an aggregate amount in excess of \$1,000,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) triggering a default, a mandatory prepayment or other obligation to repurchase, redeem or repay such Indebtedness.

“**Claims**” are defined in Section 13.2.

“**Clinical Trial**” means any clinical or pre-clinical trial or study of the Products conducted by or on behalf of Issuer or any of its Subsidiaries.

“**CLPT Canada**” means ClearPoint Neuro (Canada) Inc., a corporation organized under the laws of New Brunswick (Corporation Number 671829).

“**Code**” means the Internal Revenue Code of 1986, as amended, or any successor federal tax code. Any reference to any provision of the Code shall also include the income tax regulations promulgated thereunder, whether final, temporary or proposed.

“**Collateral**” means any and all properties, rights and assets of Obligor described on Exhibit A.

“**Collateral Account**” means any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by any Obligor at any time (other than any Excluded Account).

“**Commercialization**” means any and all activities, other than manufacturing, directed to the preparation for sale of, or sale of any product, including activities related to marketing, promoting, distributing, partnering, and importing such product, or the provision of any Services, including activities related to marketing, promoting and conducting such services, and interacting with any Regulatory Authority regarding any of the foregoing. When used as a verb, “to Commercialize” and “Commercializing” means to engage in Commercialization, and “Commercialized” has a corresponding meaning.

“**Commitment**” means, for any Purchaser, the obligation of such Purchaser to purchase Notes, up to the principal amount shown on Schedule 1.1. “**Commitments**” means the aggregate amount of such commitments of all Purchasers.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commitment Termination Date**” means the earliest of (i) (a) with respect to the First Purchase, the First Purchase Date, (b) with respect to the Second Purchase, December 31, 2026 (or such later date as specified in writing by the Required Purchasers in their sole discretion), (ii) the occurrence of a Change of Control, (iii) the redemption or repurchase by Issuer in full of all outstanding Notes, (iv) the payment to the Purchasers of the Repayment Amount, and (v) the termination of the Commitments pursuant to Section 9.1.

“**Commodity Account**” means any “commodity account” as defined in the UCC with such additions to such term as may hereafter be made.

“**Communication**” is defined in Article X.



“**Competitor**” means, at any time of determination, any operating company (and each Subsidiary of such Person where such Subsidiary is readily identifiable by name) that is engaged in the same, substantially the same, or similar line of business as Issuer and its Subsidiaries as of such time (which, for the avoidance of doubt, shall include the business of manufacturing, developing and/or selling medical devices), and which Person has been identified in writing by Issuer to Purchaser Agent prior to the Effective Date, or after the Effective Date subject to Purchaser Agent’s written confirmation and approval (not to be unreasonably withheld or delayed).

“**Compliance Certificate**” means that certain certificate in the form attached hereto as Exhibit C.

“**Confidential Information**” means (a) all information disclosed, directly or indirectly, through any means of communication or observation, by or on behalf of the Disclosing Party to the Receiving Party on or after the date hereof, that relates to or is derived from the Disclosing Party’s business, strategic, marketing or technological affairs, or to any other matter that the Receiving Party is advised or has reason to know is the confidential or proprietary information of the Disclosing Party (including Personal Data), (b) the Note Documents, any amendments or modifications thereto or waivers thereof, and any term sheets, transaction structures, draft agreements, discussions or negotiations relating thereto and (c) all notes, analyses, reports, compilations, forecasts, memoranda, studies or other documents or writings (including emails, text or other instant messages and handwritten documents) based on, containing or relating to any of the foregoing which may be prepared or created by, for or on behalf of the Receiving Party or its Representatives.

“**Contingent Obligation**” means, as to any Person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers’ acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “**Contingent Obligation**” does not include endorsements of instruments for deposit or collection in the ordinary course of business, typical contractual indemnities provided in the ordinary course of business or any product warranties. The amount of any Contingent Obligation is deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“**Control Agreement**” means any control agreement (or other appropriate instrument), in form and substance reasonably satisfactory to Purchaser Agent, entered into among the depository institution at which any Obligor maintains a Deposit Account or the securities intermediary or commodity intermediary at which any Obligor maintains a Securities Account or a Commodity Account, such Obligor, and Purchaser Agent pursuant to which Purchaser Agent obtains “control” (within the meaning of the UCC or any other

perfection regime) for the benefit of the Secured Parties over such Deposit Account, Securities Account, or Commodity Account.

**“Controlled Account”** means a Collateral Account that is subject to a Control Agreement or another instrument in favor of Purchaser Agent, in each case satisfactory to Purchaser Agent in its reasonable discretion, that provides Purchaser Agent with a first priority (subject to solely to Permitted Liens identified in clause (g) and (m) of the definition thereof) perfected Lien in such Collateral Account.

**“Copyrights”** means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

**“Corporate Benefit Limitations”** means, with respect to any Guaranty or the grant or perfection of any security interest by any Foreign Subsidiary, any limitations on such Guaranty or such grant or perfection imposed pursuant to Requirements of Law in the applicable jurisdiction (other than limitations that do not impair the rights and remedies of the Secured Parties more than analogous restrictions imposed under the laws of the United States as reasonably determined by Purchaser Agent).

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

**“Default Rate”** is defined in Section 2.3(c).

**“Deposit Account”** means any “deposit account” as defined in the UCC with such additions to such term as may hereafter be made.

**“Designated Deposit Account”** means Issuer’s deposit account, identified as the Designated Deposit Account in the Perfection Certificate on the Effective Date, and any successor deposit account designated by Issuer as such by written notice to Purchaser Agent; provided that the Designated Deposit Account shall be (a) located in the United States, (b) held with a financial institution that meets the requirements set forth in clause (iii) of the definition of “Cash Equivalents”, and (c) at all times subject to a Control Agreement and an ACH authorization in favor of Purchaser Agent.

**“Development”** means all activities related to design, research and development of a product or service, including creation and prosecution of Intellectual Property, pre-clinical and other non-clinical testing, manufacturing scale-up, qualification and validation, quality assurance/quality control, Clinical Trials, including Manufacturing in support thereof, statistical analysis and report writing, the preparation and submission of applications for Regulatory Approval, regulatory affairs with respect to the foregoing and all other activities necessary or reasonably useful or otherwise requested or required by a Regulatory Authority as a condition or in support of obtaining or maintaining a Regulatory Approval for such product. When used as a verb, **“Develop”** means to engage in Development.

**“Disclosing Party”** is defined in Section 13.8(a).

**“Disclosure Letter”** means that certain confidential Disclosure Letter delivered by the Obligors on the Effective Date and any updates thereto delivered to the Purchasers pursuant to Section 3.5(f).

**“Disputes”** is defined in Section 5.11(e).

**“Disqualified Equity Interest”** means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to 181 days after the Maturity Date (other than solely for (x) Equity Interests that are not Disqualified Equity Interests and (y) cash in lieu of fractional shares), (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to this definition, in each case at any time on or prior to 181 days after the Maturity Date, or (c) contains any repurchase obligation or provides for mandatory distributions which may come into effect prior to Payment in Full; provided, however, that if such Equity Interests are issued pursuant to any plan for the benefit of any employee, director, manager or consultant of Issuer or its Subsidiaries or by any such plan to such employee, director, manager or consultant, such Equity Interests shall not constitute Disqualified Equity Interests because they may be required to be repurchased by Issuer or its Subsidiaries (x) to the extent permitted by clause (c) of the definition of Permitted Distributions, in order to satisfy applicable statutory or regulatory obligations or (y) to the extent permitted by clause (a) of the definition of Permitted Distributions, as a result of the termination, death or disability of such employee, director, manager or consultant.

**“Dollars,” “dollars”** and **“\$”** each are lawful money of the United States.

**“Effective Date”** is defined in the preamble of this Agreement.

**“Electronic Signature”** means an electronic sound, symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

**“Eligible Assignee”** means (i) a Purchaser, (ii) an Affiliate of a Purchaser, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case of this clause (iv), which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Purchaser or (B) has total assets in excess of \$5,000,000,000; provided that, notwithstanding the foregoing, “Eligible Assignee” shall not include a Competitor.

**“EMA”** means the European Medicines Agency or any successor agency thereto.

**“Environmental Claims”** means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment, arising out of a violation of Environmental Law or any Hazardous Material Activity.

**“Environmental Laws”** means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous

Materials; or (iii) to the extent related to Hazardous Material Activity, occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Issuer or any of its Subsidiaries or any Facility.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Obligor or any of its Subsidiaries directly or indirectly resulting from or based upon (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) exposure to any Hazardous Materials, (iv) the release or threatened release of any Hazardous Materials into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Equipment”** means all “equipment” as defined in the UCC with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

**“Equity Interest”** means, with respect to any Person, any and all shares (including any American Depositary Shares, each representing one or more of such shares), interests, partnership interests (whether general or limited), membership interests, rights to purchase, warrants, options, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such Person.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

**“ERISA Affiliate”** means any Person, trade or business (whether or not incorporated) under common control with Issuer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(b), (c), (m) and (o) of the Code for purposes of Section 4001(b) of ERISA).

**“ERISA Event”** means (a) a “reportable event” (as defined in ERISA) with respect to a Pension Plan; (b) the failure by an Obligor or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules or the filing of an application for the waiver of the minimum funding standards under the Pension Funding Rules; (c) the incurrence by an Obligor or any ERISA Affiliate of any liability pursuant to Section 4063 or 4064 of ERISA or a cessation of operations with respect to a Pension Plan within the meaning of Section 4062(e) of ERISA; (d) a complete or partial withdrawal by an Obligor or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization or insolvent (within the meaning of Title IV of ERISA); (e) the filing of a notice of intent to terminate a Pension Plan under, or the treatment of a Pension Plan amendment as a termination under, Section 4041 of ERISA; (f) the institution by the PBGC of proceedings to terminate a Pension Plan; (g) any event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the determination that any Pension Plan is in at-risk status (within the meaning of Section 430 of the Code or Section 303 of ERISA) or that a Multiemployer Plan is in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (i) the imposition or incurrence of any liability under Title IV of ERISA or with respect to the funding and payment of any benefits under any such plan, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate; (j) the engagement by any Obligor or any ERISA Affiliate in a transaction that could reasonably be expected to be subject to Section 4069 or Section 4212(c) of ERISA; (k) the imposition of a lien upon any Obligor

pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; or (l) the making of an amendment to a Pension Plan that could result in the posting of bond or security under Section 436(f)(1) of the Code.

“**EU MDR**” means the Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017.

“**Event of Default**” is defined in Article VIII.

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

“**Excluded Accounts**” means, collectively, (a) any Deposit Account of any Obligor that is used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Issuer’s or any of its Subsidiaries’ employees, (b) any escrow accounts, Deposit Accounts and trust accounts that are pledged or otherwise encumbered pursuant to clauses (m) and (q) of the definition of “Permitted Liens”, (c) “zero balance” accounts and (d) other accounts the cash balance of which do not exceed \$250,000 in the aggregate at any time.

“**Excluded Subsidiary**” means (a) any Immaterial Foreign Subsidiary or (b) any Subsidiary that is prohibited by any Requirement of Law or by any contractual obligation (provided such contractual obligation was not entered into in contemplation thereof) from guaranteeing the Obligations or any Subsidiary that would require any Governmental Approval in order to guarantee the Obligations unless such Governmental Approval has been received or can be obtained by the Subsidiary through the use of commercially reasonable efforts.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to any Purchaser or required to be withheld or deducted from a payment to any Purchaser: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case (i) imposed as a result of the Purchaser being organized under the laws of, or having its principal office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Purchaser with respect to an applicable interest in the Notes to the extent they are imposed pursuant to a law in effect on the date on which (A) the Purchaser acquires such interest in the Notes or (B) the Purchaser changes its applicable lending office, except in each case to the extent that amounts with respect to such Taxes were payable either to the Purchaser’s assignor immediately before such Purchaser became a party hereto or to such Purchaser immediately before it changed its applicable lending office; (c) Taxes attributable to such Purchaser’s failure to comply with Section 14.2; (d) Taxes resulting directly from such Purchaser changing its jurisdiction of domicile or form of legal entity; and (e) any withholding Taxes imposed under FATCA. For the purposes of the definition of “Excluded Taxes,” the term “Purchaser” includes its successors and assigns pursuant to Section 13.1.

“**Facility**” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by any Obligor or any of its Subsidiaries.

“**Fair Market Value**” means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the board of directors of Issuer.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to

comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

**“FDA”** means the United States Food and Drug Administration and any successor agency thereto.

**“First Purchase”** is defined in Section 2.1(a).

**“First Purchase Date”** means the Purchase Date in respect of the First Purchase, which shall occur on the Effective Date.

**“Floor”** means the SOFR Floor, subject to adjustment by Purchaser Agent for Benchmark Replacement Conforming Changes following any Benchmark Replacement Date.

**“Foreign Plan”** means any employee pension benefit plan, program, policy, arrangement or agreement maintained or contributed to by Issuer or any Subsidiary with respect to employees employed outside the United States (other than any governmental arrangement).

**“Foreign Subsidiary”** means any Subsidiary of Issuer that is not an entity organized under the laws of the United States or any state or territory thereof.

**“Full Guarantor”** means any Guarantor that is not a Limited Guarantor.

**“GAAP”** means generally accepted accounting principles as in effect in the United States of America on the Effective Date (except as expressly provided in the first paragraph of Article I).

**“GDPR”** is defined in the definition of “Privacy Laws.”

**“General Intangibles”** means all “general intangibles” as defined in the UCC in effect on the Effective Date with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

**“Governmental Approval”** means any consent, authorization, approval, CE mark, clearance, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority (including, without limitation, the FDA, the Notified Body with respect to the EU MDR, the MHRA, Health Canada and any similar state or foreign Governmental Authority).

**“Governmental Authority”** means any government, court, regulatory or administrative agency, body or commission, or other governmental authority, agency or instrumentality, whether foreign, federal, national, state or other political subdivision, local or supranational (domestic or foreign), or other entity

exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, including any central bank, securities exchange or self-regulatory organization, or other entity responsible for licensure, certification or accreditation required for the operations of the Issuer or any Subsidiary, including all applicable recognized accrediting bodies.

**“Guarantee Assumption Agreement”** means a Guarantee Assumption Agreement substantially in the form of Exhibit E by a Person that, pursuant to Section 6.11, is required to become a “Guarantor” hereunder.

**“Guaranteed Obligations”** is defined in Section 12.1.

**“Guarantor”** means each Person that is a guarantor of the Obligations under a Guaranty, including, without limitation, a Person that becomes a guarantor pursuant to a Guarantee Assumption Agreement.

**“Guaranty”** means the guaranty set forth in Article XII and/or any guarantee of all or any part of the Obligations in form and substance satisfactory to Purchaser Agent, as the same may from time to time be amended, restated, modified or otherwise supplemented.

**“Hazardous Materials”** means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or would reasonably be expected to pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

**“Hazardous Materials Activity”** means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

**“Health Canada”** means Health Canada and any successor agency thereto.

**“Healthcare Laws”** is defined in Section 5.6(e).

**“HIPAA”** is defined in Section 5.6(e).

**“Immaterial Foreign Subsidiary”** means, as of any date, any Foreign Subsidiary of an Obligor that does not own or license any Product/Services Intellectual Property (other than non-exclusive intercompany licenses) and is not an Obligor and for which (a) the consolidated total assets (determined in accordance with GAAP) of such Foreign Subsidiary and its Subsidiaries constitute less than 2.0% of consolidated total assets (determined in accordance with GAAP) of Issuer and its Subsidiaries and (b) the consolidated revenues (determined in accordance with GAAP) of such Foreign Subsidiary and its Subsidiaries constitute less than 2.0% of the consolidated revenues (determined in accordance with GAAP) of Issuer and its Subsidiaries, in each case, as of the last day of and for the most recently ended four fiscal quarter period for which financial statements have been delivered pursuant to Section 6.2(a)(i) or (a)(ii) (and for the avoidance of doubt, each excluding intercompany payables); provided that, if the consolidated revenues or consolidated assets of all such Subsidiaries that would otherwise be an Immaterial Foreign Subsidiary pursuant to clauses (a) and (b) above equals or exceeds 5.0% of the consolidated revenues or consolidated assets, as applicable, of Issuer and its Subsidiaries as of the last day of the most recent fiscal quarter for which financial statements of Issuer were delivered or required to be delivered, then Issuer shall

designate in writing to the Purchaser Agent one or more of such Subsidiaries that would otherwise be Immaterial Foreign Subsidiaries to be excluded as Immaterial Foreign Subsidiaries until such 5.0% threshold is met. As of the Effective Date, CLPT Canada, ClearPoint Neuro UK LTD, ClearPoint Neuro Germany GmbH and ClearPoint Neuro Italy Srl. are Immaterial Foreign Subsidiaries.

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such person for borrowed money or advances; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (d) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable, accrued obligations incurred in the ordinary course of business on normal trade terms and not overdue by more than 90 days); (e) all Indebtedness of others secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, but limited to the Fair Market Value of such property; (f) all Capital Lease Obligations and synthetic lease obligations of such person; (g) all liability or obligations of such Person in respect of hedging agreements and other derivative contracts (for the net amount owed by such Person thereunder), (h) all Contingent Obligations of such Person; (i) all liability and obligations of such Person under guaranteed minimum purchase, take or pay or similar performance requirement contracts, (j) all liability and obligations under receivables factoring, receivable sales or similar transactions or arising under revenue interest agreements, royalty financing agreements or similar financings, (k) all liability and obligations for milestone payments, royalty payments, license payments and similar payments pursuant to any License Agreement, research and development agreement, collaboration or development agreement or merger or acquisition agreement, and (l) Disqualified Equity Interests. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except (other than in the case of general partner liability) to the extent that terms of such Indebtedness expressly provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) (X), in the case of Issuer or any Subsidiary, the Fair Market Value of the property encumbered thereby, and (Y) in the case of any other Person, the Fair Market Value of the property encumbered thereby as determined by such Person in good faith.

**“In-License”** means any license or other agreement between the Issuer or any of its Subsidiaries and any Third Party pursuant to which the Issuer or such Subsidiary obtains a license or sublicense of, covenant not to sue under, or other similar rights to, any Intellectual Property of such Third Party (other than off-the-shelf software licenses and non-exclusive licenses of Intellectual Property that does not constitute Product/Services Intellectual Property).

**“Insolvency Laws”** means, collectively, in any jurisdiction, bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer, or other similar applicable laws affecting the enforcement of creditors’ rights generally.

**“Insolvency Proceeding”** means the occurrence of any of the following:

(a) Issuer or any Subsidiary commences any case, proceeding or other action (i) under any Insolvency Law, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, administration, protection, liquidation or dissolution (other than a solvent winding-up, dissolution or liquidation of a Subsidiary into an Obligor), composition or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, interim receiver, receiver and manager, trustee, administrator, administrative receiver, custodian or other similar official for it or for all



or any portion of its assets, or Issuer or any Subsidiary makes a general assignment for the benefit of its creditors or enter into a composition, compromise, assignment or arrangement with any of its creditors (whether by way of a voluntary arrangement, scheme of arrangement, deed of compromise or otherwise);

(b) there is commenced against Issuer or any Subsidiary any case, proceeding or other action seeking to adjudicate it bankrupt or insolvent, or seeking dissolution, liquidation, administration, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, interim receiver, receiver and manager, trustee, administrator, administrative receiver, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding remains undismissed or unstayed for a period of forty-five (45) days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, interim receiver, receiver and manager, trustee, administrator, administrative receiver, custodian or other similar official for it or for any substantial part of its property) occurs;

(c) a receiver, interim receiver, receiver and manager, trustee, administrator, administrative receiver, custodian or other similar official is appointed, either voluntarily or involuntarily, to or in respect of Issuer or any Subsidiary or the whole or any part of the property, assets or undertaking of Issuer or any Subsidiary;

(d) there is commenced against Issuer or any Subsidiary any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against (i) all or a substantial portion of its assets and/or (ii) any Product or all or a material portion of the Collateral, which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, satisfied or bonded pending appeal within forty-five (45) days from the entry thereof; or

(e) an affirmative vote by the board of directors, or other applicable governing body, of Issuer or any of its Subsidiaries to commence any case, proceeding or other action described in clause (a) above or any other action by Issuer or any Subsidiary to otherwise cause, consent to, approve or acquiesce in any of the acts described in clauses (a) through (d) inclusive above.

**“Insolvent”** means not Solvent.

**“Intellectual Property”** means all intellectual property and other proprietary rights worldwide of any kind or nature, whether registered or unregistered and whether registrable or not, protected, created or arising under any law, including any and all rights in: proprietary information; technical data; laboratory notebooks; clinical data; priority rights; trade secrets; know-how; confidential information; software; inventions (whether patentable or unpatentable and whether or not reduced to practice or claimed in a pending patent application); Patents; Trademarks, trade names, service marks, trade dress, logos, slogans, including all goodwill associated therewith; domain names; Copyrights and all applications thereof; and all rights in works of authorship of any type, in all forms or media, designs rights, registered designs, database rights and rights in compilations of data.

**“Intellectual Property Updates”** means a summary of any new Patents, trademarks or copyrights issued or patent, trademark or copyright applications filed by Issuer or any Subsidiary (in form sufficient to allow Purchaser Agent to prepare appropriate filings in respect thereof to protect its Liens thereon).

**“Intercompany Subordination Agreement”** means the intercompany subordination agreement substantially in the form of Exhibit E.

**“Interest Period”** means, with respect to each Note, (a) initially, the period commencing on the applicable Purchase Date of such Note and ending on the last day of the calendar quarter in which such Purchase Date occurs, and (b) thereafter, each period beginning on the first day following the end of the immediately preceding Interest Period and ending on the last day of the next succeeding calendar quarter.

**“Inventory”** means all “inventory” as defined in the UCC in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** means (a) any beneficial ownership interest in any Person (including Equity Interests or other securities), (b) any loan, advance, extension of credit, capital contribution or similar payment to any Person, (c) the incurrence of any Contingent Obligation or the assumption of any liabilities of any other Person, (d) any Acquisition, (e) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, and (f) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, less the amount of Cash or the Fair Market Value of any other property received, returned or repaid as a result of dispositions, distributions or liquidations of all or a portion of such Investment, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

**“Involuntary Disposition”** means, with respect to any property or assets of the Obligors or their Subsidiaries, any of the following: (a) any loss, destruction or damage of such property or assets or (b) any condemnation, seizure, or taking, by exercise of the power of eminent domain or otherwise, of such property or assets, or confiscation of such property or assets or the requisition of the use of such property or assets.

**“IRS”** means the United States Internal Revenue Service.

**“Issuer”** is defined in the preamble hereof.

**“License Agreement”** means any existing or future license, commercialization, co-promotion, collaboration, distribution, manufacturing, marketing or partnering agreement entered into before or during the term of this Agreement by Issuer or any of its Subsidiaries that grants a license, covenants not to sue, or other similar rights with respect to any Product/Services Intellectual Property.

**“Licensees”** means, collectively, the licensees and any sublicensees under any License Agreement; each a **“Licensee”**.

**“Lien”** means a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**“Limited Guarantor”** means any Guarantor whose Guaranteed Obligations, or the grant or perfection of a security interest in whose assets, are limited by Corporate Benefit Limitations.

**“Manufacture”** and **“Manufacturing”** means all activities related to the design, supply, production, manufacture, verification, validation, packaging, labeling, shipping, and holding of any

product, or any component thereof, including process development, process qualification and validation, scale-up, and commercial manufacture and development, quality assurance, and quality control.

**“Margin Stock”** means “margin stock” as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

**“Material Adverse Change”** means a material adverse effect on (a) the business, operations, assets, prospects or condition (financial or otherwise) of Issuer and its Subsidiaries, taken as a whole, (b) the validity or enforceability of any of the Note Documents, (c) the rights or remedies of Purchaser Agent or any Purchaser under any of the Note Documents or (d) the validity, perfection (except to the extent permitted under this Agreement) or first priority of Liens in favor of Purchaser Agent for the benefit of the Secured Parties (except to the extent resulting solely from any actions or inactions on the part of Purchaser Agent and the Purchasers despite timely receipt of information regarding Issuer and its Subsidiaries as required by this Agreement).

**“Material Agreement”** means: (a) any Affiliate Agreement; (b) any agreement with respect to which (i), during any of the prior two fiscal years, receipts or payments exceeded (A) for hospitals or healthcare provider customer agreements for the sale, service, or placement of products in the ordinary course of business, \$1,000,000 (provided such amount shall increase to \$3,000,000 from and after the Milestone Event), and (B) for all other agreements, \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) or (ii), in the subsequent two fiscal years, receipts or payments are reasonably expected to exceed (A) for hospitals or healthcare provider customer agreements for the sale, service, or placement of products in the ordinary course of business, \$1,000,000 (provided such amount shall increase to \$3,000,000 from and after the Milestone Event) and (B) for all other agreements, \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event), in either case as set forth in the Issuer’s Annual Projections as updated from time to time; (c) any agreement for the Development or Commercialization of Products that provides for the payment of milestones or royalties in excess of \$5,000,000 in the aggregate over the term of such agreement (as estimated, in the case of royalties, in good faith by Issuer); (d) the agreements set forth on Schedule 5.14 of the Disclosure Schedule; and (e) any other agreement with respect to Issuer or its Affiliates relating to any Material Patent, Product or Service, for which breach, non-performance or failure to renew by Issuer or its Affiliates or the respective counterparty could reasonably be expected to result in a Material Adverse Change.

**“Material Patents”** is defined in Section 5.11(c).

**“Maturity Date”** means, with respect to each Note, the sixth (6<sup>th</sup>) anniversary of the applicable Purchase Date.

**“MHRA”** means the Medicines and Healthcare products Regulatory Agency in the United Kingdom or any successor agency thereto.

**“Milestone Event”** means Purchaser Agent and the Purchasers shall have received financial statements and reports pursuant to Sections 6.2(a)(i) and (ii) and Section 6.2(b) that demonstrate to Purchaser Agent’s and the Purchasers’ satisfaction that Net Revenue for the trailing 12-month period is at least \$100,000,000.

**“MNPI Notice Period”** means any period designated as such by Purchaser Agent by written notice to the Obligors. Each MNPI Notice Period will commence on the Business Day immediately following Purchaser Agent’s written notice to the Obligors of such MNPI Notice Period (or any later date specified

by Purchaser Agent in such notice), and will end immediately upon written notice from Purchaser Agent to the Obligor that such MNPI Notice Period is terminated.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Obligor or any ERISA Affiliate makes or is obligated to make contributions, during the preceding five plan years has made or been obligated to make contributions, or has any liability.

“**Multiple Employer Plan**” means a Plan with respect to which any Obligor or any ERISA Affiliate is a contributing sponsor, and that has two or more contributing sponsors at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“**Net Revenue**” means, for any relevant fiscal period, consolidated net revenue of Issuer and its Subsidiaries properly recognized and reported under GAAP, consistently applied, during such period.

“**Non-Disturbance Agreement**” is defined in Section 4.1.

“**Note Documents**” means, collectively, this Agreement, the Notes, any mortgages, deeds of trust or deeds to secure debt that encumbers real property, each Guaranty, the Intercompany Subordination Agreement, the Perfection Certificate, each Compliance Certificate, each Purchase Notice, any subordination agreements, notes or guaranties executed by Issuer or any other Obligor and any other present or future agreement entered into by Issuer, any Guarantor or any other Person, in each case, for the benefit of the Secured Parties in connection with this Agreement; all as amended, restated, or otherwise modified.

“**Note Record**” means a record maintained by each Purchaser with respect to the outstanding Obligations owed by Issuer to Purchaser and credits made thereto.

“**Notes**” means the senior secured notes issued from time to time pursuant to this Agreement.

“**Obligations**” means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to Purchaser Agent or any Purchaser, any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Note Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) all principal and interest and other amounts owing under any Note, all Revenue Participation Payments and the Repayment Amount, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding and (ii) all other documented out-of-pocket fees, expenses (including documented fees, charges and disbursements of outside counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Note Document. Unless the context otherwise requires, all references herein to Obligations refers to the Obligations of all of the Obligors.

“**Obligors**” means, collectively, Issuer and the Guarantors.

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

“**Operating Documents**” means, for any Person, such Person’s formation documents, and, (a) if such Person is a corporation, its constitutional documents or bylaws in current form, (b) if such Person is a

limited liability company, its certificate of incorporation, memorandum and articles of association, limited liability company agreement or operating 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.

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

**“Patents”** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, revisions, extensions and continuations-in-part of the same and including all foreign equivalents.

**“Payment Date”** means each March 31, June 30, September 30 and December 31, commencing on the first such date to occur following the First Purchase Date.

**“Payment in Full”** means all Obligations of the Obligors (other than inchoate indemnity or reimbursement obligations for which no claim has been made) have been fully and indefeasibly repaid in cash and all Commitments have been terminated.

**“PBGC”** means the Pension Benefit Guaranty Corporation.

**“Pension Act”** means the Pension Protection Act of 2006.

**“Pension Funding Rules”** means the rules of the Code and ERISA regarding minimum funding standards and minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

**“Pension Plan”** means any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by any Obligor or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

**“Perfection Certificate”** is defined in Section 5.1.

**“Permitted Acquisition”** means either (x) any In-License that contains guaranteed payments to the applicable licensor not exceeding \$1,000,000 in any fiscal year, or (y) an Acquisition to the extent that each of the following conditions shall have been satisfied:

(a) immediately prior to, and after giving effect thereto, no Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with applicable law;

(c) in the case of the purchase or other acquisition of Equity Interests, (i) all of the Equity Interests (except for any such Equity Interest in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Subsidiary in connection with such acquisition shall be wholly owned by Issuer or another Obligor, and (ii) all Persons whose Equity Interests are being acquired shall become Obligors (other than Excluded Subsidiaries);

(d) Issuer shall have delivered written notice of such Acquisition to the Purchaser Agent not less than ten (10) Business Days prior to the execution of a definitive agreement for such Acquisition (or such shorter period as may be specified by the Purchaser Agent in its sole discretion), together with information about such Acquisition, including, but not limited to, (i) a draft of any acquisition agreement related to the proposed acquisition (together with disclosure schedules, other material agreements and any other related documents reasonably requested by Purchaser Agent and Purchasers), (ii) the sources and uses of funds to finance the proposed acquisition, (iii) to the extent available, quarterly and annual audited financial statements of the Person whose Equity Interests or in respect of the assets that are being acquired, and (iv) any materials provided to the board of directors of Issuer (or any committee thereof) with regard to such Permitted Acquisition;

(e) Purchaser Agent, on behalf of the Purchasers, shall have received, substantially concurrently with the execution of the definitive documentation relating to such Acquisition, fully executed acquisition agreements and other related agreements with all attachments and schedules;

(f) any assets acquired by Obligors pursuant to such Permitted Acquisition shall be subject to the security interest granted to Purchaser Agent under the Note Documents and the security interest in such assets shall be perfected in accordance with requirement set forth in this Agreement and other Note Documents;

(g) the consideration for the Acquisition Cost consists solely of (i) Cash in an aggregate amount not to exceed \$2,000,000 during the term of this Agreement (provided that such amount shall be increased to \$7,500,000 from and after the Milestone Event) and/or (ii) Issuer's Equity Interests (other than Disqualified Equity Interests) and/or cash proceeds from the issuance of Issuer's Equity Interests (other than Disqualified Equity Interests); provided that such issuance is effected for the specific purpose of financing the Acquisition Cost for such Acquisition (and not for general "war chest" purposes);

(h) no Change of Control shall result from such Permitted Acquisition;

(i) the Person whose Equity Interests or business are being acquired shall be engaged in, or the asset acquired shall be used to engage in, or any In-License shall be in relation to, the same line of business as the Issuer or a business reasonably related, incidental or ancillary thereto, as determined by the reasonable judgment of the Required Purchasers;

(j) to the extent such Permitted Acquisition is an In-License, such In-License shall not constitute a Restricted Agreement;

(k) such Permitted Acquisition shall be consensual and shall have been approved by the target's board of directors; and

(l) on or prior to the date of such Permitted Acquisition, Purchaser Agent and Purchasers shall have received, in form and substance reasonably satisfactory to Purchaser Agent and Purchasers, a certificate of the chief financial officer of Issuer certifying compliance with the requirements

contained in this definition of “Permitted Acquisition” and with the other terms of the Note Documents (before and after giving effect to such Permitted Acquisition).

**“Permitted Distributions”** means:

(a) repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed \$500,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) in the aggregate in any fiscal year;

(b) repurchases of Equity Interests deemed to occur upon the cash-less or net exercise of stock options, warrants or other convertible or exchangeable securities;

(c) repurchases of Equity Interests deemed to occur upon the withholding of a portion of the Equity Interests granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such person upon such grant or award (or upon vesting or exercise thereof);

(d) dividends or distributions by any wholly-owned (other than qualifying directors’ shares and similar interests mandated by applicable Requirements of Law) Subsidiary to its shareholders, on a pro rata basis;

(e) payments to Affiliates of Issuer (other than dividends, distributions or payments in respect of any Equity Interests) pursuant to transactions expressly permitted pursuant to Section 7.8 of this Agreement; and

(f) payment of cash in lieu of the issuance of fractional shares.

**“Permitted Indebtedness”** means:

(a) the Obligors’ Indebtedness to the Purchasers and Purchaser Agent under this Agreement and the other Note Documents;

(b) Indebtedness existing on the Effective Date and set forth in Schedule 7.4 of the Disclosure Letter;

(c) Indebtedness consisting of Capital Lease Obligations and purchase money Indebtedness, in each case incurred by Issuer or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that the aggregate outstanding principal amount of all such Indebtedness does not exceed \$1,000,000 at any time;

(d) Contingent Obligations of Issuer and its Subsidiaries in respect of Indebtedness otherwise permitted hereunder of Issuer and any Subsidiary;

(e) Indebtedness incurred by Issuer or its Subsidiaries to finance the payment of insurance premiums;

(f) Contingent Obligations (or liabilities as a surety, endorser, accommodation endorser or otherwise) in respect of performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business but excluding guaranties with respect to any obligations for borrowed money;

(g) Indebtedness comprising Investments permitted by clause (e) of Permitted Investments; provided that any obligations of an Obligor owing pursuant to this clause (g) shall be subordinated to the Obligations pursuant to the Intercompany Subordination Agreement;

(h) (i) Indebtedness incurred in respect of credit card processing services, debit cards, stored value cards (including so-called “procurement cards” or “P cards”), or (ii) any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements, in each case, incurred in the ordinary course of business; provided that the aggregate amount of all such Indebtedness described in clause (i) above shall not exceed \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) at any time outstanding;

(i) unsecured Indebtedness consisting of obligations in respect of (i) purchase price adjustments in connection with the disposition of assets or acquisition of assets permitted hereunder or (ii) any royalty payments, performance or milestone-based consideration, including earnouts, indemnification obligations, and non-compete payments and consulting payments, in respect of Permitted Acquisitions;

(j) reimbursement obligations in connection with letters of credit, banker’s acceptances or similar instruments that are unsecured or secured by Cash and issued on behalf of Issuer or a Subsidiary for real estate purposes in the ordinary course of business in a face amount up to \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) at any time outstanding, and otherwise in a face amount not to exceed \$750,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event) at any time outstanding;

(k) Indebtedness consisting of hedging obligations incurred in the ordinary course of business for the purpose of directly mitigating bona fide risks associated with interest rates or foreign exchange rates and not for speculative purposes;

(l) Indebtedness, in an aggregate principal amount not to exceed \$500,000 (provided that such amount shall increase to \$1,000,000 from and after the Milestone Event), of Persons that are acquired by Issuer or any Subsidiary or merged into, amalgamated or consolidated with Issuer or a Subsidiary in connection with a Permitted Acquisition, so long as such Indebtedness was not incurred in connection with, or in anticipation of, such Permitted Acquisition;

(m) other unsecured Indebtedness in an aggregate outstanding amount not to exceed \$500,000 (provided that such amount shall increase to \$1,000,000 from and after the Milestone Event) at any time outstanding;

(n) (i) payments to contract manufacturing organizations and contract development manufacturing organizations in the ordinary course of business, and (ii) obligations in respect of minimum purchase commitments under supply agreements incurred in the ordinary course of business;

(o) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business; and

(p) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of an Obligor’s business.



**“Permitted Investments”** means:

(a) Investments (and commitments to make Investments) existing on the Effective Date and set forth in Schedule 7.7(b) of the Disclosure Letter, and Investments consisting of an extension, modification, replacement or renewal of such Investments; provided that the amount of any such Investment may be increased as required by the terms of such Investment as in existence on the Effective Date;

(b) Investments consisting of Cash;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(d) Investments in connection with Transfers permitted by Section 7.1;

(e) Investments (i) by Obligors in other Obligors that are Full Guarantors; (ii) by Subsidiaries that are not Obligors in other such Subsidiaries or Obligors; and (iii) by Obligors in Subsidiaries that are not Obligors or that are not Full Guarantors in an aggregate amount not to exceed (A) \$1,250,000 at any time outstanding solely for purposes of funding the payroll expenses of such Subsidiaries and (B) \$250,000 at any time outstanding for other purposes;

(f) Investments not to exceed \$250,000 in the aggregate during any fiscal year consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Issuer or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Issuer’s board of directors;

(g) 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 business;

(h) Investments consisting of notes receivable or prepaid royalties and other credit extensions to customers and suppliers in the ordinary course of business in an aggregate amount at any time outstanding not to exceed \$500,000;

(i) Permitted Acquisitions;

(j) Investments consisting of trade credit extended in the ordinary course of business;

(k) Investments consisting of hedging agreements entered into in the ordinary course of business for the purpose of directly mitigating bona fide risks associated with interest rates or foreign exchange rates and not for speculative purposes;

(l) Investments consisting of security deposits with utilities, landlords and other like Persons made in the ordinary course of business, in each case which constitute Permitted Liens;

(m) Investments of a Subsidiary acquired after the Effective Date or of an entity merged into or amalgamated or consolidated with a Subsidiary in a Permitted Acquisition after the Effective Date to the extent that such Investments were not made in contemplation of such Permitted Acquisition; and

(n) other Investments in an aggregate amount at any time not to exceed \$500,000 (provided that such amount shall increase to \$2,000,000 from and after the Milestone Event).

**“Permitted Licenses” means:**

(a) any License Agreement for the Development, Manufacture and/or Commercialization of the Products; provided that (i) such License Agreement is not a Restricted Agreement and constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property; (ii) all upfront payments, royalties, milestone payments or other proceeds arising from the License Agreement that are payable to Issuer or any Subsidiary are paid to a Controlled Account; and (iii) such license is non-exclusive;

(b) any license for the distribution and sale of a Product outside of the United States to any Third Party that purchases such Product in finished form from the Issuer or its Subsidiaries, or sublicensees that take title to such Product, and then distributes such Product to subdistributors or directly to customers; provided, however, that such Third Party distributor shall not Develop or Manufacture such Product or make any royalty, profit-share, or other payment to the Issuer or its Subsidiaries or sublicensees, other than payment for the purchase of such Product for resale;

(c) any exclusive license to customers to Commercialize, Develop and Manufacture Products and processes Developed by the Issuer or any Subsidiary specifically at the request of such customer; provided that such license is sufficiently narrow in scope, field or territory that it does not impair the ability of Issuer or any Subsidiary to license similar Products and/or Services to other customers;

(d) any License Agreement acquired in a Permitted Acquisition; provided that such License Agreement existed at the time of such Permitted Acquisition and was not entered into in connection with or anticipation of such Permitted Acquisition;

(e) any license granted to any Third Party for the Manufacture of any product or otherwise granted to a vendor or service provider in order to provide services for the benefit of Issuer or its Affiliates but granting no rights to sell, offer to sell, have sold or otherwise Commercialize any Product;

(f) any sponsored research or similar agreement providing for the Development of any product that does not grant the counterparty any right to sell, offer to sell, have sold or otherwise Commercialize any Product;

(g) intercompany non-exclusive licenses or grants of rights for Development, Manufacture, production, Commercialization (including commercial sales to end users), marketing, sale, research, co-promotion, or distribution among Issuer and its Subsidiaries;

(h) non-exclusive licenses for the use of the property of Issuer or its Subsidiaries in the ordinary course of business in connection with the sale of Products or provision of Services by Issuer or any Subsidiary;

(i) licenses of over-the-counter software that is commercially available to the public; and

(j) any License Agreement existing on the Effective Date and set forth in Schedule 7.1(d) of the Disclosure Letter.

**“Permitted Liens”** means:

(a) Liens existing on the Effective Date and set forth in Schedule 7.5 of the Disclosure Letter or arising under this Agreement and the other Note Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Issuer or the applicable Subsidiary maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Code;

(c) Liens securing Indebtedness permitted under clause (c) of the definition of “Permitted Indebtedness,” provided that (i) such Liens exist prior to the acquisition of, or attach substantially simultaneous with, or within sixty (60) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such Liens do not extend to any property other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings;

(e) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) leases or subleases of real property granted in the ordinary course of Issuer’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Product/Services Intellectual Property) granted in the ordinary course of Issuer’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Purchaser Agent or any Purchaser a security interest therein;

(g) banker’s liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with the Obligors’ Deposit Accounts or Securities Accounts held at such institutions provided such accounts are maintained in compliance with Section 6.6 hereof;

(h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(i) Permitted Licenses;

(j) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar encumbrances not interfering in any material respect with the value or use of the property to which such Lien is attached;

(k) Liens on insurance policies and the proceeds thereof securing the financing of premiums with respect thereto to the extent permitted under this Agreement;

(l) Liens that secure Indebtedness existing on any property acquired after the Effective Date pursuant to a Permitted Acquisition and existing prior to such Permitted Acquisition or existing on any property of any Person that becomes an Obligor after the Effective Date, provided that such lien is not created in contemplation of or in connection with such Permitted Acquisition or such Person becoming an Obligor and such Lien shall secure only those obligations which it secured on the date of such Permitted Acquisition or that such Person becomes an Obligor;

(m) (i) Liens on Cash deposits securing Indebtedness permitted pursuant to clause (j) of the definition of “Permitted Indebtedness”; provided that the amount of such Cash deposits in respect of any letter of credit does not exceed 105% of the face amount thereof, and (ii) Liens on Cash deposits securing Indebtedness permitted pursuant to clause (h) of the definition of “Permitted Indebtedness”;

(n) with respect to any real property, (a) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (b) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to applicable laws; and (c) rights of expropriation, access or user or any similar right conferred or reserved by or in applicable laws, which, in the aggregate for (a), (b) and (c), are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Issuer and its Subsidiaries;

(o) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and incurred in the ordinary course of business;

(p) deposits to secure the performance of bids, tenders, trade contracts and leases (other than Indebtedness), statutory obligations, surety, stay, customs and appeal bonds, performance bonds, or as security for the payment of rent, and other obligations of a like nature incurred in the ordinary course of business;

(q) (i) Liens solely on any cash earnest deposits made by Issuer or its Subsidiaries in connection with any letter of intent or other agreement in respect of any Permitted Acquisition and (ii) on the escrowed cash portion of any earnest moneys paid or the purchase price received in connection with any Permitted Acquisition or Transfer permitted by this Agreement to secure guarantees, indemnities or obligations thereunder, in each case, to the extent such funds (x) are on deposit in accounts described in clause (b) of the definition of “Excluded Accounts” and (y) do not exceed \$500,000 (provided that such amount shall increase to \$1,000,000 from and after the Milestone Event) in the aggregate at any time;

(r) to the extent constituting a Lien, escrow arrangements securing indemnification obligations associated with any Permitted Acquisition; and

(s) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed \$500,000 (provided that such amount shall be increased to \$1,000,000 from and after the Milestone Event) at any time outstanding.

**“Permitted Negative Pledges”** means any (a) restrictions on specific property encumbered to secure payment of particular Indebtedness permitted under the Note Documents or to be sold pursuant to an executed agreement in connection with a Transfer permitted under the Note Documents; (b) customary restrictions on assignment, subletting, or other transfers contained in leases, licenses, and other agreements to the extent otherwise permitted hereunder; (c) restrictions imposed by Requirements of Law; and (d)

restrictions already on any assets acquired pursuant to a Permitted Acquisition to the extent that such restrictions were not imposed in contemplation of such Permitted Acquisition.

**“Permitted Priority Liens”** means Permitted Liens identified in clauses (a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (l), (m), (n), (o), (p), (q) and (r) of the definition thereof and solely with respect to Foreign Subsidiaries, Permitted Liens that have statutory priority to properly perfected security interests under applicable Requirements of Law.

**“Permitted Purpose”** is defined in Section 13.8(a).

**“Person”** means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

**“Personal Data”** means any information or data that either (a) relates to an identified or identifiable natural person, or that is reasonably capable of being used to identify, contact, or precisely locate a natural person, household, or a particular computing system or device, including without limitation, a natural person’s name, street address, telephone number, email address, financial account number, government-issued identifier, social security number or tax identification number, biometric identifier or biometric information, banking information relating to any natural person, or passport number, client or account identifier, or credit card number, or any Internet protocol address or any other unique identifier, device or machine identifier, photograph, or credentials for accessing any accounts; or (b) is defined as “personally identifiable information,” “personal information,” “personal data,” or other similar terms, by any applicable Privacy Laws.

**“PIK Interest”** has the meaning set forth in Section 2.3(a).

**“PIK Period”** has the meaning set forth in Section 2.3(a).

**“Plan”** means any employee benefit plan within the meaning of Section 3(3) of ERISA, maintained for employees of Issuer or any of its Subsidiaries, or any such plan to which Issuer or any of its Subsidiaries is required to contribute on behalf of any of its employees or with respect to which Issuer or such Subsidiary has any liability.

**“Press Release”** means a press release mutually agreed upon by the Obligors and Purchaser Agent in respect of the transactions contemplated by the Note Documents.

**“Prime Rate”** means, for any day, the per annum rate of interest in effect for such day quoted by the Wall Street Journal as the “prime rate”.

**“Prime Rate Floor”** means a rate equal to (a) if the then current Benchmark prior to the time of such Benchmark’s replacement by the Prime Rate (pursuant to Section 2.3(e)) was less than or equal to the Floor at such time, the sum of (i) the Prime Rate in effect at such time of replacement plus (ii) the Floor minus such Benchmark and (b) if the then current Benchmark prior to the time of such Benchmark’s replacement by the Prime Rate (pursuant to Section 2.3(e)) was greater than the Floor, the Prime Rate in effect at such time of conversion minus (ii) the difference between such Benchmark and the Floor.

**“Privacy Laws”** shall mean (A) each applicable law concerning the privacy, secrecy, security, protection, disposal, international transfer or other Processing of Personal Data, and incident reporting and security incident notification requirements regarding Personal Data, including without limitation, and to the

extent applicable, (i) the EU General Data Protection Regulation 2016/679 and EU Member State laws and regulations implementing the same (the “**GDPR**”), the GDPR as it forms part of United Kingdom law by virtue of section 3 of the European Union (Withdrawal) Act 2018, the EU e-Privacy Directive 2002/58/EC as amended by Directive 2009/136/EC or further amended or replaced from time to time, and any relevant national implementing legislation, and any substantially similar local legislation, including the recommendations and deliberations of the relevant privacy commissioners and other privacy agencies, Personal Data protection, and data protection authorities, the California Consumer Privacy Act of 2018 and any regulations promulgated thereunder, and the California Privacy Rights Act of 2020; (ii) Laws applicable to direct marketing, e-mails, communication by text messages or initiation, transmission, monitoring, recording, or receipt of communications (in any format, including voice, video, email, phone, text messaging, or otherwise); and (iii) state consumer protection Laws, HIPAA, the Payment Card Industry Data Security Standard and programs, the Federal Trade Commission Act, Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003, (B) guidance issued by a Governmental Authority that pertains to one of the laws, rules or standards outlined in clause (A), or (C) industry self-regulatory principles relating to the protection or Processing of Personal Data, direct marketing, emails, text messages or telemarketing.

“**Pro Rata Share**” means, as of any date of determination, with respect to each Purchaser, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Notes held by such Purchaser by the aggregate outstanding principal amount of all Notes; provided that after repayment of the Notes, each Purchaser’s Pro Rata Share shall be calculated based on the outstanding Notes immediately prior to the repayment hereof.

“**Process**” or “**Processing**” means the receipt, access, acquisition, collection, compilation, use, storage, disposal, safeguarding, security, destruction, disclosure by transmission, or transfer of Personal Data.

“**Product/Services Intellectual Property**” means all Intellectual Property that is necessary, used or reasonably useful for, or otherwise material to, the Development, Commercialization, and/or Manufacture, or other exploitation, of any Product or the provision of Services that is owned, licensed or otherwise controlled by Issuer or any of its Subsidiaries as of the Effective Date or developed, acquired, licensed or controlled by an Obligor thereafter, which shall initially include, without limitation, the Patents identified in Schedule 5.11(a) to the Disclosure Letter.

“**Products**” means (a) all systems, apparatuses, processor-readable media, devices, surgical products, software, methods (including methods of use and methods of manufacture) and/or processes and being designed, Developed, licensed, Manufactured or Commercialized by Issuer or any Subsidiary from time to time and (b) all therapeutics and devices and methods used to administer therapeutics being Developed, Manufactured or Commercialized directly by Issuer or any Subsidiary from time to time.

“**Purchase**” is defined in Section 2.1(c).

“**Purchase Date**” means any date on which a purchase of Notes is made by the Purchasers, which date shall be a Business Day.

“**Purchase Notice**” is that certain form attached hereto as Exhibit B.

“**Purchase Percentage**” means, for any Purchaser, the percentage set forth on Schedule 1.1 opposite such Purchaser’s name.

**“Purchaser”** means any one of the Purchasers.

**“Purchaser Agent”** means CALW SA LLC (or any successor thereto pursuant to Section 13.12(h)), not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Purchasers.

**“Purchaser Transfer”** is defined in Section 13.1(a).

**“Purchasers”** means the Persons identified on Schedule 1.1 and each assignee that becomes a party to this Agreement or that acquires a Note pursuant to Section 13.1.

**“Receiving Party”** is defined in Section 13.8(a).

**“Register”** is defined in Section 13.1(b).

**“Registered Organization”** means any “registered organization” as defined in the UCC with such additions to such term as may hereafter be made.

**“Regulatory Approval”** means any Governmental Approval, whether U.S. or non-U.S., relating to any Product or Service or the Commercialization, Development or Manufacture of such Product or development or commercialization of such Service.

**“Regulatory Authority”** means a Governmental Authority (including the FDA, the Notified Body with respect to the EU MDR, the MHRA and Health Canada) with responsibility for the approval of the marketing and sale of pharmaceuticals, biologics or medical devices (including software) or the regulation of research facilities and research activities in connection with pharmaceuticals, biologics or medical devices.

**“Reimbursable Expenses”** means all audit fees and expenses, costs, and out-of-pocket expenses (including documented fees and expenses of outside counsel, as well as appraisal fees, consulting fees, advisory fees, fees incurred on account of lien searches, inspection fees, filing fees and fees for registration of security interests in any applicable jurisdiction) for preparing, amending, negotiating, executing, administering, defending and enforcing the Note Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Purchaser Agent and/or the Purchasers in connection with the Note Documents.

**“Relevant Governmental Body”** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

**“Repayment Amount”** means, as of any date of Payment in Full, with respect to each Note:

(a) from and after the Purchase Date for such Note and prior to the first anniversary of such Purchase Date, an amount equal to 117.5% of the outstanding principal amount (including any PIK Interest added thereto) of such Note;

(b) from and after the first anniversary of such Purchase Date and prior to the second anniversary of such Purchase Date, an amount equal to 125% of outstanding principal amount (including any PIK Interest added thereto) of such Note;

(c) from and after the second anniversary of such Purchase Date and prior to the third anniversary of such Purchase Date, an amount equal to 135% of the outstanding principal amount (including any PIK Interest added thereto) of such Note;

(d) from and after the third anniversary of such Purchase Date and prior to the fourth anniversary of such Purchase Date, an amount equal to the amount (greater than zero) that would generate an internal rate of return (calculated utilizing the same methodology utilized by the XIRR function in Microsoft Excel) to the Purchasers equal to 11.50% on the outstanding principal amount (including any PIK Interest added thereto) of such Note, calculated from the Purchase Date for such Note to the date of Payment in Full and taking into account (i) all regularly scheduled interest paid in cash to the Purchasers prior to such date with respect to such Note (excluding, for the avoidance of doubt, any default interest), (ii) all Revenue Participation Payments paid in cash to the Purchasers prior to such date, and (iii) payments of proceeds of insurance policies to the extent actually paid in cash to the Purchasers pursuant to Section 6.5(b) prior to such date and applied to the outstanding principal amount of such Note (for the avoidance of doubt, the calculation of such amount in this clause (d) shall be made for the period beginning on such Purchase Date and ending on the date of Payment in Full assuming the full outstanding principal amount thereof (including all PIK interest added thereto) was issued as of such Purchase Date);

(e) from and after the fourth anniversary of such Purchase Date and prior to the Maturity Date, an amount equal to the amount (greater than zero) that would generate an internal rate of return (calculated utilizing the same methodology utilized by the XIRR function in Microsoft Excel) to the Purchasers equal to 10.50% on the outstanding principal amount (including any PIK Interest added thereto) of such Note, calculated from the Purchase Date for such Note to the date of Payment in Full and taking into account (i) all regularly scheduled interest paid in cash to the Purchasers prior to such date with respect to such Note (excluding, for the avoidance of doubt, any default interest), (ii) all Revenue Participation Payments paid in cash to the Purchasers prior to such date, and (iii) payments of proceeds of insurance policies to the extent actually paid in cash to the Purchasers pursuant to Section 6.5(b) prior to such date and applied to the outstanding principal amount of such Note (for the avoidance of doubt, the calculation of such amount in this clause (e) shall be made for the period beginning on such Purchase Date and ending on the date of Payment in Full assuming the full outstanding principal amount thereof (including all PIK interest added thereto) was issued as of such Purchase Date); and

(f) on the Maturity Date, an amount equal to the amount (greater than zero) that would generate an internal rate of return (calculated utilizing the same methodology utilized by the XIRR function in Microsoft Excel) to the Purchasers equal to 9.50% on the outstanding principal amount (including any PIK Interest added thereto) of such Note, calculated from the Purchase Date for such Note to the date of Payment in Full and taking into account (i) all regularly scheduled interest paid in cash to the Purchasers prior to such date with respect to such Note (excluding, for the avoidance of doubt, any default interest), (ii) all Revenue Participation Payments paid in cash to the Purchasers prior to such date, and (iii) payments of proceeds of insurance policies to the extent actually paid in cash to the Purchasers pursuant to Section 6.5(b) prior to such date and applied to the outstanding principal amount of such Note (for the avoidance of doubt, the calculation of such amount in this clause (f) shall be made for the period beginning on such Purchase Date and ending on the date of Payment in Full assuming the full outstanding principal amount thereof (including all PIK interest added thereto) was issued as of such Purchase Date).

*minus*, in the case of clauses (a), (b) and (c) only, the sum, without duplication, of (i) all regularly scheduled interest paid in cash to the Purchasers prior to such date with respect to such Note (excluding, for the avoidance of doubt, any default interest), *plus* (ii) all Revenue Participation Payments paid in cash to the Purchasers prior to such date, *plus* (iii) payments of proceeds of insurance policies to the extent actually paid in cash to the Purchasers pursuant to Section 6.5(b) prior to such date and applied to the outstanding



principal amount of such Note; provided that the Repayment Amount shall not be less than zero or, if any Notes remain outstanding immediately prior to the payment of the Repayment Amount, the outstanding principal amount of the Notes being repurchased. For the avoidance of doubt, the principal amount for purposes of the calculations in clauses (a) through (c) of this definition will not take into account proceeds applied to the outstanding principal amount under Section 6.5(b), if any.

“**Representatives**” is defined in Section 13.8(b).

“**Required Purchasers**” means, at any time, (i) prior to the expiration of the Commitments, the Purchasers holding at least 50% of the aggregate principal amount of Notes and unused or unexpired Commitments, and (ii) thereafter, the Purchasers holding at least fifty percent (50%) of the Pro Rata Shares. For purposes of Section 2.2(c), the Required Purchasers means the Purchasers holding Notes representing at least fifty percent (50%) of the aggregate outstanding principal amount of the Notes.

“**Requirement of Law**” or “**Requirements of Law**” means as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Responsible Officer**” means, with respect to Issuer, any of the Chief Executive Officer, Chief Financial Officer, Chief Business Officer or Chief Operations Officer of Issuer or other officers of Issuer or any Subsidiary, as applicable, with responsibilities substantially equivalent to those of the foregoing officers acting alone.

“**Restricted Agreement**” means any Material Agreement (i) under which a default or of which a termination could interfere with Purchaser Agent’s or any Purchaser’s right to sell any Collateral, (ii) that cannot be collaterally assigned to secure the Obligations or otherwise contains provisions that restrict or penalize the granting of a security interest in or Lien on such Material Agreement or if entered into after the Effective Date by Issuer or any other Obligor, does not recognize the collateral assignment thereof to secure the Obligations (in each case after giving effect to Section 9-406, 9-407, 9-408 or 9-409 of the UCC, to the extent applicable, and other applicable law), (iii) that contains provisions that restrict or penalize the granting of a security interest in or Lien on, or the assignment or other Transfer of, any Product/Services Intellectual Property (in each case after giving effect to Section 9-406, 9-407, 9-408 or 9-409 of the UCC, to the extent applicable, and other applicable law), (iv) that restricts the assignment of such Material Agreement upon the sale or other disposition of all or substantially all of the of the Issuer’s business (other than customary provisions requiring the assumption by the applicable purchaser of all obligations under such Material Agreement), or (v) that does not permit the disclosure of information to be provided thereunder to Purchaser Agent and the Purchasers, to any purchaser or prospective purchaser in a foreclosure or other Transfer of all or any portion of the Collateral (subject to customary confidentiality obligations) (the provisions and restrictions in clauses (i) through (v), the “**Restrictions**”); provided that any agreement with a foreign governmental authority or foreign non-profit entity acting under foreign public mandates, in each case for Products or Services delivered solely outside of the United States, shall be deemed not to be a Restricted Agreement so long as the Obligors have used commercially reasonable efforts to negotiate the terms of such agreement to eliminate or minimize any Restrictions applicable to such agreement.

“**Revenue Participation Payments**” means, for any fiscal quarter, 0.375% of Net Revenue for such fiscal quarter (up to \$50,000,000 of Net Revenue for each fiscal year), which percentage shall be increased pro rata in the event of any Second Purchase or Third Purchase in accordance with the amounts of each respective Purchase.

**“Revenue Participation Period”** means the period beginning on January 1, 2027 and ending on the earlier to occur of (i) the Maturity Date and (ii) the date of Payment in Full.

**“Revenue Report”** is defined in Section 6.2(b).

**“Sanctioned Country”** means, at any time, (i) a country, region or territory which is itself the subject or target of any comprehensive territorial Sanctions (including, but not limited to, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk People’s Republic, and Luhansk People’s Republic regions in Ukraine), and (ii) Russia.

**“Sanctioned Person”** means, at any time, (i) any Person listed in any Sanctions-related list of designated Persons maintained by any Sanctions Authority (including, without limitation, any “Specially Designated Nationals and Blocked Persons” as designated by OFAC), (ii) any Person operating, organized, located or resident in a Sanctioned Country or (iii) any Person 50% or more owned or otherwise controlled by any such Person or Persons described in the foregoing clauses (i) or (ii).

**“Sanctions”** means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any Sanctions Authority.

**“Sanctions Authority”** means the U.S. government (including OFAC and the U.S. Department of State), the United Nations Security Council, His Majesty’s Treasury, the European Union, any European Union member state or any other applicable sanctions authority.

**“Second Purchase”** is defined in Section 2.1(b).

**“Second Purchase Date”** means each Purchase Date in respect of a Second Purchase.

**“Secured Parties”** means Purchaser Agent and the Purchasers.

**“Securities Account”** means any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

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

**“Services”** means all Development, Manufacturing, Commercialization, pre-clinical and clinical services and related services provided by Issuer or any Subsidiary from time to time, including, but not limited to, benchtop testing, pre-clinical studies, clinical trial support, safety and toxicology studies, compatibility testing, neurosurgical and infusion consultation, case reporting and post-infusion analysis, study design and protocol generation, quality and regulatory consultation and support, and distribution.

**“Shares”** means one hundred percent (100%) of the issued and outstanding Equity Interests or other securities owned or held of record by any Obligor.

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

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

**“SOFR Floor”** means 4.30%.

**“Solvent”** means, with respect to any Person: that as of the date of determination, such Person and its Subsidiaries on a consolidated basis, is “solvent” or not “unable to pay its debts” within the meaning given to such terms and similar terms under applicable laws relating to fraudulent transfers and conveyances or applicable Insolvency Laws, including that (i) the present fair saleable value of the assets on a going concern basis of such Person and its Subsidiaries on a consolidated basis (*i.e.*, the amount that may be realized within a reasonable time, considered to be six months to one year, either through collection or sale at regular market value, conceiving regular market value as the amount that could be obtained for the property in question with such period by a capable and diligent businessperson from an interested buyer who is willing to purchase under ordinary selling conditions) is not less than the amount that will be required to pay the probable liability of such Person and its Subsidiaries on a consolidated basis on their debts (including contingent, unmatured and unliquidated liabilities) as they become absolute and matured, (ii) such Person and its Subsidiaries will not, on a consolidated basis, have an unreasonably small capital in relation to their business or with respect to any transaction then contemplated, (iii) such Person and its Subsidiaries, on a consolidated basis, will have sufficient cash flow to enable them to pay their debts as they mature, and (iv) the value of such Person’s consolidated assets is not less than the amount of its consolidated liabilities, taking into account its contingent and prospective liabilities.

**“Subsidiary”** means, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other Equity Interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries. Unless the context otherwise requires, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Issuer.

**“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 SOFR”** means, with respect to any Interest Period, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

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

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

**“Third Party”** means any Person other than an Obligor or any Affiliate of an Obligor.

“**Third Purchase**” is defined in Section 2.1(c).

“**Third Purchase Date**” means each Purchase Date in respect of a Third Purchase.

“**Trademarks**” means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including all renewals of trademark and service mark registrations, together, in each case, with the goodwill of the business connected with the use thereof.

“**Transfer**” is defined in Section 7.1.

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

“**UCC**” means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided that, to the extent that the UCC is used to define any term herein or in any Note Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, 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, Purchaser Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**Section 15.2 Divisions.** For all purposes under the Note 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.

*[Balance of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**ISSUER:**

**CLEARPOINT NEURO, INC.**

By: /s/ Danilo D'Alessandro  
Name: Danilo D'Alessandro  
Title: Chief Financial Officer

*[Signature Page to Note Purchase Agreement]*

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**PURCHASER AGENT:**

**CALW SA LLC**

By: /s/ David Dubinsky  
Name: David Dubinsky  
Title: Authorized Signatory

**PURCHASERS:**

**TPC INVESTMENTS III LP**

By: /s/ David Dubinsky  
Name: David Dubinsky  
Title: Authorized Signatory

Address for notices:  
c/o Oberland Capital Management LLC  
1700 Broadway, 37th Floor  
New York, NY 10019  
Facsimile: (212) 257-5851  
Telephone: (212) 257-5863  
E-mail: kwiggert@oberlandcapital.com

***[Signature Page to Note Purchase Agreement]***

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**SCHEDULE 1.1**

**Purchasers and Commitments**

<b>Purchaser</b>	<b>Commitments</b>			
	<b>First Purchase</b>	<b>Second Purchase</b>	<b>Total</b>	<b>Purchase Percentage</b>
TPC Investments III LP	\$30,000,000	\$25,000,000	\$55,000,000	100%
<b>TOTAL</b>	\$30,000,000	\$25,000,000	\$55,000,000	100%

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## **Exhibit A**

### **Description of Collateral**

The Collateral consists of all of each Obligor's right, title and interest in and to the following personal property:

(a) all of each Obligor's goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including Intellectual Property), Regulatory Approvals, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, Deposit Accounts, Securities Accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), Shares, securities and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

(b) all of each Obligor's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (i) any Excluded Account, (ii) any rights or interest in any contract, lease, permit, license, or license agreement covering real or personal property if under the terms of such contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein would result in the abandonment, invalidation, unlawfulness or unenforceability of any right or interest of any Obligor therein or is prohibited as a matter of law or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (provided that the foregoing exclusions of this clause (ii) shall in no way be construed to apply (A) to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or 9-409 of the UCC or other applicable law, (B) to the extent that any consent or waiver has been obtained that would permit Purchaser Agent's security interest or lien to attach notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement, (C) to any proceeds or receivables thereof or (D) to the Material Agreements set forth on Schedule 5.14 to the Disclosure Letter); (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral; (iv) any Margin Stock; and (v) property (other than Product/Services Intellectual Property) that is subject to Liens described in clauses (d) and (m) of the definition of "Permitted Liens", in each case solely to the extent the agreement(s) governing such Liens prohibit the granting of a Lien to Purchaser Agent and such prohibition has not been waived.

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**Exhibit B**

**Form of Purchase Notice**

[see attached]

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## PURCHASE NOTICE

[ ], 202[●]

The undersigned, being the duly elected and acting of ClearPoint Neuro, Inc., a Delaware corporation (“**Issuer**”), does hereby certify to CALW SA LLC, a Delaware limited liability company, as agent for the Purchasers (the “**Purchaser Agent**”) in connection with that certain Note Purchase Agreement dated as of May [●], 2025, by and among Issuer, the other Obligors party thereto, Purchaser Agent and the Purchasers from time to time party thereto (as amended, modified, restated or supplemented from time to time, the “**Purchase Agreement**”; with other capitalized terms used below having the meanings ascribed thereto in the Purchase Agreement) that:

1. The representations and warranties made in Article V of the Purchase Agreement and in the other Note Documents are true and correct in all material respects as of the date hereof and on the Purchase Date of the Notes described in Section 8 below; provided that such materiality qualifier is not applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided further that those representations and warranties expressly referring to a specific date are true, accurate and complete in all material respects as of such date.

2. No Default or Event of Default has occurred and is continuing or will result from the purchase of Notes pursuant to this notice.

3. (i) Since December 31, 2024, there has not been any event or circumstance, either individually or in the aggregate, that has resulted in or could reasonably be expected to result in a Material Adverse Change and (ii) there has not been any material adverse deviation from the projections of Issuer presented to and accepted by Purchaser Agent and each Purchaser prior to the Effective Date.

4. Attached hereto are updates to the information in the Perfection Certificate since the Effective Date or the most recent update thereto.

5. The Obligors have provided all financial statements, reports or notices required under the Note Documents prior to the Purchase Date, including, in each case, to the extent required under Section 6.2 of the Purchase Agreement;

6. All conditions referred to in Article III of the Purchase Agreement to the purchase of Notes to be made on or about the date hereof have been satisfied or waived by Purchaser Agent.

7. The undersigned is a Responsible Officer of Issuer.

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8. The proceeds of the Notes issued on the [First][Second][Third] Purchase Date shall be disbursed as follows:

**From Purchasers:**

Purchase Amount \$[ ]

Plus:

--[ ] \$[ ]

Less:

[--Interim Interest (\$ )]

--Purchasers' Fees and Expenses (\$ )<sup>1</sup>

**TOTAL NET PROCEEDS FROM PURCHASERS**

**\$**\_\_\_\_\_

9. The aggregate net proceeds of the Notes shall be transferred to the Designated Deposit Account as follows:

[Issuer Wire Instructions]

*[Balance of Page Intentionally Left Blank]*

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\* Legal fees and costs are through the Effective Date. Post-closing legal fees and costs, payable after the Effective Date, to be invoiced and paid post-closing.

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Dated as of the date first set forth above.

**ISSUER:**

**CLEARPOINT NEURO, INC.**

By:  
Name:  
Title:

**PURCHASER AGENT:**

**CALW SA LLC**

By:  
Name:  
Title:

*[Signature Page to Purchase Notice]*

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**Exhibit C**  
**Compliance Certificate**

TO: CALW SA LLC, as Purchaser Agent

FROM: ClearPoint Neuro, Inc.

The undersigned authorized officer (“**Officer**”) of ClearPoint Neuro, Inc., a Delaware corporation (“**Issuer**”), hereby certifies that in accordance with the terms and conditions of the Note Purchase Agreement, dated as of May 12, 2025, by and among Issuer, the other Obligors party thereto, Purchaser Agent, and the Purchasers from time to time party thereto (as amended, modified, restated or supplemented from time to time, the “**Purchase Agreement**,” capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Purchase Agreement),

(a) The Obligors are in complete compliance for the period ending \_\_\_\_\_ and there are no Events of Default, except as noted below;

(b) Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of the Obligors, further certifies that (i) the attached financial statements fairly present in all material respects the financial condition and operating results of Issuer and its Subsidiaries as of the dates and for the periods indicated therein and are prepared in accordance with GAAP and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements and (ii) the attached Revenue Report is a true and complete copy and any statements and any data and information therein prepared by the Obligors are true, correct and accurate in all material respects.

**Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under “Complies” column.**

	Reporting Covenant	Requirement	Actual	Complies		
1)	Quarterly financial statements	Quarterly within 45 days (first three fiscal quarters)	Yes	No	N/A	
2)	Annual (audited) financial statements	Within 90 days after FYE	Yes	No	N/A	
3)	Intellectual Property Updates	Quarterly within 45 days	Yes	No	N/A	
4)	Updates to Perfection Certificate	Annually within 90 days after FYE	Yes	No	N/A	
5)	Annual Projections (prepared on a quarterly basis)	Annually (within 90 days of FYE), and when revised (within 5 Business Days)	Yes	No	N/A	

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<b>6)</b>	Board kit or board pack and related materials	Within 7 Business Days of each board meeting (or, no more than 2 times prior to Payment in Full, 9 Business Days).	Yes	No	N/A
<b>7)</b>	Revenue Report	Concurrently with delivery of quarterly and annual financial reports (i.e., within 45 days after quarter end and 90 days of year-end)	Yes	No	N/A
<b>8)</b>	New Material Agreements and amendments to existing Material Agreements	Concurrently with delivery of quarterly and annual financial reports (i.e., within 45 days after quarter end and 90 days of year-end)	Yes	No	N/A

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**Exceptions**

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state “No exceptions.” Attach separate sheet if additional space needed.)

CLEARPOINT NEURO, INC.

By  
Name:  
Title:  
  
Date:

**PURCHASER AGENT USE ONLY**

Received by:	Date:
Verified by:	Date:
Compliance Status: Yes No	

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**Exhibit D**

**Form of Note**

[see attached]

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[THIS NOTE MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) FOR U.S. FEDERAL INCOME TAX PURPOSES. THE ISSUE PRICE, AMOUNT OF OID, ISSUE DATE AND YIELD TO MATURITY WITH RESPECT TO THIS NOTE MAY BE OBTAINED BY WRITING TO ISSUER AT THE FOLLOWING ADDRESS: 120 S SIERRA AVE. SUITE 100, SOLANA BEACH, CALIFORNIA 92075, ATTENTION: DANILO D’ALESSANDRO, EMAIL: DDALESSANDRO@CLEARPOINTNEURO.COM.

## NOTE

\$[ ] Dated: [ ], 202[ ]

FOR VALUE RECEIVED, ClearPoint Neuro, Inc., a Delaware corporation (“**Issuer**”), hereby promises to pay to [ ], a [ ] (the “**Purchaser**”), at its offices located at 1700 Broadway, 37th Floor, New York, NY 10019 (or at such other place or places as the Purchaser may designate), at the times and in the manner provided in the Note Purchase Agreement, dated as of May [●], 2025 (as amended, modified, restated or supplemented from time to time, the “**Note Purchase Agreement**”), among Issuer, the other Obligor from time to time parties thereto, the Purchasers from time to time parties thereto, and CALW SA LLC, a Delaware limited liability company, as Purchaser Agent and a Purchaser, the Repayment Amount in respect of the principal sum of [ ] (\$[ ]), under the terms and conditions of this senior secured note (this “**Note**”) and the Note Purchase Agreement. If Payment in Full does not occur sooner, the Repayment Amount in respect of this Note shall be due and payable on the Maturity Date (as defined in the Note Purchase Agreement). The defined terms in the Note Purchase Agreement are used herein with the same meaning. Issuer also promises to pay interest on the aggregate unpaid principal amount of this Note at the rates applicable thereto and Revenue Participation Payments from time to time as provided in the Note Purchase Agreement.

This Note is one of the Notes referred to in the Note Purchase Agreement and is issued to evidence the purchase thereof by the Purchaser pursuant to the Note Purchase Agreement. All of the terms, conditions and covenants of the Note Purchase Agreement are expressly made a part of this Note by reference in the same manner and with the same effect as if set forth herein at length, and any holder of this Note is entitled to the benefits of and remedies provided in the Note Purchase Agreement and the other Note Documents. Reference is made to the Note Purchase Agreement for provisions relating to transfer and assignments, the interest rate, maturity, payment, prepayment, redemption and acceleration of this Note.

In the event of an acceleration of the maturity of this Note pursuant to the Note Purchase Agreement, this Note (and the Repayment Amount in respect thereof) shall become immediately due and payable, without presentation, demand, protest or notice of any kind, all of which are hereby waived by Issuer. In the event this Note is not paid when due at any stated or accelerated maturity, Issuer agrees to pay, in addition to the principal and interest and other amounts owed due and payable under this Note and all Revenue Payments and the Repayment Amount, all costs of collection, including documented out-of-pocket attorneys’ fees.

This Note and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Note shall be governed by, and construed in accordance with, the law of the State of New York. Issuer hereby submits to the nonexclusive jurisdiction and venue of the courts of the State of New York sitting in the City and County of New York and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, although the Purchaser shall not be limited to bringing an action in such courts.

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The ownership of an interest in this Note shall be registered on a record of ownership maintained by Purchaser or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, Repayment Amount and Revenue Participation Payments in respect of, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation whereby such transfer shall only be registered if carried out pursuant to Section 13.1 of the Note Purchase Agreement. Issuer shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

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IN WITNESS WHEREOF, Issuer has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

**ISSUER:**

CLEARPOINT NEURO, INC.

By  
Name:  
Title:

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**Exhibit E**

**Form of Intercompany Subordination Agreement**

[see attached]

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## INTERCOMPANY SUBORDINATION AGREEMENT

This INTERCOMPANY SUBORDINATION AGREEMENT, dated as of [ ], 2025 (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”), is made by and among each of the Obligor listed on the signature pages hereof (together with any Additional Obligor (as defined below), collectively, the “Obligors” and each, individually, an “Obligor”), in favor of CALW SA LLC, in its capacity as agent for the Purchasers (as defined in the Note Purchase Agreement (as defined below)) (in such capacity, together with any successors and permitted assigns, the “Purchaser Agent”).

### WITNESSETH:

WHEREAS, pursuant to the Note Purchase Agreement, dated as of May [●], 2025 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions thereof, including any replacement agreement therefor, the “Note Purchase Agreement”), by and among ClearPoint Neuro, Inc., a Delaware corporation (“Issuer”), the other Obligor (as defined therein) party thereto, the Purchasers from time to time party thereto and the Purchaser Agent, the Purchasers have agreed to make certain financial accommodations to the Obligor;

WHEREAS, each Obligor has made or may make certain loans or advances from time to time to one or more other Obligor; and

WHEREAS, each Obligor has agreed to the subordination of such indebtedness of each other Obligor owed to such Obligor to the Senior Debt (as defined below), upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Purchasers to extend credit to the Obligor pursuant to the Note Purchase Agreement, the Obligor hereby jointly and severally agree with the Purchaser Agent and the Purchasers as follows:

#### (1) Definitions; Interpretation.

a. Terms Defined in Note Purchase Agreement. All capitalized terms used in this Agreement which are defined in the Note Purchase Agreement and not otherwise defined herein shall have the meanings assigned to such capitalized terms in the Note Purchase Agreement.

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

“Additional Obligor” has the meaning set forth in Section 16 hereto.

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

“Creditor Obligor” has the meaning set forth in the definition of Subordinated Debt.

“Debtor Obligor” has the meaning set forth in the definition of Subordinated Debt.

“Discharge of Senior Debt” means the repayment in full of all Senior Debt, in each case, after or concurrently with the termination or expiration of all Commitments or other commitments, if any, to make loans, advances or otherwise extend credit that would constitute Senior Debt (other than any such contingent obligations or liabilities under the Note Purchase Agreement that by the express terms thereof survive such payment in full of all Senior Debt).

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“Enforcement Event” has the meaning set forth in Section 4 hereto.

“Insolvency Event” has the meaning set forth in Section 3 hereto.

“Note Purchase Agreement” has the meaning set forth in recitals hereto.

“Obligor” and “Obligors” have the meaning set forth in the preamble hereto.

“Purchaser Agent” has the meaning set forth in preamble hereto.

“Senior Debt” means, collectively, the Obligations (as defined in the Note Purchase Agreement) and the Guaranteed Obligations (as defined in the Note Purchase Agreement).

“Subordinated Debt” means, with respect to each Obligor (each, a “Creditor Obligor”), all indebtedness, liabilities, and other obligations of any other Obligor (each, a “Debtor Obligor”) owing to such Creditor Obligor in respect of any and all indebtedness made by such Creditor Obligor to such other Debtor Obligor whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined, including all fees and all other amounts payable by such Debtor Obligor to such Creditor Obligor under or in connection with any documents or instruments related thereto.

“Subordinated Debt Payment” means any direct or indirect payment, reduction or discharge of Subordinated Debt, whether effected by a payment or distribution by or on behalf of any of the Obligors, directly or indirectly, of any assets or property of any of the Obligors of any kind or character, whether in cash, property, or securities, including on account of the purchase, redemption, or other acquisition of any of the Subordinated Debt, as a result of any collection, sale, or other disposition of collateral, or by setoff, exchange, or in any other manner, in each case, for or on account of the Subordinated Debt.

c. Interpretation. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein”, “hereof”, “hereby” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections, Clauses, Exhibits, Schedules and Annexes shall be construed to refer to Sections, Subsections, and Clauses of, and Exhibits, Schedules and Annexes to, this Agreement, and (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. The captions and headings contained herein are for convenience of reference only and shall not affect the construction of this Agreement.

(2) Subordination to Payment of Senior Debt. As to each Obligor, all Subordinated Debt, including without limitation, all payments on account of the Subordinated Debt shall be subject,

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subordinate, and junior, in right of payment and exercise of remedies, to the extent and in the manner set forth herein, to the Discharge of Senior Debt.

(3)Subordination Upon Any Distribution of Assets of the Obligor. As to each Creditor Obligor, in the event of any payment or distribution of assets of any Debtor Obligor of any kind or character, whether in cash, property, or securities, upon the dissolution, winding up, or total or partial liquidation or reorganization, readjustment, arrangement, examinership or similar proceeding relating to such Debtor Obligor or its property, whether voluntary or involuntary, or in an insolvency proceeding, or upon any other marshaling or composition of the assets and liabilities of such Debtor Obligor, or otherwise (such events, collectively, the “Insolvency Events”): (a) the Discharge of Senior Debt shall have occurred before any Subordinated Debt Payment is made; and (b) to the extent permitted by applicable law, any Subordinated Debt Payment to which any Creditor Obligor would be entitled except for the provisions hereof, shall be paid or delivered by the trustee in bankruptcy, receiver, assignee for the benefit of creditors, examiner or other liquidating agent making such payment or distribution, directly to the Purchaser Agent (or its designee) for the benefit of the Purchaser Agent and the Purchasers for application to the payment of the Senior Debt in accordance with clause (a), after giving effect to any concurrent payment or distribution or provision therefor to the Purchaser Agent or the Purchasers in respect of such Senior Debt.

(4)Payments on Subordinated Debt.

a.Permitted Payments. So long as no Event of Default shall have occurred and be continuing and Purchaser Agent shall not have delivered notice (which has not been withdrawn by Purchaser Agent; provided that such notice may be general in nature) to Issuer that intercompany payments shall be suspended (an “Enforcement Event”), each Debtor Obligor may make, and each Creditor Obligor shall be entitled to accept and receive, Subordinated Debt Payments in accordance with the terms of the Note Purchase Agreement.

b.No Payment Upon Senior Debt Defaults. Upon an Enforcement Event and until (x) the Discharge of Senior Debt or (y) such Event of Default is cured or waived in accordance with the terms of the Note Purchase Agreement, no Debtor Obligor shall make, and no Creditor Obligor shall accept or receive, any Subordinated Debt Payment, unless otherwise expressly permitted by the Purchaser Agent in its permitted discretion.

(5)Subordination of Remedies. Until the Discharge of Senior Debt has occurred, whether or not any Insolvency Event has occurred, no Creditor Obligor shall, without the prior written consent of the Purchaser Agent:

a.(i) accelerate, make demand, or otherwise make due and payable prior to the original due date thereof any Subordinated Debt or bring suit or institute any other actions or proceedings to enforce such Obligor’s rights or interests in respect of the Subordinated Debt or (ii) terminate, delay performance, or take such other action to effect the foregoing in connection with any rights such Creditor Obligor may have under the respective agreement or contract evidencing such Subordinated Debt;

b.exercise any rights under or with respect to guaranties of the Subordinated Debt, if any;

c.exercise any rights to set-offs and counterclaims in respect of any Indebtedness, liabilities, or obligations of such Creditor Obligor to any Debtor Obligor against any of the Subordinated Debt; or

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d.commence, or cause to be commenced, or join with any creditor other than the Purchaser Agent or the Purchasers, in commencing, any Insolvency Proceeding, or receivership proceeding against any Debtor Obligor.

(6)Payment Over to the Purchaser Agent. In the event that, notwithstanding the provisions of Sections 3, 4, and 5 hereof, any Subordinated Debt Payments shall be received in contravention of such Sections 3, 4, or 5 hereof by any Creditor Obligor before the Discharge of Senior Debt, each Subordinated Debt Payment shall be held by such Creditor Obligor in trust for the benefit of the Purchaser Agent and the Purchasers and shall forthwith be paid over or delivered to the Purchaser Agent (or its designee), in the same form as received and with any necessary endorsements, for the benefit of the Purchaser Agent and the Purchasers for application to the payment of the Senior Debt in accordance with the terms of the Note Documents. The Purchaser Agent is authorized to make any such endorsements as agent for the Creditor Obligors. Such authorization shall be coupled with an interest and is irrevocable until the Discharge of Senior Debt.

(7)Authorization to Purchaser Agent. If, while any Subordinated Debt is outstanding, any Insolvency Event shall occur and be continuing with respect to any Obligor or its property: (a) the Purchaser Agent hereby is, to the extent permitted by applicable law, irrevocably authorized and empowered (in the name of each Obligor or otherwise), but shall have no obligation, to demand, sue for, collect, and receive every payment or distribution in respect of the Subordinated Debt and give acquittance therefor and to file claims and proofs of claim and take such other action (including voting the Subordinated Debt) as the Purchaser Agent may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of the Purchaser Agent or the Purchasers; and (b) each Obligor shall promptly take such action as the Purchaser Agent reasonably may request (i) to collect the Subordinated Debt for the account of the Purchaser Agent or the Purchasers and to file appropriate claims or proofs of claim in respect of the Subordinated Debt, (ii) to execute and deliver to the Purchaser Agent such powers of attorney, assignments, and other instruments as it may reasonably request to enable the Purchaser Agent to enforce any and all claims with respect to the Subordinated Debt, and (iii) to collect and receive any and all Subordinated Debt Payments, in each case until the Discharge of Senior Debt.

(8)Certain Agreements of Each Obligor.

a.No Benefits. Each Obligor understands that there may be various agreements between the Purchaser Agent and/or the Purchasers and any other Obligor evidencing and governing the Senior Debt, and each Obligor acknowledges and agrees that such agreements are not intended to confer any benefits on such Obligor and that the Purchaser Agent and the Purchasers shall have no obligation to such Obligor or any other Person to exercise any rights, enforce any remedies, or take any actions which may be available to them under such agreements.

b.No Interference. Each Obligor acknowledges that each other Obligor has granted to the Purchaser Agent, for the benefit of the Purchaser Agent and the Purchasers, a Lien on the Collateral of such Obligor, and agrees not to interfere with or in any manner oppose a disposition of any Collateral by the Purchaser Agent or any Purchaser after the occurrence and during the continuance of an Event of Default and agrees to not take such action as would materially impact the remedies and rights of the Purchaser Agent or any Purchaser with respect to the Collateral, in accordance with applicable law and the terms of the applicable Note Documents.

c.Reliance. Each Obligor acknowledges and agrees that the Purchaser Agent and the Purchasers will have relied upon and will continue to rely upon the subordination provisions provided for

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herein and the other provisions hereof in entering into the Note Documents and making or issuing and maintaining the Notes and other financial accommodations thereunder.

d.Waivers. Except as provided under the Note Purchase Agreement, each Obligor hereby waives any and all notice of the incurrence of the Senior Debt or any part thereof and any right to require marshaling of assets.

e.Obligations of Each Obligor Not Affected. Each Creditor Obligor hereby agrees that at any time and from time to time, without notice to or the consent of such Creditor Obligor, without incurring responsibility to such Creditor Obligor, and without impairing or releasing the subordination provided for herein or otherwise impairing the rights of the Purchaser Agent or the Purchasers hereunder: (i) the time for any Debtor Obligor's performance of or compliance with any of its agreements contained in the Note Documents may be extended or such performance or compliance may be waived by the Purchaser Agent or the Purchasers; (ii) the agreements of any Debtor Obligor with respect to the Note Documents may from time to time be modified by such Debtor Obligor and the Purchaser Agent or the Purchasers for the purpose of adding any requirements thereto or changing in any manner the rights and obligations of such Debtor Obligor or the Purchaser Agent or the Purchasers thereunder; (iii) the manner, place, or terms for payment of Senior Debt or any portion thereof may be altered or the terms for payment extended, or the Senior Debt may be renewed in whole or in part; (iv) the maturity of the Senior Debt may be accelerated in accordance with the terms of any present or future written agreement by any other Obligor and the Purchaser Agent or the Purchasers; (v) any Collateral may be sold, exchanged, released, or substituted and any Lien in favor of the Purchaser Agent may be terminated, subordinated, or fail to be perfected or become unperfected; (vi) any Person liable in any manner for Senior Debt may be discharged, released, or substituted; and (vii) all other rights against any other Debtor Obligor, any other Person, or with respect to any Collateral may be exercised (or the Purchaser Agent or the Purchasers may waive or refrain from exercising such rights as provided in the Note Documents or under applicable law), in each case, in accordance with the applicable Note Documents and applicable law.

f.Rights of the Purchasers and the Purchaser Agent Not to Be Impaired. No right of the Purchaser Agent or any Purchaser to enforce the subordination provided for herein or to exercise any other rights of such Person hereunder shall at any time in any way be prejudiced or impaired by any act or failure to act by any Obligor, Purchaser or the Purchaser Agent hereunder or under or in connection with the other Note Documents or by any noncompliance by any Obligor with the terms and provisions and covenants herein or in any other Note Document, regardless of any knowledge thereof that the Purchaser Agent or Purchaser may have or otherwise be charged with.

g.Financial Condition of the Obligors. Except as provided under the Note Purchase Agreement, each Obligor shall not have any right to require the Purchaser Agent or any Purchaser to obtain or disclose any information with respect to: (i) the financial condition or character of any other Obligor or the ability of any other Obligor to pay and perform any or all of the Senior Debt; (ii) the Senior Debt; (iii) the Collateral or other security for any or all of the Senior Debt; (iv) the existence or nonexistence of any guarantees of, or any other subordination agreements with respect to, all or any part of the Senior Debt; (v) any action or inaction on the part of the Purchaser Agent, or any Purchaser or any other Person; or (vi) any other matter, fact, or occurrence whatsoever.

h.Acquisition of Liens or Guaranties. Except to the extent permitted under the Note Purchase Agreement, no Creditor Obligor shall, without the prior consent of the Purchaser Agent, acquire any Lien on any asset of any Debtor Obligor or accept any guaranties for the Subordinated Debt.

(9)Subrogation.

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a.Subrogation. Until the Discharge of Senior Debt, no Obligor shall have, nor shall it directly or indirectly exercise, any rights that such Obligor may acquire by way of subrogation under this Agreement, by any payment or distribution to the Purchaser Agent or any Purchaser hereunder or otherwise. Upon the Discharge of Senior Debt, each Obligor may exercise its rights of subrogation to the rights of the Purchaser Agent and the Purchasers to receive payments or distributions applicable to the Senior Debt until the Subordinated Debt shall be paid in full. For the purposes of the foregoing subrogation, no payments or distributions to the Purchaser Agent or any Purchaser of any cash, property, or securities to which any Obligor would be entitled except for the provisions of Section 3, 4, or 5 hereto shall, as among such Creditor Obligor, its creditors (other than the Purchaser Agent and the Purchasers) and any other Obligor, be deemed to be a payment by any other Obligor to or on account of the Senior Debt.

b.Payments Over to the Obligors. If any payment or distribution to which any Creditor Obligor would otherwise have been entitled but for the provisions of Section 3, 4, or 5 hereto shall have been applied pursuant to the provisions of Section 3, 4, or 5 hereto to the Discharge of Senior Debt, such Creditor Obligor shall be entitled to receive from the Purchaser Agent or the Purchasers any payments or distributions received by the Purchaser Agent or the Purchasers in excess of the amount sufficient to cause the Discharge of Senior Debt. If any such excess payment is made to the Purchaser Agent or the Purchasers, the Purchaser Agent or the Purchasers, as the case may be, shall promptly remit such excess payment to such Creditor Obligor and until so remitted shall hold such excess payment in trust for the benefit of such Creditor Obligor.

(10)Continuing Agreement; Reinstatement.

a.Continuing Agreement. This Agreement is a continuing agreement of subordination and shall continue in effect and be binding upon each Obligor until the Discharge of Senior Debt. The subordinations, agreements, and priorities set forth herein shall remain in full force and effect regardless of whether any party hereto in the future seeks to rescind, amend, terminate, or reform, by litigation or otherwise, its respective agreements with any other Obligor.

b.Reinstatement. This Agreement shall continue to be effective or shall be reinstated, as the case may be, if, for any reason, any payment of the Senior Debt by or on behalf of any other Obligor shall be rescinded or must otherwise be restored by the Purchaser Agent or any Purchaser, whether as a result of an Insolvency Event or otherwise.

(11)Transfer of Subordinated Debt. Except as otherwise permitted by the Note Purchase Agreement, no Obligor may assign or transfer its rights and obligations in respect of the Subordinated Debt without the prior written consent of the Purchaser Agent, and any such assignment without the Purchaser Agent's prior written consent shall be null and void. Any such transferee or assignee, as a condition to acquiring an interest in the Subordinated Debt shall agree to be bound hereby, in form satisfactory to the Purchaser Agent.

(12)Obligations of the Obligors Not Affected. The provisions of this Agreement are intended solely for the purpose of defining the relative rights of each Creditor Obligor against each Debtor Obligor, on the one hand, and of the Purchaser Agent and the Purchasers against the Obligors, on the other hand. Nothing contained in this Agreement shall (a) impair, as between each Creditor Obligor and any Debtor Obligor, the obligation of each Debtor Obligor to pay its respective obligations with respect to the Subordinated Debt as and when the same shall become due and payable, or (b) otherwise affect the relative rights of any Creditor Obligor against any Debtor Obligor, on the one hand, and of the creditors

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(other than the Purchaser Agent and the Purchasers) of the Debtor Obligors against the other Debtor Obligors, on the other hand.

(13)Endorsement of Obligor Documents; Further Assurances and Additional Acts.

a.Endorsement of Obligor Documents. At the request of the Purchaser Agent, all documents and instruments evidencing any of the Subordinated Debt, if any, shall be endorsed with a legend in form and substance reasonably satisfactory to the Purchaser Agent noting that such documents and instruments are subject to this Agreement, and each Obligor shall promptly deliver to the Purchaser Agent evidence of the same.

b.Further Assurances and Additional Acts. Each Obligor shall execute, acknowledge, deliver, file, notarize, and register at its own expense all such further agreements, instruments, certificates, financing statements, documents, and assurances, and perform such acts as the Purchaser Agent reasonably shall deem necessary to effectuate the purposes of this Agreement, and promptly provide the Purchaser Agent with evidence of the foregoing reasonably satisfactory in form and substance to the Purchaser Agent.

(14)Costs and Expenses.

a.Payments by the Obligors. Each of the Obligors jointly and severally agrees to pay to the Purchaser Agent (or its designee) all documented out-of-pocket costs and expenses of the Purchaser Agent, including the documented fees and disbursements of outside counsel to the Purchaser Agent, in connection with the negotiation, preparation, execution, delivery, and administration of this Agreement, in each case, to the extent required by, and in accordance with the terms of, Section 2.5 of the Note Purchase Agreement.

b.Additional Payments by the Obligors. Each of the Obligors jointly and severally agrees to pay to the Purchaser Agent (or its designee) on demand all documented out-of-pocket costs and expenses of the Purchaser Agent and the Purchasers, including the documented fees and disbursements of outside counsel to the Purchaser Agent and the Purchasers, in connection with (i) any amendments, modifications or waivers of the terms of this Agreement and (ii) the enforcement or attempted enforcement of, and preservation of rights or interests under, this Agreement, including any losses, costs and expenses sustained by the Purchaser Agent or any Purchaser as a result of any failure by any Obligor to perform or observe its obligations contained in this Agreement.

(15)Miscellaneous.

a.Notices. All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing and shall be mailed, telecopied, or delivered in accordance with the notice provisions contained in the Note Purchase Agreement.

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

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c.Survival. All covenants, agreements, representations and warranties made in this Agreement shall, except to the extent otherwise provided herein, survive the execution and delivery of this Agreement, and shall continue in full force and effect until the Discharge of Senior Debt.

d.Benefits of Agreement. This Agreement is entered into for the sole protection and benefit of the parties hereto, the Purchaser Agent and the Purchasers and their respective successors and assigns, and no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

e.Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by each Obligor, each Purchaser and the Purchaser Agent and their respective successors and assigns except that no Obligor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Purchaser Agent.

f.GOVERNING LAW; CONSENT TO JURISDICTION. ARTICLE XI (CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER) OF THE NOTE PURCHASE AGREEMENT IS HEREBY INCORPORATED BY REFERENCE, *MUTATIS MUTANDIS*.

g.Entire Agreement. This Agreement constitutes the entire agreement of each of the Obligors with respect to the matters set forth herein and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

h.Amendments and Waivers. No amendment or waiver of any provision of this Agreement and no consent to any departure by any Obligor therefrom shall in any event be effective unless the same shall be in writing and signed by each of the Obligors and the Purchaser Agent. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

i.Conflicts. In case of any conflict or inconsistency between any terms of this Agreement, on the one hand, and any documents or instruments in respect of the Subordinated Debt, on the other hand, the terms of this Agreement shall control.

j.Severability. Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

k.Interpretation. This Agreement is the result of negotiations between, and has been reviewed by the respective counsel to, the Obligors, the Purchaser Agent and the Purchasers and is the product of all parties hereto. Accordingly, this Agreement shall not be construed against the Purchaser Agent or the Purchasers merely because of the Purchaser Agent's or the Purchasers' involvement in the preparation hereof.

l.Counterparts; Facsimile Execution. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

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m.Termination of Agreement. Subject to Section 10(b) hereof, upon the Discharge of Senior Debt, this Agreement shall terminate without further action and the Purchaser Agent, on behalf of the Purchasers, shall, at the Obligors' joint and several expense, and without any recourse, representation or warranty, promptly execute and deliver to each Obligor such documents and instruments as shall be reasonably necessary or available to evidence such termination.

(16)Additional Obligors. The initial Obligors hereunder shall be such of the Obligors as are signatories hereto as of the date hereof. From time to time subsequent to the date hereof, additional Obligors, as required by the Note Purchase Agreement or the other Note Documents, may become parties hereto, as additional Obligors (each, an "Additional Obligor"), by executing and delivering a counterpart of this Agreement. Upon delivery of any such counterpart to the Purchaser Agent, notice of which is hereby waived by each other Obligor, such Additional Obligor shall be an Obligor hereunder and shall be as fully a party hereto as if such Additional Obligor were an original signatory hereof. Each Obligor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Obligor hereunder. This Agreement shall be fully effective as to any Obligor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be an Obligor hereunder.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**OBLIGORS:**

**CLEARPOINT NEURO, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLEARPOINT NEURO U.K. LTD**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLEARPOINT NEURO (CANADA) INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLEARPOINT NEURO GERMANY GMBH.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLEARPOINT NEURO ITALY, S.R.L.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**Exhibit F**

**Form of Guarantee Assumption Agreement**

[see attached]



FORM OF GUARANTEE ASSUMPTION AGREEMENT

GUARANTEE ASSUMPTION AGREEMENT dated as of [DATE] (this “**Agreement**”) by [NAME OF ADDITIONAL SUBSIDIARY GUARANTOR], a \_\_\_\_\_ [corporation][limited liability company] (the “**Additional Subsidiary Guarantor**”), in favor of CALW SA LLC, a Delaware limited liability company, as Purchaser Agent for the benefit of the Secured Parties under that certain Note Purchase Agreement, dated as of May [●], 2025 (as amended, restated, supplemented or otherwise modified from time to time, the “**Note Purchase Agreement**”), among ClearPoint Neuro, Inc., a Delaware corporation (“**Issuer**”), the other Obligors from time to time parties thereto, Purchaser Agent, and the Purchasers from time to time party thereto. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Note Purchase Agreement.

Pursuant to Section 6.11 of the Note Purchase Agreement, the Additional Subsidiary Guarantor hereby agrees to become a “Guarantor” for all purposes of the Note Purchase Agreement. Without limiting the foregoing, the Additional Subsidiary Guarantor hereby, (i) jointly and severally with the other Guarantors, guarantees to Purchaser Agent and the Purchasers and their successors and assigns the prompt Payment in Full when due (whether at stated maturity, by acceleration or otherwise) of all Guaranteed Obligations (as defined in Section 12.1 of the Note Purchase Agreement) in the same manner and to the same extent as is provided in Article XII of the Note Purchase Agreement and (ii) grants a security interest in the Collateral owned by such Additional Subsidiary Guarantor pursuant to, and on the terms and conditions set forth in, the Note Purchase Agreement. In addition, as of the date hereof, the Additional Subsidiary Guarantor hereby makes the representations and warranties set forth in Article V of the Note Purchase Agreement (other than Section 5.4), with respect to itself and its obligations under this Agreement and the other Note Documents, as if each reference in such Sections to the Note Documents included reference to this Agreement, such representations and warranties to be made as of the date hereof.

The Additional Subsidiary Guarantor hereby instructs its counsel to deliver the opinions referred to in Section 6.11 of the Note Purchase Agreement to Purchaser Agent.

IN WITNESS WHEREOF, the Additional Subsidiary Guarantor has caused this Guarantee Assumption Agreement to be duly executed and delivered as of the day and year first above written.

[ADDITIONAL SUBSIDIARY GUARANTOR]

By \_\_\_\_\_  
Name:  
Title:

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May 12, 2025

## ClearPoint Neuro Announces Investment of up to \$110 Million by Oberland Capital with \$33.5 Million Funded at Closing

**SOLANA BEACH, CALIFORNIA / (ACCESS Newswire) / May 12, 2025** / ClearPoint Neuro, Inc. (NASDAQ: CLPT) (the "Company"), a global device, cell, and gene therapy-enabling company offering precise navigation to the brain and spine, today announced that it has entered into a note financing arrangement with Oberland Capital Management LLC ("Oberland Capital") of up to \$105 Million, with \$30.0 million of gross proceeds funded at closing. Additional note financing will be provided to the Company by Oberland Capital under the following terms:

- An additional \$25.0 million at the option of the Company any time prior to December 31, 2026; and
- An additional \$50.0 million at the option of the Company and Oberland Capital any time prior to December 31, 2026.

In addition to the note financing, the Company entered into a stock purchase agreement with Oberland Capital whereby Oberland Capital purchased 275,808 shares of the Company's common stock at a price of \$12.69 per share in a registered direct offering, representing an additional \$3,500,003.52 of gross proceeds to the Company. The price per share was equal to the trailing 30-trading days volume-weighted average price for the period ending on the day prior to the date of the stock purchase agreement. Oberland Capital also has the right to participate in a future offering of the Company's common stock in an amount of \$1.5 million on or before December 31, 2026.

The Company intends to use the proceeds from the offerings for general corporate purposes, which may include capital expenditures, working capital, and general and administrative expenses.

"We are thrilled to begin this partnership with Oberland Capital, as their goal of supporting the development and commercialization of innovative medical technologies such as cell and gene therapy is perfectly aligned with our vision, our products, and our partners," commented Danilo D'Alessandro, Chief Financial Officer of ClearPoint Neuro. "Even as the global economic landscape continues to evolve, many of our 60+ pharmaceutical partners are routinely asking us to accelerate our new product introductions, expand our installed base, and prepare hospitals for the influx of new patients who will seek treatment once these advanced therapies become available. Oberland Capital has provided us with a substantial, creative, and flexible source of capital that will allow us to respond to our cell and gene therapy partners who depend on us to support their key clinical trials and eventual commercialization over the next few years."

William Clifford, Partner at Oberland Capital, stated, "ClearPoint Neuro has a market leading portfolio of medical devices for neurosurgical navigation and a large and growing pipeline of cell and gene therapy delivery partnerships with pharmaceutical companies to serve patients with high unmet medical needs. We are excited to partner with ClearPoint Neuro through this structured financing, which includes a combination of debt, royalty and equity, and look forward to helping the Company achieve its long-term objectives."

The shares of common stock in the registered direct offering are being offered pursuant to a shelf registration statement on Form S-3 (File No. 333-275476), which was declared effective by the U.S. Securities and Exchange Commission (the "SEC") on November 20, 2023. The notes are offered pursuant to an exemption from the registration requirements of the Act under Section 4(a)(2) thereof and have not been registered under the Act or applicable state securities laws. A prospectus supplement relating to the shares of common stock will be filed by the Company with the SEC. When available, copies of the prospectus supplement relating to the registered direct offering, together with the accompanying prospectus, can be obtained at the SEC's website at [www.sec.gov](http://www.sec.gov).

Covington & Burling LLP served as legal advisor to ClearPoint Neuro on the financings and Sheppard, Mullin, Richter & Hampton LLP served as legal advisor to ClearPoint Neuro on the registered direct offering. Cooley LLP advised Oberland Capital in these transactions.

This press release does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be any sales of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

#### **About ClearPoint Neuro**

ClearPoint Neuro is a device, cell, and gene therapy-enabling company offering precise navigation to the brain and spine. The Company uniquely provides both established clinical products as well as preclinical development services for controlled drug and device delivery. The Company's flagship product, the ClearPoint Neuro Navigation System, has FDA clearance and is CE-marked. ClearPoint Neuro is engaged with healthcare and research centers in North America, Europe, Asia, and South America. The Company is also partnered with the most innovative pharmaceutical/biotech companies, academic centers, and contract research organizations, providing solutions for direct central nervous system delivery of therapeutics in preclinical studies and clinical trials worldwide. To date, thousands of procedures have been performed and supported by the Company's field-based clinical specialist team, which offers support and services to our customers and partners worldwide. For more information, please visit [www.clearpointneuro.com](http://www.clearpointneuro.com).

#### **About Oberland Capital**

Oberland Capital is a private investment firm formed in 2013 with assets under management in excess of \$3.0 billion, focused exclusively on investing in the global healthcare industry and specializing in flexible investment structures customized to meet the specific needs of its transaction partners. Oberland Capital's broad suite of financing solutions includes monetization of royalty streams, acquisition of future product revenues, creation of project-based financing structures, and investments in traditional debt and equity. With a combination of deep industry knowledge and extensive structured finance experience, the Oberland Capital team has a history of creating value for its transaction partners. For more information, please visit [www.oberlandcapital.com](http://www.oberlandcapital.com).

#### **Forward Looking Statements**

This press release contains "forward-looking statements" that are subject to substantial risks and uncertainties. All statements, other than statements of historical fact, contained in this press release

are forward-looking statements. Forward-looking statements contained in this press release include, but are not limited to, our intended use of proceeds from the offering, our ability to respond to and support our pharmaceutical partners by introducing new products, expanding our installed base and preparing hospitals for new patients, and patient demand for the expansion of our products and services. Forward-looking statements are based on the Company's current expectations and are subject to inherent uncertainties, risks and assumptions that are difficult to predict. Further, certain forward-looking statements are based on assumptions as to future events that may not prove to be accurate. These and other risks and uncertainties are described more fully in the "Risk Factors" section of the Company's Annual Report on Form 10-K for the year ended December 31, 2024. The Company does not assume any obligation to update these forward-looking statements.

#### **Contact Information**

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