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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 3, 2026

Celcuity Inc.
(Exact name of Registrant as Specified in its Charter)

Delaware	**001-38207**	**82-2863566**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

2800 Campus Drive, Suite 140
Minneapolis, Minnesota 55441
(Address of Principal Executive Offices and Zip Code)

(763) 392-0123
(Registrant's telephone number, including area code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.001 par value per share	CELC	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

On June 3, 2026, Celcuity Inc. (the "Company") entered into an underwriting agreement (the "Underwriting Agreement") with Jefferies LLC, J.P. Morgan Securities LLC, TD Securities (USA) LLC and Guggenheim Securities, LLC, as representatives of the several underwriters named therein (collectively, the "Underwriters"), agreeing, subject to customary conditions, to issue and sell in a public offering $500,000,000 aggregate principal amount of the Company's 0.250% Convertible Senior Notes due 2032 (the "Notes") to the Underwriters (the "Offering"). In addition, pursuant to the Underwriting Agreement, the Company granted the Underwriters an option to purchase up to an additional $75,000,000 aggregate principal amount of the Notes, solely to cover over-allotments. On June 4, 2026, the Underwriters exercised such option to purchase an additional $75,000,000 aggregate principal amount of the Notes. The issuance of $575,000,000 aggregate principal amount of the Notes was completed on June 8, 2026. The Notes were issued pursuant to, and are governed by, an indenture (the "Base Indenture"), dated as of August 1, 2025, between the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), as supplemented by a second supplemental indenture (the "Supplemental Indenture," and the Base Indenture, as supplemented by the Supplemental Indenture, the "Indenture"), dated as of June 8, 2026, between the Company and the Trustee.

The net proceeds from the Offering, after deducting underwriting discounts and commissions and offering expenses, were approximately $557.0 million, including the proceeds from the Underwriters' exercise of their over-allotment option in full. The Company intends to use the net proceeds from the Offering to repay in full all outstanding obligations under the Loan Agreement (defined below) and the remainder for working capital and general corporate purposes, which may include clinical trial expenditures, commercial launch expenditures, commercialization expenditures, research and development expenditures, capital expenditures, expansion of business development activities and other general corporate purposes. The Company may also use a portion of the proceeds for the potential acquisition of businesses, technologies, and products, although the Company has no current binding understandings, commitments, or agreements to do so.

The Notes will be general, unsecured, senior obligations of the Company. The Notes will bear interest at a rate of 0.250% per annum, payable semi-annually in arrears on February 1 and August 1 of each year, beginning on February 1, 2027. In addition, special interest will accrue on the Notes upon the occurrence of certain events relating to the Company's failure to file certain reports with the U.S. Securities and Exchange Commission (the "SEC") as provided in the Indenture. The Notes will mature on August 1, 2032, unless earlier repurchased, redeemed or converted. The Notes will be convertible at the option of the holders if certain conditions are met and during certain periods, at an initial conversion rate of 8.0302 shares of the Company's common stock, par value $0.001 per share (the "Common Stock"), per $1,000 principal amount of the Notes, which is equivalent to an initial conversion price of approximately $124.53 per share of Common Stock. The conversion rate and conversion price will be subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a "Make-Whole Fundamental Change" (as defined in the Indenture) occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time. The Company will settle conversions of the Notes by paying or delivering, as applicable, cash, shares of Common Stock or a combination of cash and shares of Common Stock, at the Company's election, based on the applicable conversion rate.

The Notes will be redeemable, in whole or in part (subject to certain limitations described below), at the Company's option at any time, and from time to time, on a redemption date on or after August 6, 2029 and on or before the 31st scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of Common Stock exceeds 130% of the conversion price on (i) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice; and (ii) the trading day immediately before the date the Company sends such notice. However, the Company may not redeem less than all of the outstanding Notes unless at least $50.0 million aggregate principal amount of Notes are outstanding and not called for redemption as of the time the Company sends the related redemption notice. In addition, calling any Note for redemption will constitute a Make-Whole Fundamental Change with respect to that Note, in which case the conversion rate applicable to the conversion of that Note will be increased in certain circumstances if it is converted after it is called for redemption.

If certain events that constitute a "Fundamental Change" (as defined in the Indenture) occur, then, subject to certain exceptions as provided in the Indenture, noteholders may require the Company to repurchase their Notes at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid special interest, if any, to, but excluding, the fundamental change repurchase date.

The Notes will have customary provisions relating to the occurrence of "Events of Default" (as defined in the Indenture), which include the following: (i) certain payment defaults on the Notes (which, in the case of a default in the payment of interest on the Notes, will be subject to a 30-day cure period); (ii) the Company's failure to send certain notices under the Indenture within specified periods of time; (iii) the Company's failure to convert a Note in accordance with the Indenture within a specified period of time; (iv) the Company's failure to comply with certain covenants in the Indenture relating to the Company's ability to consolidate with or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to another person; (v) a default by the Company in its other obligations or agreements under the Indenture or the Notes if such default is not cured or waived within 60 days after notice is given in accordance with the Indenture; (vi) certain defaults by the Company or any of its significant subsidiaries with respect to indebtedness for borrowed money of at least $60,000,000; (vii) certain events of bankruptcy, insolvency and reorganization involving the Company or any of its significant subsidiaries; and (viii) certain judgments being rendered against the Company or any of its significant subsidiaries for the payment of at least $60,000,000.

If an Event of Default involving bankruptcy, insolvency or reorganization events with respect to the Company (and not solely with respect to a significant subsidiary of the Company) occurs, then the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any person. If any other Event of Default occurs and is continuing, then, the Trustee, by notice to the Company, or noteholders of at least 25% of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding to become due and payable immediately. Notwithstanding the foregoing, the Company may elect, at its option, that the sole remedy for an Event of Default relating to certain failures by the Company to comply with certain reporting covenants in the Indenture consists exclusively of the right of the noteholders to receive special interest on the Notes for up to 365 days, at a rate per annum equal to 0.25% of the principal amount of the Notes for the first 180 days on which special interest accrues and, thereafter, at a rate per annum equal to 0.50% of the principal amount thereof.

The above description of the Underwriting Agreement, the Indenture and the Notes is a summary and is not complete. The Underwriting Agreement contains customary representations, warranties, covenants and indemnification obligations of the Company and the Underwriters, including for liabilities under the Securities Act of 1933, as amended (the "Securities Act"), and other obligations of the parties. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement and may be subject to limitations agreed upon by such parties. A copy of the Underwriting Agreement, the Base Indenture, the Supplemental Indenture and the form of the certificate representing the Notes are filed as Exhibits 1.1, 4.1, 4.2 and 4.3, respectively, to this Current Report on Form 8-K, and the above summary is qualified in its entirety by reference to the terms of the Underwriting Agreement, the Base Indenture, the Supplemental Indenture and the Notes set forth in such exhibits.

The Offering is being made pursuant to a prospectus supplement, dated June 3, 2026, filed with the SEC on June 5, 2026 and an accompanying base prospectus that forms a part of the Registration Statement. This Current Report on Form 8-K does not constitute an offer to sell or a solicitation of an offer to buy any of the Notes.

Item 1.02 Termination of a Material Definitive Agreement

On June 8, 2026, the Company completed a voluntary prepayment of all outstanding principal, accrued and unpaid interest, fees, costs and expenses, equal to approximately $[137.5 million] in the aggregate (the "Payoff Amount"), under that certain Amended and Restated Loan and Security Agreement, dated as of May 30, 2024, by and among the Company, as borrower, Oxford Finance LLC, a Delaware limited liability company ("Oxford"), as collateral agent and a lender, Innovatus Life Sciences Lending Fund I, LP, a Delaware limited partnership ("Innovatus" and together with Oxford, the "Lenders"), as a lender, and the other lenders party thereto (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Loan Agreement"). Upon receipt by the Lenders of the Payoff Amount on June 8, 2026, all obligations, covenants, debts and liabilities of the Company under the Loan Agreement were satisfied and discharged in full, and the Loan Agreement and all other documents entered into in connection with the Loan Agreement were terminated.

The Loan Agreement provided for term loans with aggregate maximum commitments of up to $350 million (the "Term Loans"), with the potential for an additional $150 million in discretionary term loans at the Lenders' sole discretion. Under the Loan Agreement, the Company had total borrowings of $100 million as of May 30, 2024, and on September 9, 2025, the Company borrowed an additional $30 million. The Term Loans bore interest at a floating per annum rate equal to the greater of (i) the Prime Rate (as defined in the Loan Agreement) and (ii) 7.75%, plus 2.85% (the "Basic Rate"). Additionally, 1.00% of the Basic Rate was payable in kind by adding such amount to the outstanding principal balance on a monthly basis through May 31, 2027. Interest-only payments on the borrowings under the Loan Agreement were due through May 31, 2027. Interest-only payments on the borrowings under the Loan Agreement were due through August 1, 2028, or if certain regulatory milestones were met, through March 1, 2029. After the interest-only payment period, borrowings under the Loan Agreement were due in equal monthly payments of principal and accrued interest until the maturity date of November 1, 2029.

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

The disclosure set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 8.01 Other Events.

Press Release – Launch of Offering

On June 3, 2026, the Company issued a press release announcing that it had launched the Offering. A copy of this press release is filed as Exhibit 99.1 hereto and is incorporated herein by reference.

Press Release – Pricing of Notes Offering

On June 3, 2026, the Company issued a press release announcing that it priced the Offering to issue and sell $500 million aggregate principal amount of 0.250% Convertible Senior Notes due 2032. A copy of this press release is filed as Exhibit 99.2 hereto and is incorporated herein by reference.

Forward-Looking Statements

This Current Report on Form 8-K contains "forward-looking" statements, as that term is defined under the federal securities laws, including but not limited to statements regarding the Offering, the Company's expectations regarding the expected net proceeds from the Offering and the use of those net proceeds. These forward-looking statements are based on the Company's current assumptions, expectations and beliefs and are subject to substantial risks, uncertainties, assumptions and changes in circumstances that may cause the Company's plans to differ materially from those expressed or implied in any forward-looking statement. These risks include, but are not limited to, market risks, trends and conditions, and those risks described in the Company's filings with the SEC from time to time, particularly under the captions "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," including the Annual Report on Form 10-K for the fiscal year ended December 31, 2025, the Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2026 and subsequent filings with the SEC. Copies of these documents may be obtained by visiting the SEC's website at www.sec.gov. These forward-looking statements represent the Company's estimates and assumptions only as of the date of this Current Report on Form 8-K. The Company assumes no obligation and does not intend to update these forward-looking statements, except as required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

1.1	Underwriting Agreement, dated as of June 3, 2026, among Celcuity Inc. and the representatives of the underwriters named therein, relating to the offer and sale of 0.250% Convertible Senior Notes due 2032.
4.1	Indenture, dated as of August 1, 2025, between Celcuity Inc. and U.S. Bank Trust Company, National Association, as trustee (incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed August 1, 2025).
4.2	Second Supplemental Indenture, dated as of June 8, 2026, between Celcuity Inc. and U.S. Bank Trust Company, National Association, as trustee.
4.3	Form of certificate representing the 0.250% Convertible Senior Notes due 2032 (included as Exhibit A in Exhibit 4.2).
5.1	Opinion of Faegre Drinker Biddle & Reath LLP.
23.1	Consent of Faegre Drinker Biddle & Reath LLP (included in Exhibit 5.1).
99.1	Press release dated June 3, 2026.
99.2	Press release dated June 3, 2026.
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.

Date: June 8, 2026

CELCUITY INC.

By: */s/ Brian F. Sullivan*
Brian F. Sullivan
Chief Executive Officer

Exhibit 1.1

$500,000,000 0.250% Convertible Senior Notes Due 2032
Celcuity Inc.

UNDERWRITING AGREEMENT

June 3, 2026

JEFFERIES LLC
J.P. MORGAN SECURITIES LLC
TD SECURITIES (USA) LLC
GUGGENHEIM SECURITIES, LLC
As Representatives of the several Underwriters

c/o JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

c/o J.P. MORGAN SECURITIES LLC
270 Park Avenue
New York, New York 10017

c/o TD SECURITIES (USA) LLC
1 Vanderbilt Avenue
New York, New York 10017

c/o GUGGENHEIM SECURITIES, LLC
330 Madison Avenue
New York, New York 10017
Ladies and Gentlemen:

Introductory. Celcuity Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to the several underwriters named in Schedule A (the "**Underwriters**") $500,000,000 principal amount of 0.250% Convertible Senior Notes due 2032 of the Company (the "**Securities**"). The $500,000,000 principal amount of Securities to be sold by the Company are called the "**Firm Securities**." In addition, the Company has granted to the Underwriters an option to purchase up to an additional $75,000,000 principal amount of Securities as provided in Section 2. The additional $75,000,000 principal amount of Securities to be sold by the Company pursuant to such option are collectively called the "**Optional Securities**." The Firm Securities and, if and to the extent such option is exercised, the Optional Securities are collectively called the "**Offered Securities**." Jefferies LLC ("**Jefferies**"), J.P. Morgan Securities LLC ("**J.P. Morgan**"), TD Securities (USA) LLC ("**TD Cowen**") and Guggenheim Securities, LLC ("**Guggenheim Securities**") have agreed to act as representatives of the several Underwriters (in such capacity, the "**Representatives**") in connection with the offering and sale of the Offered Securities. The Offered Securities will be convertible into cash, shares (the "**Underlying Securities**") of common stock of the Company, par value $0.001 per share (the "**Common Stock**"), or a combination of cash and Underlying Securities, at the Company's election. The Securities will be issued pursuant to an indenture (the "**Base Indenture**"), dated as of August 1, 2025, as supplemented by a supplemental indenture (the Base Indenture, as so supplemented, the "**Indenture**"), to be dated as of the First Closing Date (as hereinafter defined), between the Company and U.S. Bank Trust Company, National Association, as trustee (the "**Trustee**"). To the extent there are no additional underwriters listed on Schedule A, the term "Representatives" as used herein shall mean you, as Underwriters, and the term "Underwriters" shall mean either the singular or the plural, as the context requires.

The Company has prepared and filed with the Securities and Exchange Commission (the "**Commission**") a shelf registration statement on Form S-3, File No. 333-292646, including a base prospectus (the "**Base Prospectus**") to be used in connection with the public offering and sale of the Offered Securities. Such registration statement, as amended, including the financial statements, exhibits and schedules thereto, in the form in which it became effective under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the "**Securities Act**"), including all documents incorporated or deemed to be incorporated by reference therein and any information deemed to be a part thereof at the time of effectiveness pursuant to Rule 430B under the Securities Act, is called the "**Registration Statement**." The preliminary prospectus supplement dated June 3, 2026 describing the Offered Securities and the offering thereof (the "**Preliminary Prospectus Supplement**"), together with the Base Prospectus, is called the "**Preliminary Prospectus**," and the Preliminary Prospectus and any other prospectus supplement to the Base Prospectus in preliminary form that describes the Offered Securities and the offering thereof and is used prior to the filing of the Prospectus (as defined below), together with the Base Prospectus, is called a "**preliminary prospectus**." As used herein, the term "**Prospectus**" shall mean the final prospectus supplement to the Base Prospectus that describes the Offered Securities and the offering thereof (the "**Final Prospectus Supplement**"), together with the Base Prospectus, in the form first used by the Underwriters to confirm sales of the Offered Securities or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act. References herein to the Preliminary Prospectus, any preliminary prospectus and the Prospectus shall refer to both the prospectus supplement and the Base Prospectus components of such prospectus. As used herein, "**Applicable Time**" is 5:45 p.m. (New York City time) on June 3, 2026. As used herein, "**free writing prospectus**" has the meaning set forth in Rule 405 under the Securities Act, and "**Time of Sale Prospectus**" means the Preliminary Prospectus, as amended or supplemented immediately prior to the Applicable Time, together with the free writing prospectuses, if any, identified in Schedule B hereto and the pricing term sheet set forth on Schedule C hereto. As used herein, **"Road Show"** means a "road show" (as defined in Rule 433 under the Securities Act) relating to the offering of the Offered Securities contemplated hereby that is a "written communication" (as defined in Rule 405 under the Securities Act). As used herein, "**Section 5(d) Written Communication**" means each written communication (within the meaning of Rule 405 under the Securities Act) that is made in reliance on Section 5(d) of the Securities Act by the Company or any person authorized to act on behalf of the Company to one or more potential investors that are qualified institutional buyers ("**QIBs**") and/or institutions that are accredited investors ("**IAIs**"), as such terms are respectively defined in Rule 144A and Rule 501(a) under the Securities Act, to determine whether such investors might have an interest in the offering of the Offered Securities; "**Section 5(d) Oral Communication**" means each oral communication, if any, made in reliance on Section 5(d) of the Securities Act by the Company or any person authorized to act on behalf of the Company made to one or more QIBs and/or one or more IAIs to determine whether such investors might have an interest in the offering of the Offered Securities; "**Marketing Materials**" means any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Offered Securities, including any roadshow or investor presentations made to investors by the Company (whether in person or electronically); and "**Permitted Section 5(d) Communication**" means the Section 5(d) Written Communication(s) and Marketing Materials listed on Schedule C attached hereto.

All references in this Agreement to the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus and the Prospectus shall include the documents incorporated or deemed to be incorporated by reference therein. All references in this Agreement to financial statements and schedules and other information which are "contained," "included" or "stated" in, or "part of" the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus and all other references of like import, shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus, as the case may be. All references in this Agreement to amendments or supplements to the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus, the Time of Sale Prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "**Exchange Act**") that is or is deemed to be incorporated by reference in the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus or the Prospectus, as the case may be. All references in this Agreement to (i) the Registration Statement, the Preliminary Prospectus, any preliminary prospectus, the Base Prospectus or the Prospectus, any amendments or supplements to any of the foregoing, or any free writing prospectus, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("**EDGAR**"), and (ii) the Prospectus shall be deemed to include any "electronic Prospectus" provided for use in connection with the offering of the Offered Securities as contemplated by Section 3(n) of this Agreement.

The Company hereby confirms its agreements with the Underwriters as follows:

Section 1. Representations and Warranties of the Company. The Company hereby represents, warrants and covenants to each Underwriter, as of the date of this Agreement, as of the First Closing Date (as hereinafter defined) and as of each Option Closing Date (as hereinafter defined), if any, as follows:

(a) ***Compliance with Registration Requirements.*** The Registration Statement has become effective under the Securities Act. The Company has complied, to the Commission's satisfaction with all requests of the Commission for additional or supplemental information, if any. No stop order suspending the effectiveness of the Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated or threatened by the Commission. At the time the Company's Annual Report on Form 10-K for the year ended December 31, 2025 was filed with the Commission, or, if later, at the time the Registration Statement was originally filed with the Commission, as well as at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Securities Act) made any offer relating to the Offered Securities in reliance on the exemption contained in Rule 163 under the Securities Act, the Company was a "well-known seasoned issuer" as defined in Rule 405 under the Securities Act, and as of the date hereof, the Company met or meets the then-applicable requirements for use of Form S-3 under the Securities Act. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 under the Securities Act, and became effective on January 9, 2026. The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the Company's use of the automatic shelf registration form. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the Time of Sale Prospectus and the Prospectus, at the time they were or hereafter are filed with the Commission, or became effective under the Exchange Act, as the case may be, complied and will comply in all material respects with the requirements of the Exchange Act. As of the date of this Agreement, the Company is an "experienced issuer" as defined in FINRA Rule 5110(j)(6).

(b) ***Disclosure.*** Each preliminary prospectus and the Prospectus when filed complied in all material respects with the Securities Act and, if filed by electronic transmission pursuant to EDGAR, was identical (except as may be permitted by Regulation S-T under the Securities Act) to the copy thereof delivered to the Underwriters for use in connection with the offer and sale of the Offered Securities. Each of the Registration Statement and any post-effective amendment thereto, at the time it became or becomes effective, complied and will comply in all material respects with the Securities Act and the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (collectively, the "**Trust Indenture Act**"), and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, the Time of Sale Prospectus did not, and at the First Closing Date (as defined in Section 2) and at each applicable Option Closing Date (as defined in Section 2), will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Prospectus, as of its date, did not, and at the First Closing Date and at each applicable Option Closing Date, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the three immediately preceding sentences do not apply to (i) that part of the Registration Statement that constitutes the Statement of Eligibility and Qualification (Form T-1) of the Trustee under the Trust Indenture Act or (ii) statements in or omissions from the Registration Statement or any post-effective amendment thereto, or the Prospectus or the Time of Sale Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with written information relating to any Underwriter furnished to the Company in writing by the Representatives expressly for use therein, it being understood and agreed that the only such information consists of the information described in Section 9(b) below. There are no contracts or other documents required to be described in the Time of Sale Prospectus or the Prospectus or to be filed as an exhibit to the Registration Statement which have not been described or filed as required. The statements set forth in the Registration Statement, the Time of Sale Prospectus and the Prospectus under the caption "Description of Notes" and "Description of Capital Stock" insofar as they purport to constitute a summary of the terms of the Securities and the Common Stock, are accurate, complete and fair in all material respects.

(c) ***Free Writing Prospectuses; Road Show.*** As of the determination date referenced in Rule 164(h) under the Securities Act, the Company was not, is not or will not be (as applicable) an "ineligible issuer" in connection with the offering of the Offered Securities pursuant to Rules 164, 405 and 433 under the Securities Act. Each free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of Rule 433 under the Securities Act, including timely filing with the Commission, retention and legending, as applicable, and each such free writing prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Offered Securities did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, the Prospectus or any preliminary prospectus unless such information has been superseded or modified as of such time. Except for the free writing prospectuses, if any, identified in Schedule B, and electronic road shows, if any, furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior written consent, prepare, use or refer to, any free writing prospectus. Each Road Show, when considered together with the Time of Sale Prospectus, did not, as of the Applicable Time, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) ***Testing-the-Waters Materials.*** The Company (i) has not alone engaged in any Testing-the-Waters Communications in connection with the offering to which this Agreement relates and (ii) has not authorized anyone to engage in Testing-the-Waters Communications in connection with the offering to which this Agreement relates. The Company has not distributed or approved for distribution any Written Testing-the-Waters Communications in connection with the offering of the Offered Securities. "Testing-the-Waters Communication" means any oral or written communication with potential investors undertaken in reliance on Rule 163B under the Securities Act. "Written Testing-the-Waters Communication" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

(e) ***Distribution of Offering Material by the Company*****.** Prior to the later of (i) the expiration or termination of the option granted to the several Underwriters in Section 2 and (ii) the completion of the Underwriters' distribution of the Offered Securities, the Company has not distributed and will not distribute any offering material in connection with the offering and sale of the Offered Securities other than the Registration Statement, the Time of Sale Prospectus, the Prospectus or any free writing prospectus reviewed and consented to by the Representatives, the free writing prospectuses, if any, identified on Schedule B hereto and any Permitted Section 5(d) Communications.

(f) ***Due Authorization.*** The Company has full right, power and authority to execute and deliver this Agreement, the Indenture and the Offered Securities (collectively, the "**Transaction Documents**") and to perform its obligations hereunder and thereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of each of the Transaction Documents and the consummation by it of the transactions contemplated thereby or by the Time of Sale Prospectus and the Prospectus has been duly and validly taken.

(g) ***The Indenture****.* The Indenture has been duly authorized by the Company and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability (collectively, the "**Enforceability Exceptions**"), and at the First Closing Date (and, if applicable, at each Option Closing Date), the Indenture will conform in all material respects to the requirements of the Trust Indenture Act.

(h) ***Authorization of the Offered Securities*****.** The Offered Securities have been duly authorized for issuance and sale pursuant to this Agreement and at the First Closing Date and any Option Closing Date, as the case may be, will have been duly executed by the Company and, when authenticated, issued and delivered by the Company as provided in the Indenture against payment therefor pursuant to this Agreement, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(i) ***The Maximum Number of Underlying Securities***. Upon issuance and delivery of the Offered Securities in accordance with this Agreement and the Indenture, the Offered Securities will be convertible at the option of the holder thereof into cash, Underlying Securities, or a combination of cash and Underlying Securities, at the Company's election, in accordance with the terms of the Offered Securities and the Indenture. A number of Underlying Securities equal to the product of (x) the number of Offered Securities (assuming the Underwriters exercise their over-allotment option to purchase Optional Securities in full) and (y) the conversion rate for the Offered Securities (assuming the maximum increase to such conversion rate for a conversion of Offered Securities in connection with a "make-whole fundamental change" or a redemption of the Offered Securities) (the "**Maximum Number of Underlying Securities**") have been duly authorized and reserved for issuance by the Company by all necessary corporate action and such Maximum Number of Underlying Securities, if and when issued upon any conversion of the Offered Securities in accordance with the terms of the Offered Securities and the Indenture, will be validly issued, fully paid and non-assessable; no holder of such Underlying Securities will be subject to personal liability by reason of being such a holder; and the issuance of such Underlying Securities upon any such conversion will not be subject to the preemptive or other similar rights of any securityholder of the Company.

(j) ***Descriptions of the Transaction Documents***. Each Transaction Document conforms (or, at the First Closing Date (and, if applicable, at each Option Closing Date), will conform) in all material respects to the description thereof contained in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus.

(k) ***No Applicable Registration or Other Similar Rights.*** There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived or satisfied.

(l) ***No Material Adverse Change.*** Except as otherwise disclosed in the Registration Statement, the Time of Sale Prospectus and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement, the Time of Sale Prospectus and the Prospectus: (i) there has been no material adverse change, or any development that would be expected to result in a material adverse change, in (A) the condition, financial or otherwise, or in the earnings, business, properties, operations, operating results, assets, liabilities or prospects, whether or not arising from transactions in the ordinary course of business, of the Company or (B) the ability of the Company to consummate the transactions contemplated by this Agreement or perform its obligations under the Transaction Documents (any such change being referred to herein as a "**Material Adverse Change**"); (ii) the Company has not incurred any material liability or obligation, indirect, direct or contingent, including without limitation any losses or interference with its business from fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that are material, individually or in the aggregate, to the Company, and has not entered into any transactions not in the ordinary course of business; and (iii) there has not been any material decrease in the capital stock or any material increase in any short-term or long-term indebtedness of the Company and there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of capital stock, or any repurchase or redemption by the Company of any class of capital stock.

(m) ***Independent Accountants.*** Boulay PLLP, which has expressed its opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as a part of the Registration Statement, the Time of Sale Prospectus and the Prospectus is, (i) an independent registered public accounting firm as required by the Securities Act, the Exchange Act, and the rules of the Public Company Accounting Oversight Board ("**PCAOB**"), (ii) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Securities Act and (iii) a registered public accounting firm as defined by the PCAOB whose registration has not been suspended or revoked and who has not requested such registration to be withdrawn.

(n) ***Financial Statements*****.** The financial statements of the Company included or incorporated by reference in the Registration Statement, the Time of Sale Prospectus and the Prospectus, together with the related notes and schedules, present fairly the consolidated financial position of the Company as of the dates indicated and the results of their operations, changes in stockholders' equity and cash flows for the periods specified. Such financial statements have been prepared in compliance with the requirements of the Securities Act and the Exchange Act and in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. The interactive data in eXtensible Business Reporting Language included in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto. No other historical or pro forma financial statements or supporting schedules are required to be included in the Registration Statement, the Time of Sale Prospectus or the Prospectus. The other financial data set forth in or incorporated by reference in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus has been derived from the accounting records of the Company and fairly presents the information shown thereby. All disclosures contained in the Registration Statement, any preliminary prospectus or the Prospectus and any free writing prospectus, that constitute non-GAAP financial measures (as defined by the rules and regulations under the Securities Act and the Exchange Act) comply with Regulation G under the Exchange Act and Item 10 of Regulation S-K under the Securities Act, as applicable. To the Company's knowledge, no person who has been suspended or barred from being associated with a registered public accounting firm, or who has failed to comply with any sanction pursuant to Rule 5300 promulgated by the PCAOB, has participated in or otherwise aided the preparation of, or audited, the financial statements, supporting schedules or other financial data filed with the Commission as a part of the Registration Statement, the Time of Sale Prospectus and the Prospectus.

(o) ***Company's Accounting System*****.** The Company makes and keeps accurate books and records and maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the Time of Sale Prospectus and the Prospectus fairly presents the information called for in all material respects and is prepared in all material respects in accordance with the Commission's rules and guidelines applicable thereto.

(p) ***Disclosure Controls and Procedures; Deficiencies in or Changes to Internal Control Over Financial Reporting*****.** The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company is made known to the Company's principal executive officer and its principal financial officer by others within the Company, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared; (ii) have been evaluated by management of the Company for effectiveness as of the end of the Company's most recent fiscal quarter; and (iii) are effective in all material respects to perform the functions for which they were established. Since the end of the Company's most recent audited fiscal year, there have been no significant deficiencies or material weakness in the Company's internal control over financial reporting (whether or not remediated) and no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is not aware of any change in its internal control over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(q) ***Incorporation and Good Standing of the Company*****.** The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Time of Sale Prospectus and the Prospectus and to enter into and perform its obligations under each of the Transaction Documents. The Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of Minnesota and is duly qualified in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change.

(r) ***Subsidiaries*****.** The Company does not own or control, directly or indirectly, any corporation, association or other entity.

(s) ***Capitalization and Other Capital Stock Matters*****.** The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement, the Time of Sale Prospectus and the Prospectus (other than for subsequent issuances, if any, pursuant to employee benefit plans, or upon the exercise or conversion of outstanding options, warrants or convertible securities, in each case described in the Registration Statement, the Time of Sale Prospectus and the Prospectus). The Offered Securities conform in all material respects to the description thereof contained in the Time of Sale Prospectus. All of the issued and outstanding capital stock or other equity interest in the Company have been duly authorized and validly issued, are fully paid and non-assessable and have been issued in compliance with all federal and state securities laws. None of the outstanding shares of capital stock or other equity interest in the Company was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock or other equity interest in the Company other than those described in the Registration Statement, the Time of Sale Prospectus and the Prospectus. The descriptions of the Company's stock option, stock bonus and other stock plans or any other arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement, the Time of Sale Prospectus and the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

(t) ***Stock Exchange Listing*****.** The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act. The Company's shares of Common Stock are listed on The Nasdaq Capital Market (the "**Nasdaq**"), and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the shares of Common Stock from the Nasdaq, nor has the Company received any notification that the Commission or the Nasdaq is contemplating terminating such registration or listing. The Company is in compliance with all applicable listing requirements of Nasdaq.

(u) ***Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required*****.** The Company is not in violation of its charter or by-laws nor is it in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, loan, credit agreement, note, lease, license agreement, contract, franchise or other instrument (including, without limitation, any pledge agreement, security agreement, mortgage or other instrument or agreement evidencing, guaranteeing, securing or relating to indebtedness) to which the Company is a party or by which it may be bound, or to which its properties or assets are subject (each, an "**Existing Instrument**"), except for such Defaults as would not be expected, individually or in the aggregate, to result in a Material Adverse Change. The Company's execution, delivery and performance of each of the Transaction Documents, consummation of the transactions contemplated thereby and by the Registration Statement, the Time of Sale Prospectus and the Prospectus and the issuance and sale of the Offered Securities, including the issuance and delivery of any Common Stock and the payment of any cash, in each case, due upon conversion thereof (including the use of proceeds from the sale of the Offered Securities as described in the Registration Statement, the Time of Sale Prospectus and the Prospectus under the caption "Use of Proceeds") (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws of the Company, (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, or require the consent of any other party to, any Existing Instrument and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of each of the Transaction Documents and consummation of the transactions contemplated thereby and by the Registration Statement, the Time of Sale Prospectus and the Prospectus, except such as have been obtained or made by the Company and are in full force and effect, under the Securities Act, including, but not limited to, the registration of the Offered Securities, the qualification of the Indenture under the Trust Indenture Act and such as may be required under applicable state securities or blue sky laws or the Financial Industry Regulatory Authority, Inc. ("**FINRA**"). As used herein, a "**Debt Repayment Triggering Event**" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company.

(v) ***Compliance with Laws.*** The Company has been and is in compliance with all applicable laws, rules and regulations, except where failure to be so in compliance would not be expected, individually or in the aggregate, to result in a Material Adverse Change.

(w) ***No Material Actions or Proceedings*****.** There is no action, suit, proceeding, inquiry or investigation brought by or before any legal or governmental entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company, which would be expected, individually or in the aggregate, to result in a Material Adverse Change. No material labor dispute with the employees of the Company, or with the employees of any principal supplier, manufacturer, customer or contractor of the Company, exists or, to the knowledge of the Company, is threatened or imminent.

(x) ***Intellectual Property Rights*****.** The Company owns, or has obtained valid and enforceable licenses for, the inventions, patent applications, patents, trademarks, trade names, service names, copyrights, trade secrets and other intellectual property described in the Registration Statement, the Time of Sale Prospectus and the Prospectus as being owned or licensed by it or which are necessary for the conduct of its businesses as currently conducted or as currently proposed to be conducted (collectively, "**Intellectual Property**"), and the conduct of its businesses does not and, to the Company's knowledge, will not, infringe, misappropriate or otherwise conflict in any material respect with any such rights of others. The Intellectual Property of the Company has not been adjudged by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, and the Company is unaware of any facts which would form a reasonable basis for any such adjudication. To the Company's knowledge: (i) there are no third parties who have rights to any Intellectual Property, except for customary reversionary rights of third-party licensors with respect to Intellectual Property that is disclosed in the Registration Statement, the Time of Sale Prospectus and the Prospectus as licensed to the Company; and (ii) there is no infringement by third parties of any Intellectual Property. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others: (A) challenging the Company's rights in or to any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (B) challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; or (C) asserting that the Company infringes or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement, the Time of Sale Prospectus or the Prospectus as under development, infringe or violate, any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim. The Company has complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company, and all such agreements are in full force and effect. To the Company's knowledge, there are no material defects in any of the patents or patent applications included in the Intellectual Property. The Company has taken all reasonable steps to protect, maintain and safeguard its Intellectual Property, including the execution of appropriate nondisclosure, confidentiality agreements and invention assignment agreements and invention assignments with their employees, and no employee of the Company is in or has been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement, or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company. The duty of candor and good faith as required by the United States Patent and Trademark Office during the prosecution of the United States patents and patent applications included in the Intellectual Property have been complied with; and in all foreign offices having similar requirements, all such requirements have been complied with. None of the Company owned Intellectual Property or technology (including information technology and outsourced arrangements) employed by the Company has been obtained or is being used by the Company in violation of any contractual obligation binding on the Company or any of its officers, directors or employees or otherwise in violation of the rights of any persons. The product candidates described in the Registration Statement, the Time of Sale Prospectus and the Prospectus as under development by the Company fall within the scope of the claims of one or more patents owned by, or exclusively licensed to, the Company.

(y) ***All Necessary Permits, etc.*** The Company possesses such valid and current certificates, authorizations or permits required by state, federal or foreign regulatory agencies or bodies to conduct its businesses as currently conducted and as described in the Registration Statement, the Time of Sale Prospectus or the Prospectus ("**Permits**"), except where the failure to so possess or comply would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. The Company is not in violation of, or in default under, any of the Permits nor has it received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit, except where such violation, default, revocation, modification or non-compliance would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

(z) ***Title to Properties.*** The Company has good and marketable title to all of the real and personal property and other assets reflected as owned in the financial statements referred to in Section 1(n) above (or elsewhere in the Registration Statement, the Time of Sale Prospectus or the Prospectus), in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, adverse claims and other defects, other than those described in the Registration Statement, the Time of Sale Prospectus or the Prospectus. The real property, improvements, equipment and personal property held under lease by the Company are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company.

(aa) ***Tax Law Compliance.*** The Company has (i) filed all tax returns required to be filed by it (or has properly requested extensions thereof) and (ii) has paid all taxes required to be paid by it and, if due and payable, any related or similar assessment, fine or penalty levied against it, except as may be being contested in good faith and by appropriate proceedings, except, in each case, where a failure to file such tax returns or pay such taxes or amounts would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 1(n) above in respect of all federal, state and foreign income and franchise taxes for all periods ending on or prior to the dates indicated therein.

(bb) ***Insurance.*** The Company is insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for its business including, but not limited to, policies covering real and personal property owned or leased by the Company against theft, damage, destruction, acts of vandalism and earthquakes and policies covering the Company for product liability claims and clinical trial liability claims. The Company has no reason to believe that it will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not be expected to result in a Material Adverse Change. The Company has not been denied any insurance coverage which it has sought or for which it has applied, except as would not be expected to result, individually or in the aggregate, in a Material Adverse Change.

(cc) ***Compliance with Environmental Laws.*** Except as would not be expected, individually or in the aggregate, to result in a Material Adverse Change: (i) the Company is not in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"); (ii) the Company has all permits, authorizations and approvals required under any applicable Environmental Laws and is in compliance with their requirements; (iii) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company; and (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company relating to Hazardous Materials or any Environmental Laws.

(dd) ***ERISA Compliance.*** The Company and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "**ERISA**")) established or maintained by the Company or its "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "**ERISA Affiliate**" means, with respect to the Company, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "**Code**") of which the Company is a member. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company or any of its ERISA Affiliates. No "employee benefit plan" established or maintained by the Company or any of its ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA). Neither the Company nor any of its ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each employee benefit plan established or maintained by the Company or any of its ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(ee) ***Company Not an "Investment Company."*** The Company is not, and will not be, either after receipt of payment for the Offered Securities or after the application of the proceeds therefrom as described under "Use of Proceeds" in the Registration Statement, the Time of Sale Prospectus or the Prospectus, required to register as an "investment company" under the Investment Company Act of 1940, as amended (the **"Investment Company Act")**.

(ff) ***No Price Stabilization or Manipulation; Compliance with Regulation M*****.** The Company has not taken, directly or indirectly, any action designed to or that might cause or result in stabilization or manipulation of the price of the Offered Securities or of any "reference security" (as defined in Rule 100 of Regulation M under the Exchange Act (**"Regulation M"**)) with respect to the Offered Securities, whether to facilitate the sale or resale of the Offered Securities or otherwise, and has not taken any action which would directly or indirectly violate Regulation M.

(gg) ***Related-Party Transactions*****.** There are no business relationships or related-party transactions involving the Company or any other person required to be described in the Registration Statement, the Time of Sale Prospectus or the Prospectus that have not been described as required.

(hh) ***FINRA Matters*****.** All of the information provided to the Underwriters or to counsel for the Underwriters by the Company, its counsel, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Offered Securities is true, complete, correct and compliant with FINRA's rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules is true, complete and correct.

(ii) ***Parties to Lock-Up Agreements*****.** The Company has furnished to the Underwriters a letter agreement in the form attached hereto as Exhibit A (the "**Lock-up Agreement**") from each of the persons listed on Exhibit B. Such Exhibit B lists the directors and executive officers of the Company. If any additional persons shall become directors or executive officers of the Company prior to the end of the Company Lock-up Period (as defined below), the Company shall cause each such person, prior to or contemporaneously with their appointment or election as a director or executive officer of the Company, to execute and deliver to the Representatives a Lock-up Agreement.

(jj) ***Statistical and Market-Related Data*****.** All statistical, demographic and market-related data included in the Registration Statement, the Time of Sale Prospectus or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate. To the extent required, the Company has obtained the written consent to the use of such data from such sources.

(kk) ***Sarbanes-Oxley Act.*** There is, and has been, no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any applicable provisions of the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(ll) ***No Unlawful Contributions or Other Payments***. Neither the Company nor, to the Company's knowledge, any employee or agent of the Company has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Registration Statement, the Time of Sale Prospectus or the Prospectus.

(mm) ***Anti-Corruption and Anti-Bribery Laws.*** Neither the Company nor any director, officer, or employee of the Company, nor to the knowledge of the Company, any agent, affiliate or other person acting on behalf of the Company has, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made or taken any act in furtherance of an offer, promise, or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or public international organization, or any political party, party official, or candidate for political office; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"), the UK Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, authorized, requested, or taken an act in furtherance of any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment or benefit. The Company and, to the knowledge of the Company, the Company's affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(nn) ***Money Laundering Laws.*** The operations of the Company are, and have been conducted at all times, in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(oo) ***Sanctions.*** Neither the Company nor any of its directors, officers, or employees, nor, to the knowledge of the Company, any agent, affiliate or other person acting on behalf of the Company is currently the subject or the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority (collectively, "**Sanctions**"); nor is the Company located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, and Syria (before July 1, 2025); the so-called Luhansk People's Republic, the so-called Donetsk People's Republic and the non-government controlled areas of Zaporizhzhia and Kherson regions of Ukraine (each, a "**Sanctioned Country**"); and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any joint venture partner or other person or entity for the purpose of financing the activities of or business with any person, or in any country or territory, that at the time of such financing, is the subject or the target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of applicable Sanctions. Since April 24, 2019, the Company has not knowingly engaged in and is not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(pp) ***Brokers.*** Except pursuant to this Agreement, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(qq) ***Forward-Looking Statements.*** Each financial or operational projection or other "forward-looking statement" (as defined by Section 27A of the Securities Act or Section 21E of the Exchange Act) contained in the Registration Statement, the Time of Sale Prospectus or the Prospectus (i) was so included by the Company in good faith and with reasonable basis after due consideration by the Company of the underlying assumptions, estimates and other applicable facts and circumstances and (ii) is accompanied by meaningful cautionary statements identifying those factors that could cause actual results to differ materially from those in such forward-looking statement. No such statement was made with the knowledge of an executive officer or director of the Company that it was false or misleading.

(rr) ***No Outstanding Loans or Other Extensions of Credit***. The Company does not have any outstanding extension of credit, in the form of a personal loan, to or for any director or executive officer (or equivalent thereof) of the Company except for such extensions of credit as are expressly permitted by Section 13(k) of the Exchange Act.

(ss) ***Cybersecurity***. The Company's information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company has implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by GDPR; (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA"**); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor to the knowledge of the Company, any incidents under internal review or investigations relating to the same. The Company is presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(tt) ***Compliance with Data Privacy Laws***. The Company is, and at all prior times was, in compliance, in all material respects, with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, and the Company has taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, has been and currently is in compliance with, the European Union General Data Protection Regulation ("**GDPR**") (EU 2016/679) (collectively, the "**Privacy Laws**"). To ensure compliance with the Privacy Laws, the Company has in place, complies with, and takes appropriate steps reasonably designed to ensure compliance in all material respects with its policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "**Policies**"). The Company has at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. The Company further certifies that it: (i) has not received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is not currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is not a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(uu) ***Clinical Data and Regulatory Compliance.*** The preclinical tests and clinical trials, and other studies (collectively, "**studies**") that are described in, or the results of which are referred to in, the Registration Statement, the Time of Sale Prospectus or the Prospectus were and, if still pending, are being conducted in all material respects in accordance with the protocols, procedures and controls designed and approved for such studies and with standard medical and scientific research procedures; each description of the results of such studies is accurate and complete in all material respects and fairly presents the data derived from such studies, and the Company has no knowledge of any other studies the results of which are materially inconsistent with, or otherwise call into question, the results described or referred to in the Registration Statement, the Time of Sale Prospectus or the Prospectus; the Company has no knowledge of any research misconduct or data fraud in any studies or clinical trials, the results of which the Company intends to include or reference in any regulatory submission for any product; the Company has made all such filings and obtained all such approvals as may be required by the Food and Drug Administration of the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency, or health care facility Institutional Review Board (collectively, the "**Regulatory Agencies**"); the Company has not received any notice of, or correspondence from, any Regulatory Agency requiring the termination, suspension or modification of any clinical trials that are described or referred to in the Registration Statement, the Time of Sale Prospectus or the Prospectus; and the Company has operated and currently is in compliance in all material respects with all applicable rules, regulations and policies of the Regulatory Agencies.

(vv) ***Compliance with Health Care Laws***. The Company is, and at all times has been, in material compliance with all Health Care Laws. For purposes of this Agreement, "**Health Care Laws**" means: (i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), the Public Health Service Act (42 U.S.C. Section 201 et seq.), and the regulations promulgated thereunder; (ii) all applicable federal, state, local and foreign health care fraud and abuse laws, including, without limitation, the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal false statements law (42 U.S.C. Section 1320a-7b(a)), 18 U.S.C. Sections 286 and 287, the health care fraud criminal provisions under the U.S. Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") (42 U.S.C. Section 1320d et seq.), the Stark Law (42 U.S.C. Section 1395nn), the civil monetary penalties law (42 U.S.C. Section 1320a-7a), the exclusion law (42 U.S.C. Section 1320a-7), the Physician Payments Sunshine Act (42 U.S.C. Section 1320-7h), and applicable laws governing government funded or sponsored healthcare programs; (iii) HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. Section 17921 et seq.); (iv) the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010; (v) the Clinical Laboratories Improvement Act of 1967, as amended; (vi) licensure, quality, safety and accreditation requirements under applicable federal, state, local or foreign laws or regulatory bodies; and (vii) all other local, state, federal, national, supranational and foreign laws, relating to the regulation of the Company, and (viii) the directives and regulations promulgated pursuant to such statutes and any state or non-U.S. counterpart thereof. The Company has not received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any court or arbitrator or governmental or regulatory authority or third party alleging that any product operation or activity is in violation of any Health Care Laws nor, to the Company's knowledge, is any such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action threatened. The Company has filed, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Health Care Laws, and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and accurate on the date filed in all material respects (or were corrected or supplemented by a subsequent submission). The Company is not a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any governmental or regulatory authority. Additionally, neither the Company nor any of its respective employees, officers, directors, or to the Company's knowledge, any agents has been excluded, suspended or debarred from participation in any U.S. federal health care program or human clinical research or, to the knowledge of the Company, is subject to a governmental inquiry, investigation, proceeding, or other similar action that would reasonably be expected to result in debarment, suspension, or exclusion.

(ww) ***No Contract Terminations.*** The Company has not sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in any preliminary prospectus, the Prospectus or any free writing prospectus, or referred to or described in, or filed as an exhibit to, the Registration Statement, and no such termination or non-renewal has been threatened by the Company or, to the Company's knowledge, any other party to any such contract or agreement, which threat of termination or non-renewal has not been rescinded as of the date hereof.

(xx) ***Outbound Investment Security Program.*** The Company is not a "covered foreign person", as that term is defined in 31 C.F.R. § 850.209. The Company does not currently engage, or have plans to engage, directly or indirectly, in a "covered activity", as that term is defined in 31 C.F.R. § 850.208.

(yy) ***Margin Rules***. None of the issuance, sale and delivery of the Offered Securities or the Maximum Number of Underlying Securities nor the application of the proceeds thereof by the Company as described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(zz) ***No Ratings***. There are no debt securities or preferred stock of or guaranteed by the Company that are rated by a "nationally recognized statistical rating organization," as such term is defined under Section 3(a)(62) under the Exchange Act.

Any certificate signed by any officer of the Company and delivered to any Underwriter or to counsel for the Underwriters in connection with the offering, or the purchase and sale, of the Offered Securities shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

The Company has a reasonable basis for making each of the representations set forth in this Section 1. The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered pursuant to Section 6 hereof, counsel to the Company and counsel to the Underwriters, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

Section 2. Purchase, Sale and Delivery of the Offered Securities.

(a) ***The Firm Securities.*** Upon the terms herein set forth, the Company agrees to issue and sell to the several Underwriters $500,000,000 aggregate principal amount of Firm Securities. On the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Underwriters agree, severally and not jointly, to purchase from the Company the respective principal amount of Firm Securities set forth opposite their names on Schedule A at a price equal to 97.0% of the principal amount thereof (the "**Purchase Price**") plus accrued interest, if any, from June 8, 2026 to the First Closing Date.

(b) ***The First Closing Date*****.** Delivery of the Firm Securities to be purchased by the Underwriters and payment therefor shall be made at the offices of Cooley LLP (or such other place as may be agreed to by the Company and the Representatives) at 10:00 a.m. New York City time, on June 8, 2026 or such other time and date not later than 1:30 p.m. New York City time, on June 22, 2026 as the Representatives shall designate by notice to the Company (the time and date of such closing are called the "**First Closing Date**"). The Company hereby acknowledges that circumstances under which the Representatives may provide notice to postpone the First Closing Date as originally scheduled include, but are not limited to, any determination by the Company or the Representatives to recirculate to the public copies of an amended or supplemented Prospectus or a delay as contemplated by the provisions of Section 11.

(c) ***The Optional Securities; Option Closing Date*****.** In addition, on the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to an additional $75,000,000 principal amount of Optional Securities from the Company at the Purchase Price plus accrued interest, if any, from June 8, 2026 to the Option Closing Date, or if such time and date of delivery of the Optional Securities occurs on the First Closing Date, then the First Closing Date. The option granted hereunder may be exercised at any time and from time to time in whole or in part upon notice by the Representatives to the Company, which notice may be given at any time within 30 days from the date of this Agreement, solely to cover over-allotments. Such notice shall set forth (i) the principal amount of Optional Securities plus accrued interest as to which the Underwriters are exercising the option and (ii) the time, date and place at which the Optional Securities will be delivered (which time and date may be simultaneous with, but not earlier than, the First Closing Date; and in the event that such time and date are simultaneous with the First Closing Date, the term "**First Closing Date**" shall refer to the time and date of delivery of the Firm Securities and such Optional Securities). Any such time and date of delivery, if subsequent to the First Closing Date, is called an "**Option Closing Date**," and shall be determined by the Representatives and shall not be earlier than two or later than five full business days after delivery of such notice of exercise. If any Optional Securities are to be purchased, each Underwriter agrees, severally and not jointly, to purchase the principal amount of Optional Securities (subject to such adjustments to eliminate Securities in denominations other than $1,000 as the Representatives in their sole discretion shall make) that bears the same proportion to the principal amount of Firm Securities (a) to be purchased as set forth on Schedule A opposite the name of such Underwriter bears to the total principal amount of Firm Securities and (b) the Company agrees to sell the number of Optional Securities set forth in the paragraph "Introductory" of this Agreement (subject to such adjustments to eliminate Securities in denominations other than $1,000 as the Representatives in their sole discretion shall make). The Representatives may cancel the option at any time prior to its expiration by giving written notice of such cancellation to the Company.

(d) ***Public Offering of the Offered Securities*****.** The Representatives hereby advise the Company that the Underwriters intend to offer for sale to the public, initially on the terms set forth in the Registration Statement, the Time of Sale Prospectus and the Prospectus, their respective portions of the Offered Securities as soon as the Representatives, in their sole judgment, have determined is advisable and practicable.

(e) ***Payment for the Offered Securities*****.** Payment for the Offered Securities to be sold by the Company shall be made at the First Closing Date (and, if applicable, at each Option Closing Date) by wire transfer of immediately available funds to the order of the Company. It is understood that the Representatives have been authorized, for their own accounts and the accounts of the several Underwriters, to accept delivery of and receipt for, and make payment of the purchase price for, the Firm Securities and any Optional Securities the Underwriters have agreed to purchase. Jefferies, J.P. Morgan, TD Cowen and Guggenheim Securities individually and not as the Representatives of the Underwriters, may (but shall not be obligated to) make payment for any Offered Securities to be purchased by any Underwriter whose funds shall not have been received by the Representatives by the First Closing Date or the applicable Option Closing Date, as the case may be, for the account of such Underwriter, but any such payment shall not relieve such Underwriter from any of its obligations under this Agreement.

(f) ***Delivery of the Offered Securities.*** The Company shall deliver, or cause to be delivered to the nominee of The Depository Trust Company ("**DTC**") for the Representatives for the accounts of the several Underwriters one or more global notes representing the Offered Securities (collectively, the "**Global Note**"), at the First Closing Date and any Option Closing Date, as applicable, against release of a wire transfer of immediately available funds for the amount of the purchase price therefor. Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Underwriters. The Global Note will be made available for inspection by the Representatives at the office of Jefferies LLC set forth above not later than 1:00 p.m. New York City time, on the business day prior to the First Closing Date or any Option Closing Date, as the case may be.

Section 3. Additional Covenants of the Company.

(a) ***Delivery of Registration Statement, Time of Sale Prospectus and Prospectus.*** The Company shall furnish to you in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement and during the period when a prospectus relating to the Offered Securities is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with sales of the Offered Securities, as many copies of the Time of Sale Prospectus, the Prospectus and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

(b) ***Representatives' Review of Proposed Amendments and Supplements.*** During the period when a prospectus relating to the Offered Securities is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule), the Company (i) will furnish to the Representatives for review, a reasonable period of time prior to the proposed time of filing of any proposed amendment or supplement to the Registration Statement, a copy of each such amendment or supplement and (ii) will not amend or supplement the Registration Statement without the Representatives' prior written consent, which consent shall not be unreasonably withheld or delayed. Prior to amending or supplementing any preliminary prospectus, the Time of Sale Prospectus or the Prospectus, the Company shall furnish to the Representatives for review, a reasonable amount of time prior to the time of filing or use of the proposed amendment or supplement, a copy of each such proposed amendment or supplement. The Company shall not file or use any such proposed amendment or supplement without the Representatives' prior written consent, which consent shall not be unreasonably withheld or delayed. The Company shall file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(c) ***Free Writing Prospectuses.*** The Company shall furnish to the Representatives for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed free writing prospectus or any amendment or supplement thereto prepared by or on behalf of, used by, or referred to by the Company, and the Company shall not file, use or refer to any proposed free writing prospectus or any amendment or supplement thereto without the Representatives' prior written consent, which consent shall not be unreasonably withheld or delayed. The Company shall furnish to each Underwriter, without charge, as many copies of any free writing prospectus prepared by or on behalf of, used by or referred to by the Company as such Underwriter may reasonably request. If at any time when a prospectus is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) in connection with sales of the Offered Securities (but in any event if at any time through and including the First Closing Date) there occurred or occurs an event or development as a result of which any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such time, not misleading, the Company shall promptly amend or supplement such free writing prospectus to eliminate or correct such conflict or so that the statements in such free writing prospectus as so amended or supplemented will not include 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 prevailing at such time, not misleading, as the case may be; *provided, however*, that prior to amending or supplementing any such free writing prospectus, the Company shall furnish to the Representatives for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented free writing prospectus, and the Company shall not file, use or refer to any such amended or supplemented free writing prospectus without the Representatives' prior written consent, which consent shall not be unreasonably withheld or delayed.

(d) ***Filing of Underwriter Free Writing Prospectuses.*** The Company shall not take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of such Underwriter that such Underwriter otherwise would not have been required to file thereunder.

(e) ***Amendments and Supplements to Time of Sale Prospectus.*** If the Time of Sale Prospectus is being used to solicit offers to buy the Offered Securities at a time when the Prospectus is not yet available to prospective purchasers, and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus so that the Time of Sale Prospectus does not include 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 when delivered to a prospective purchaser, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, the Company shall (subject to Section 3(b) and Section 3(c)) promptly prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not include 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 when delivered to a prospective purchaser, not misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the information contained in the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

(f) ***Certain Notifications and Required Actions*****.** After the date of this Agreement, the Company shall promptly advise the Representatives in writing of: (i) the receipt of any comments of, or requests for additional or supplemental information from, the Commission; (ii) the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus or the Prospectus; (iii) the time and date that any post-effective amendment to the Registration Statement becomes effective; and (iv) the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or any amendment or supplement to any preliminary prospectus, the Time of Sale Prospectus or the Prospectus or of any order preventing or suspending the use of any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation of the Underlying Securities from any securities exchange upon which they are listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its best efforts to obtain the lifting of such order at the earliest possible moment. Additionally, the Company agrees that it shall comply with all applicable provisions of Rule 424(b), Rule 433, and Rule 430B under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under Rule 424(b) or Rule 433 were received in a timely manner by the Commission. If, after the date of this Agreement and during any time when a prospectus relating to this offering is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule), the Company receives notice pursuant to Rule 401(g)(2) under the Securities Act from the Commission or otherwise ceases to be eligible to use the automatic shelf registration form, the Company shall promptly advise the Representatives in writing of such notice or ineligibility and will (i) promptly filed a new registration statement or post-effective amendment on the proper form relating to the Offered Securities, (ii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective by the Commission as soon as practicable and (iii) promptly notify the Representatives in writing of such effectiveness.

(g) ***Amendments and Supplements to the Prospectus and Other Securities Act Matters.*** If any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus so that the Prospectus does not include 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 when the Prospectus is delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) to a purchaser, not misleading, or if in the opinion of the Representatives or counsel for the Underwriters it is otherwise necessary to amend or supplement the Prospectus to comply with applicable law, the Company agrees (subject to Section 3(b) and Section 3(c)) to promptly prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not include 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 when the Prospectus is delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule) to a purchaser, not misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law. Neither the Representatives' consent to, nor delivery of, any such amendment or supplement shall constitute a waiver of any of the Company's obligations under Section 3(b) or Section 3(c).

(h) ***Blue Sky Compliance.*** The Company shall cooperate with the Representatives and counsel for the Underwriters to qualify or register the Offered Securities for sale under (or obtain exemptions from the application of) the state securities or blue sky laws or Canadian provincial securities laws (or other foreign laws) of those jurisdictions designated by the Representatives, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Offered Securities. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation where it is not otherwise subject to taxation. The Company will advise the Representatives promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Offered Securities for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(i) ***Use of Proceeds.*** The Company shall apply the net proceeds from the sale of the Offered Securities sold by it in the manner described under the caption "Use of Proceeds" in the Registration Statement, the Time of Sale Prospectus, and the Prospectus.

(j) ***Trustee and Transfer Agent.*** The Company shall engage and maintain, at its expense, a trustee and registrar for the Offered Securities and transfer agent for the shares of Common Stock issuable upon conversion of the Securities.

(k) ***Earnings Statement.*** The Company will make generally available to its securityholders and to the Representatives as soon as practicable an earnings statement (which need not be audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company commencing after the date of this Agreement that will satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder, provided that the Company will be deemed to have made generally available such statement to the extent it is available on EDGAR.

(l) ***Continued Compliance with Securities Laws.*** The Company will comply with the Securities Act and the Exchange Act so as to permit the completion of the distribution of the Offered Securities as contemplated by the Transaction Documents**,** the Registration Statement, the Time of Sale Prospectus, and the Prospectus. Without limiting the generality of the foregoing, the Company will, during the period when a prospectus relating to the Offered Securities is required by the Securities Act to be delivered (whether physically or through compliance with Rule 172 under the Securities Act or any similar rule), file on a timely basis with the Commission and the Nasdaq all reports and documents required to be filed under the Exchange Act.

(m) ***The Maximum Number of Underlying Securities.*** The Company will reserve and keep available at all times, free of preemptive rights, a number of shares of Common Stock equal to the Maximum Number of Underlying Securities. The Company will use its reasonable best efforts to effect and maintain the listing of a number of shares of Common Stock issuable upon conversion of the Offered Securities equal to the Maximum Number of Underlying Securities on Nasdaq.

(n) ***Company to Provide Copy of the Prospectus in Form That May be Downloaded from the Internet.*** If requested by the Representatives, the Company shall cause to be prepared and delivered, at its expense, within one business day from the effective date of this Agreement, to the Representatives an "**electronic Prospectus**" to be used by the Underwriters in connection with the offering and sale of the Offered Securities. As used herein, the term "**electronic Prospectus**" means a form of Prospectus, and any amendment or supplement thereto, that meets each of the following conditions: (i) it shall be encoded in an electronic format, satisfactory to the Representatives, that may be transmitted electronically by the Representatives and the other Underwriters to offerees and purchasers of the Offered Securities; (ii) it shall disclose the same information as the paper Prospectus, except to the extent that graphic and image material cannot be disseminated electronically, in which case such graphic and image material shall be replaced in the electronic Prospectus with a fair and accurate narrative description or tabular representation of such material, as appropriate; and (iii) it shall be in or convertible into a paper format or an electronic format, satisfactory to the Representatives, that will allow investors to store and have continuously ready access to the Prospectus at any future time, without charge to investors (other than any fee charged for subscription to the Internet as a whole and for on-line time). The Company hereby confirms that it has included or will include in the Prospectus filed pursuant to EDGAR or otherwise with the Commission and in the Registration Statement at the time it was declared effective an undertaking that, upon receipt of a request by an investor or his or her representative, the Company shall transmit or cause to be transmitted promptly, without charge, a paper copy of the Prospectus.

(o) ***Agreement Not to Offer or Sell Additional Securities.*** During the period commencing on and including the date hereof and continuing through and including the 60th day following the date of the Prospectus (such period, as extended as described below, being referred to herein as the "**Lock-up Period**"), the Company will not, without the prior written consent of the Representatives (which consent may be withheld in their sole discretion), directly or indirectly: (i) sell, offer to sell, contract to sell or lend any shares of Common Stock or Related Securities (as defined below); (ii) effect any short sale, or establish or increase any "put equivalent position" (as defined in Rule 16a-1(h) under the Exchange Act) or liquidate or decrease any "call equivalent position" (as defined in Rule 16a-1(b) under the Exchange Act) of any shares of Common Stock or Related Securities; (iii) pledge, hypothecate or grant any security interest in any shares of Common Stock or Related Securities; (iv) in any other way transfer or dispose of any shares of Common Stock or Related Securities; (v) enter into any swap, hedge or similar arrangement or agreement that transfers, in whole or in part, the economic risk of ownership of any shares of Common Stock or Related Securities, regardless of whether any such transaction is to be settled in securities, in cash or otherwise; (vi) announce the offering of any shares of Common Stock or Related Securities (other than as contemplated by the Transaction Documents with respect to the Offered Securities); (vii) submit or file any registration statement under the Securities Act in respect of any shares of Common Stock or Related Securities (other than as contemplated by this Agreement with respect to the Offered Securities); (viii) effect a reverse stock split, recapitalization, share consolidation, reclassification or similar transaction affecting the outstanding shares of Common Stock; or (ix) publicly announce the intention to do any of the foregoing; *provided, however*, that the Company may (A) effect the transactions contemplated the Transaction Documents, (B) issue and sell shares of Common Stock pursuant to the Open Market Sale Agreement^{SM}, dated February 4, 2022, by and between the Company and Jefferies, following the earlier to occur of (x) the date that is 30 days following the date of the Prospectus and (y) the date that the Underwriters exercise in full their option to purchase the Optional Securities pursuant to Section 2(c), (C) issue shares of Common Stock, options to purchase shares of Common Stock or restricted stock, or issue shares of Common Stock upon the exercise of options or vesting of restricted stock, pursuant to any stock option, stock bonus or other stock plan or any other arrangement described in the Registration Statement, the Time of Sale Prospectus and the Prospectus, *provided* that to the extent the recipient of any such securities (i) is not otherwise subject to a Lock-up Agreement and (ii) is an officer (as defined in Rule 16a-1(f) of the Exchange Act) or director of the Company, such recipient shall deliver a Lock-up Agreement to the Representatives, and (D) issue shares of Common Stock pursuant to the conversion of securities or loans or the exercise of warrants or pre-funded warrants, which securities, loans or warrants or pre-funded warrants are outstanding on the date hereof and described in the Registration Statement, the Time of Sale Prospectus and the Prospectus. For purposes of the foregoing, "**Related Securities**" shall mean any options or warrants or other rights to acquire shares of Common Stock or any securities exchangeable or exercisable for or convertible into shares of Common Stock, or to acquire other securities or rights ultimately exchangeable or exercisable for, or convertible into, shares of Common Stock.

(p) ***Future Reports to the Representatives.*** During the period of five years hereafter, the Company will furnish to the Representatives, c/o Jefferies LLC, at 520 Madison Avenue, New York, New York 10022, Attention: Global Head of Syndicate; J.P. Morgan Securities LLC, at 270 Park Avenue, New York, New York 10017 (fax: (212) 622-8358), Attention: Equity Syndicate Desk; TD Securities (USA) LLC, at 1 Vanderbilt Avenue, New York, New York 10017, Attention: Head of Equity Capital Markets, with a copy to CIBLegal@tdsecurities.com; Guggenheim Securities, LLC, 330 Madison Avenue, New York, New York 10017, Fax: (212) 658-9689, Attention: Head of Equity Capital Markets, (i) as soon as practicable after the end of each fiscal year, copies of the Annual Report of the Company containing the balance sheet of the Company as of the close of such fiscal year and statements of income, stockholders' equity and cash flows for the year then ended and the opinion thereon of the Company's independent public or certified public accountants; (ii) as soon as practicable after the filing thereof, copies of each proxy statement, Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other report filed by the Company with the Commission, FINRA or any securities exchange; and (iii) as soon as available, copies of any report or communication of the Company furnished or made available generally to holders of its capital stock; *provided, however,* that the requirements of this Section 3(p) shall be satisfied to the extent that such reports, statement, communications, financial statements or other documents are available on EDGAR.

(q) ***Investment Limitation*****.** The Company shall not invest or otherwise use the proceeds received by the Company from its sale of the Offered Securities in such a manner as would require the Company to register as an investment company under the Investment Company Act. During the period of one year after the First Closing Date or any Option Closing Date, if later, the Company will not be, nor will it become, an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act.

(r) ***No Stabilization or Manipulation; Compliance with Regulation M*****.** The Company will not take, and will ensure that no affiliate of the Company will take, directly or indirectly, any action designed to or that might cause or result in stabilization or manipulation of the price of the Offered Securities or any reference security with respect to the Offered Securities, whether to facilitate the sale or resale of the Offered Securities or otherwise, and the Company will, and shall cause each of its affiliates to, comply with all applicable provisions of Regulation M.

(s) ***Enforce Lock-Up Agreements*****.** During the Lock-up Period, the Company will enforce all agreements between the Company and any of its securityholders that restrict or prohibit, expressly or in operation, the offer, sale or transfer of shares of Common Stock or Related Securities or any of the other actions restricted or prohibited under the terms of the form of Lock-up Agreement. In addition, the Company will direct the transfer agent to place stop transfer restrictions upon any such securities of the Company that are bound by such "lock-up" agreements for the duration of the periods contemplated in such agreements, including, without limitation, "lock-up" agreements entered into by the Company's officers and directors and securityholders pursuant to Section 6(i) hereof.

(t) ***Company to Provide Interim Financial Statements*****.** Prior to the First Closing Date and each applicable Option Closing Date, the Company will furnish the Underwriters, as soon as they have been prepared by or are available to the Company, a copy of any unaudited interim financial statements of the Company for any period subsequent to the period covered by the most recent financial statements appearing in the Registration Statement and the Prospectus; provided, however, that the requirements of this Section 3(t) shall be deemed satisfied to the extent that such financial statements are available on EDGAR.

(u) ***Amendments and Supplements to Permitted Section 5(d) Communications.*** If at any time following the distribution of any Permitted Section 5(d) Communication, there occurred or occurs an event or development as a result of which such Permitted Section 5(d) Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Permitted Section 5(d) Communication to eliminate or correct such untrue statement or omission.

(v) ***DTC.*** The Company will assist the Underwriters in arranging for the Offered Securities to be eligible for clearance and settlement through DTC.

(w) ***Conversion Rate***. No event has occurred that would, if the Offered Securities were outstanding, require an adjustment to the Conversion Rate (as defined in the Indenture) for the Offered Securities pursuant to the terms of the Indenture. During the period beginning from the date hereof and continuing until the latest Option Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the Conversion Rate (as defined in the Indenture).

(x) ***Term Sheet***. The Company will prepare a final term sheet relating to this offering of the Offered Securities in a form approved by the Representatives (as set forth in Schedule C hereto) and will file such term sheet pursuant to and within the time required by Rule 433(d) under the Securities Act.

(y) ***Commission Filing Fees.*** The Company agrees to pay the required Commission filing fees relating to the Offered Securities within the time required by Rule 456(b)(1) under the Securities Act without regard to the proviso therein and otherwise in accordance with the Rules 456(b) and 457(r) under the Securities Act.

Section 4. Payment of Expenses. The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Offered Securities (including all printing and engraving costs), (ii) all fees and expenses of any registrar and transfer agent, (iii) all necessary issue, transfer, registration, stamp and other similar taxes in connection with the issuance and sale of the Offered Securities to the Underwriters, (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors, (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), the Time of Sale Prospectus, the Prospectus, each free writing prospectus prepared by or on behalf of, used by, or referred to by the Company, and each preliminary prospectus, each Permitted Section 5(d) Communication, and all amendments and supplements thereto, and this Agreement, (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Underwriters in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Offered Securities for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Representatives, preparing and printing a "Blue Sky Survey" or memorandum and a "Canadian wrapper", and any supplements thereto, advising the Underwriters of such qualifications, registrations and exemptions, (vii) the costs, fees and expenses incurred by the Underwriters in connection with determining their compliance with the rules and regulations of FINRA related to the Underwriters' participation in the offering and distribution of the Offered Securities, including any related filing fees and the legal fees of, and disbursements by, counsel to the Underwriters, provided that the fees and expenses of such counsel to the Underwriters under subsections (vi) and (vii) of this Section 4 shall not exceed $7,500, (viii) the costs and expenses of the Company relating to investor presentations on any "road show", any Permitted Section 5(d) Communication or any Section 5(d) Oral Communication undertaken in connection with the offering of the Offered Securities, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives, employees and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show, (ix) the fees and expenses associated with listing of a number of shares of Common Stock equal to the Maximum Number of Underlying Securities on Nasdaq, (x) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (xi) all expenses and application fees incurred in connection with the approval of the Offered Securities for book-entry transfer by DTC and (xii) all other fees, costs and expenses of the nature referred to in Item 14 of Part II of the Registration Statement. Except as provided in this Section 4 or in Section 7, Section 9 or Section 10 hereof, the Underwriters shall pay their own expenses, including the fees and disbursements of their counsel.

Section 5. Covenant of the Underwriters. Each Underwriter severally and not jointly covenants with the Company not to take any action that would result in the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not, but for such actions, be required to be filed by the Company under Rule 433(d); *provided* that Underwriters may use the term sheet as set forth in Schedule C hereto.

Section 6. Conditions of the Obligations of the Underwriters. The respective obligations of the several Underwriters hereunder to purchase and pay for the Offered Securities as provided herein on the First Closing Date and, with respect to the Optional Securities, each Option Closing Date, shall be subject to the accuracy of the representations and warranties on the part of the Company set forth in Section 1 hereof as of the date hereof and as of the First Closing Date as though then made and, with respect to the Optional Securities, as of each Option Closing Date as though then made, to the timely performance by the Company of its covenants and other obligations hereunder, and to each of the following additional conditions:

(a) ***Comfort Letter*****.** On the date hereof, the Representatives shall have received from Boulay PLLP, independent registered public accountants for the Company, a letter dated the date hereof addressed to the Underwriters, in form and substance satisfactory to the Representatives, containing statements and information of the type ordinarily included in accountant's "comfort letters" to underwriters, delivered according to Statement of Auditing Standards No. 72 (or any successor bulletin), with respect to the audited and unaudited financial statements and certain financial information contained in the Registration Statement, the Time of Sale Prospectus, and each free writing prospectus, if any.

(b) ***Compliance with Registration Requirements; No Stop Order.*** For the period from and after the date of this Agreement and through and including the First Closing Date and, with respect to any Optional Securities purchased after the First Closing Date, each Option Closing Date:

(i) The Company shall have filed the Prospectus with the Commission (including the information previously omitted from the Registration Statement pursuant to Rule 430B under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act and will file any free writing prospectus, if any, identified in Schedule B hereto (including the term sheet substantially in the form of Schedule C hereto) to the extent required by Rule 433 under the Securities Act; or the Company shall have filed a post-effective amendment to the Registration Statement containing the information previously omitted from the Registration Statement pursuant to Rule 430B, and such post-effective amendment shall have become effective.

(ii) No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment to the Registration Statement shall be in effect, and no proceedings for such purpose shall have been instituted or threatened by the Commission.

(c) ***No Material Adverse Change or Ratings Agency Change*****.** For the period from and after the date of this Agreement and through and including the First Closing Date and, with respect to any Optional Securities purchased after the First Closing Date, each Option Closing Date:

(i) in the judgment of the Representatives there shall not have occurred any Material Adverse Change; and

(ii) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the Company by any "nationally recognized statistical rating organization" as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act.

(d) ***Opinion of Counsel for the Company*****.** On each of the First Closing Date and each Option Closing Date the Representatives shall have received the opinion and negative assurance letter of Faegre Drinker Biddle & Reath LLP, counsel for the Company, in form and substance satisfactory to the Representatives.

(e) ***Opinion of Intellectual Property Counsel for the Company.*** On each of the First Closing Date and each Option Closing Date, the Representatives shall have received the opinion of Nelson Mullins Riley & Scarborough LLP, counsel for the Company with respect to intellectual property matters, dated as of such date, in form and substance satisfactory to the Representatives.

(f) ***Opinion of Counsel for the Underwriters*****.** On each of the First Closing Date and each Option Closing Date the Representatives shall have received the opinion and negative assurance letter of Cooley LLP, counsel for the Underwriters in connection with the offer and sale of the Offered Securities, in form and substance satisfactory to the Underwriters, dated as of such date.

(g) ***Officers' Certificate*****.** On each of the First Closing Date and each Option Closing Date, the Representatives shall have received a certificate executed by the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, dated as of such date, to the effect set forth in Section 6(b)(ii) and further to the effect that:

(i) for the period from and including the date of this Agreement through and including such date, there has not occurred any Material Adverse Change;

(ii) the representations, warranties and covenants of the Company set forth in Section 1 of this Agreement are true and correct with the same force and effect as though expressly made on and as of such date; and

(iii) the Company has complied with all the agreements hereunder and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such date.

(h) ***Bring-down Comfort Letter*****.** On each of the First Closing Date and each Option Closing Date the Representatives shall have received from Boulay PLLP, independent registered public accountants for the Company, a letter dated such date, in form and substance satisfactory to the Representatives, which letter shall: (i) reaffirm the statements made in the letter furnished by them pursuant to Section 6(a), except that the specified date referred to therein for the carrying out of procedures shall be no more than three business days prior to the First Closing Date or the applicable Option Closing Date, as the case may be; and (ii) cover certain financial information contained in the Prospectus.

(i) ***Lock-Up Agreements.*** On or prior to the date hereof, the Company shall have furnished to the Representatives an agreement in the form of Exhibit A hereto from each of the persons listed on Exhibit B hereto, and each such agreement shall be in full force and effect on each of the First Closing Date and each Option Closing Date.

(j) ***Reserved***.

(k) ***Approval of Listing***. At the First Closing Date, the Company shall have provided notification to the Nasdaq that the Company intends to issue the number of shares of Common Stock equal to the Maximum Number of Underlying Securities and there shall not be any written objection from the Nasdaq with respect to such notification.

(l) ***Reserved.***

(m) ***DTC***. The Offered Securities shall be eligible for clearance and settlement through DTC.

(n) ***Additional Documents***. On or before each of the First Closing Date and each Option Closing Date, the Representatives and counsel for the Underwriters shall have received such information, documents and opinions as they may reasonably request for the purposes of enabling them to pass upon the issuance and sale of the Offered Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Offered Securities as contemplated herein and in connection with the other transactions contemplated by this Agreement shall be satisfactory in form and substance to the Representatives and counsel for the Underwriters.

If any condition specified in this Section 6 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Representatives by notice from Jefferies, J.P. Morgan, TD Cowen and Guggenheim Securities to the Company at any time on or prior to the First Closing Date and, with respect to the Optional Securities, at any time on or prior to the applicable Option Closing Date, which termination shall be without liability on the part of any party to any other party, except that Section 4, Section 7, Section 9 and Section 10 shall at all times be effective and shall survive such termination.

Section 7. Reimbursement of Underwriters' Expenses. If this Agreement is terminated by the Representatives pursuant to Section 6, Section 11 or Section 12, or if the sale to the Underwriters of the Offered Securities on the First Closing Date is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof, the Company agrees to reimburse the Representatives and the other Underwriters (or such Underwriters as have terminated this Agreement with respect to themselves), severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Representatives and the Underwriters in connection with the proposed purchase and the offering and sale of the Offered Securities, including, but not limited to, fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges. For the avoidance of doubt, it is understood that the Company will not pay or reimburse any costs, fees or expenses incurred by any Underwriter that defaults on its obligations to purchase Offered Securities.

Section 8. Effectiveness of this Agreement. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

Section 9. Indemnification.

(a) ***Indemnification of the Underwriters.*** The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors, officers, employees and agents, and each person, if any, who controls any Underwriter within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such affiliate, director, officer, employee, agent or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Offered Securities have been offered or sold or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (A) (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act, any Marketing Material, any Section 5(d) Written Communication or the Prospectus (or any amendment or supplement to the foregoing), or the omission or alleged omission to state therein a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading; or (iii) any act or failure to act or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Offered Securities or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clause (i) or (ii) above, or (B) the violation of any laws or regulations of foreign jurisdictions where Offered Securities have been offered or sold; and to reimburse each Underwriter and each such affiliate, director, officer, employee, agent and controlling person for any and all expenses (including the fees and disbursements of counsel) as such expenses are incurred by such Underwriter or such affiliate, director, officer, employee, agent or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; *provided, however*, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company by the Representatives in writing expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any such free writing prospectus, any Marketing Material, any Section 5(d) Written Communication or the Prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information consists of the information described in Section 9(b) below. The indemnity agreement set forth in this Section 9(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) ***Indemnification of the Company, its Directors and Officers***. Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus, that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433 of the Securities Act, such Section 5(d) Written Communication or the Prospectus (or any such amendment or supplement) or the omission or alleged omission to state therein a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, such preliminary prospectus, the Time of Sale Prospectus, such free writing prospectus or the Prospectus (or any such amendment or supplement), in reliance upon and in conformity with information relating to such Underwriter furnished to the Company by the Representatives in writing expressly for use therein; and to reimburse the Company, or any such director, officer or controlling person for any and all expenses (including the fees and disbursements of counsel) as such expenses are incurred by the Company, or any such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Company hereby acknowledges that the only information that the Representatives have furnished to the Company expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) of the Securities Act or the Prospectus (or any amendment or supplement to the foregoing) are the statements set forth in the first sentence of the third paragraph under the caption "Underwriting", the first and second sentences of the first paragraph under the section entitled "Commission and Expenses," the first sentence of the first paragraph under the section entitled "Stabilization," and the first sentence of the first paragraph under the section entitled "Electronic Distribution," each under the caption "Underwriting" in the Preliminary Prospectus and the Prospectus. The indemnity agreement set forth in this Section 9(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(c) ***Notifications and Other Indemnification Procedures*.** Promptly after receipt by an indemnified party under this Section 9 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 9, notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which it may have to any indemnified party to the extent the indemnifying party is not materially prejudiced as a proximate result of such failure and shall not in any event relieve the indemnifying party from any liability that it may have otherwise than on account of this indemnity agreement. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; *provided, however*, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election to so assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 9 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the fees and expenses of more than one separate counsel (together with local counsel), representing the indemnified parties who are parties to such action), which counsel (together with any local counsel) for the indemnified parties shall be selected by Jefferies, J.P. Morgan, TD Cowen and Guggenheim Securities (in the case of counsel for the indemnified parties referred to in Section 9(a) above) or by the Company (in the case of counsel for the indemnified parties referred to in Section 9(b) above) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party and shall be paid as they are incurred.

(d) ***Settlements*****.** The indemnifying party under this Section 9 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 9(c), the indemnifying party shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and does not include an admission of fault or culpability or a failure to act by or on behalf of such indemnified party.

Section 10. Contribution. If the indemnification provided for in Section 9 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Offered Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Offered Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total proceeds from the offering of the Offered Securities pursuant to this Agreement (before deducting expenses) received by the Company, and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth on the front cover page of the Prospectus, bear to the aggregate initial public offering price of the Offered Securities as set forth on such cover. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 9(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 9(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 10; *provided, however,* that no additional notice shall be required with respect to any action for which notice has been given under Section 9(c) for purposes of indemnification.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 10 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 10.

Notwithstanding the provisions of this Section 10, no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions received by such Underwriter in connection with the Offered Securities underwritten by it and distributed to the public. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 10 are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their respective names on Schedule A. For purposes of this Section 10, each affiliate, director, officer, employee and agent of an Underwriter and each person, if any, who controls an Underwriter within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

Section 11. Default of One or More of the Several Underwriters. If, on the First Closing Date or any Option Closing Date any one or more of the several Underwriters shall fail or refuse to purchase Offered Securities that it or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Offered Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase does not exceed 10% of the aggregate principal amount of the Offered Securities to be purchased on such date, the Representatives may make arrangements satisfactory to the Company for the purchase of such Offered Securities by other persons, including any of the Underwriters, but if no such arrangements are made by such date, the other Underwriters shall be obligated, severally and not jointly, in the proportions of the principal amount of Firm Securities set forth opposite their respective names on Schedule A bears to the aggregate principal amount of Firm Securities set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as may be specified by the Representatives with the consent of the non-defaulting Underwriters, to purchase the Offered Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date. If, on the First Closing Date or any Option Closing Date any one or more of the Underwriters shall fail or refuse to purchase Offered Securities and the aggregate principal amount of Offered Securities with respect to which such default occurs exceeds 10% of the aggregate principal amount of Offered Securities to be purchased on such date, and arrangements satisfactory to the Representatives and the Company for the purchase of such Offered Securities are not made within 48 hours after such default, this Agreement shall terminate without liability of any party to any other party except that the provisions of Section 4, Section 7, Section 9 and Section 10 shall at all times be effective and shall survive such termination. In any such case either the Representatives or the Company shall have the right to postpone the First Closing Date or the applicable Option Closing Date, as the case may be, but in no event for longer than seven days in order that the required changes, if any, to the Registration Statement and the Prospectus or any other documents or arrangements may be effected.

As used in this Agreement, the term "**Underwriter**" shall be deemed to include any person substituted for a defaulting Underwriter under this Section 11. Any action taken under this Section 11 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

Section 12. Termination of this Agreement. Prior to the purchase of the Firm Securities by the Underwriters on the First Closing Date, this Agreement may be terminated by the Representatives by notice given to the Company if at any time: (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Nasdaq, or trading in securities generally on either the Nasdaq or the NYSE shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges; (ii) a general banking moratorium shall have been declared by any federal or New York authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or the declaration of the United States of a national emergency or war, or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Representatives is material and adverse and makes it impracticable to market the Offered Securities in the manner and on the terms described in the Time of Sale Prospectus or the Prospectus or to enforce contracts for the sale of securities; (iv) in the judgment of the Representatives there shall have occurred any Material Adverse Change; or (v) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representatives may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured. Any termination pursuant to this Section 12 shall be without liability on the part of (a) the Company to any Underwriter, except that the Company shall be obligated to reimburse the expenses of the Representatives and the Underwriters pursuant to Section 4 or Section 7 hereof or (b) any Underwriter to the Company; *provided, however,* that the provisions of Section 9 and Section 10 shall at all times be effective and shall survive such termination.

Section 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Offered Securities pursuant to this Agreement, including the determination of the public offering price of the Offered Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

Section 14. Representations and Indemnities to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of its or their partners, officers or directors or any controlling person, as the case may be, and, anything herein to the contrary notwithstanding, will survive delivery of and payment for the Offered Securities sold hereunder and any termination of this Agreement.

Section 15. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Representatives:	Jefferies LLC 520 Madison Avenue New York, New York 10022 Facsimile: (646) 619-4437 Attention: General Counsel
	J.P. Morgan Securities LLC 270 Park Avenue New York, New York 10017 Attention: Equity Syndicate Desk Fax: (212) 622-8358
	TD Securities (USA) LLC 1 Vanderbilt Avenue New York, New York 10017 Attention: Equity Capital Markets
	Guggenheim Securities, LLC 330 Madison Avenue New York, New York 10017 Fax: (212) 658-9689 Attention: Head of Equity Capital Markets
with a copy to:	Cooley LLP 55 Hudson Yards New York, New York 10001 Attention: Richard C. Segal
If to the Company:	Celcuity Inc. 16305 36th Avenue North, Suite 100 Minneapolis, Minnesota 55446 Attention: Brian F. Sullivan
with a copy to:	Faegre Drinker Biddle & Reath LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, Minnesota 55402 Attention: Jonathan R. Zimmerman

Any party hereto may change the address for receipt of communications by giving written notice to the others.

Section 16. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, including any substitute Underwriters pursuant to Section 11 hereof, and to the benefit of the affiliates, directors, officers, employees, agents and controlling persons referred to in Section 9 and Section 10, and in each case their respective successors and personal representatives, and no other person will have any right or obligation hereunder. The term "**successors**" shall not include any purchaser of the Offered Securities as such from any of the Underwriters merely by reason of such purchase.

Section 17. Partial Unenforceability. The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 18. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Agreement, (A) "**BHC Act Affiliate**" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k); (B) "**Covered Entity**" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b); (C) "**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and (D) "U**.S. Special Resolution Regime**" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Section 19. Waiver of Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 20. Governing Law Provisions. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. 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 located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court, as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above 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 other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

Section 21. General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification provisions of Section 9 and the contribution provisions of Section 10, and is fully informed regarding said provisions. Each of the parties hereto further acknowledges that the provisions of Section 9 and Section 10 hereof fairly allocate the risks in light of the ability of the parties to investigate the Company, its affairs and its business in order to assure that adequate disclosure has been made in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, each free writing prospectus and the Prospectus (and any amendments and supplements to the foregoing), as contemplated by the Securities Act and the Exchange Act.

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

CELCUITY INC.

By: /s/ *Brian F. Sullivan*
Name: Brian F. Sullivan
Title: Chief Executive Officer

The foregoing Underwriting Agreement is hereby confirmed and accepted by the Representatives in New York, New York as of the date first above written.

JEFFERIES LLC
J.P. MORGAN SECURITIES LLC
TD SECURITIES (USA) LLC
GUGGENHEIM SECURITIES, LLC
Acting individually and as Representatives
of the several Underwriters named in
the attached Schedule A.

JEFFERIES LLC

By: /s/ *Coyler Curtis*
Name: Colyer Curtis
Title: Managing Director

J.P. MORGAN SECURITIES LLC

By: /s/ *Suraj Vasishtha*
Name: Suraj Vasishtha
Title: Executive Director

TD SECURITIES (USA) LLC

By: /s/ *Tucker Martin*
Name: Tucker Martin
Title: Managing Director

GUGGENHEIM SECURITIES, LLC

By: /s/ *Jordan Bliss*
Name: Jordan Bliss
Title: Senior Managing Director

Schedule A

Underwriters	Principal Amount of Firm Securities to be Purchased
Jefferies LLC	$ 150,000,000
J.P. Morgan Securities LLC	$ 150,000,000
TD Securities (USA) LLC	$ 90,000,000
Guggenheim Securities, LLC	$ 62,500,000
LifeSci Advisors, LLC	$ 32,500,000
Craig-Hallum Capital Group LLC	$ 7,500,000
Nomura Securities International, Inc.	$ 7,125,000
WR Securities, LLC	$ 375,000
Total	$ 500,000,000

Schedule B

Free Writing Prospectuses Included in the Time of Sale Prospectus

None.

Schedule C

Pricing Term Sheet

Filed Pursuant to Rule 433
Registration No. 333-292646
Issuer Free Writing Prospectus, dated June 3, 2026

PRICING TERM SHEET
June 3, 2026

Celcuity Inc.

$500.0 Million Aggregate Principal Amount of 0.250% Convertible Senior Notes due 2032

The information in this pricing term sheet supplements Celcuity Inc.'s ("Celcuity") preliminary prospectus supplement, dated June 3, 2026, (the "Preliminary Prospectus Supplement"), filed pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the "Securities Act"), relating to an offering of convertible senior notes (the "Convertible Notes Offering"), and the accompanying prospectus, dated January 9, 2026. This pricing term sheet supersedes the information in the Preliminary Prospectus Supplement to the extent inconsistent with the information in the Preliminary Prospectus Supplement. Terms used, but not defined, in this pricing term sheet have the respective meanings set forth in the Preliminary Prospectus Supplement. As used in this pricing term sheet, "we," "our" and "us" refer to Celcuity. Celcuity has increased the size of the Convertible Notes Offering from $400,000,000 to $500,000,000 (or, if the underwriters of the Convertible Notes Offering fully exercise their over-allotment option, $575,000,000). The final prospectus supplement relating to the Convertible Notes Offering will reflect conforming changes relating to such increase in the size of the Convertible Notes Offering.

Issuer:	Celcuity Inc.
Ticker/Exchange for Our Common Stock ("Common Stock"):	"CELC" / The Nasdaq Capital Market
Securities:	0.250% Convertible Senior Notes due 2032 (the "Notes")
Offering Size:	$500.0 million aggregate principal amount of Notes (or $575.0 million aggregate principal amount if the underwriters of the Convertible Notes Offering exercise their over-allotment option in full)
Ranking:	Senior unsecured.
Maturity Date:	August 1, 2032, unless earlier converted, redeemed or repurchased
Issue Price:	100% of principal amount per Note
Underwriting Discount:	3.0% of the principal amount of the Notes, and approximately $15.0 million in the aggregate (or approximately $17.3 million in the aggregate, if the underwriters of the Convertible Notes Offering exercise their over-allotment option in full)
Interest:	0.250% per annum, payable semi-annually in arrears on February 1 and August 1 of each year, beginning on February 1, 2027. In addition, special interest will accrue on the Notes in the circumstances described in the Preliminary Prospectus Supplement under the caption "Description of Notes—Special Interest as Sole Remedy for Certain Reporting Defaults."

Pricing Date	June 3, 2026
Trade Date	June 4, 2026
Settlement Date:	T+2; June 8, 2026
Use of Proceeds:	We estimate that the net proceeds to us from the Convertible Notes Offering will be approximately $484.3 million (or approximately $557.0 million if the underwriters of the Convertible Notes Offering exercise their over-allotment option in full), after deducting the underwriting discounts and commissions and our estimated offering expenses. We intend to use the net proceeds from the Convertible Notes Offering to repay in full all outstanding obligations under its amended and restated loan agreement with Oxford Finance, LLC, as collateral agent, and the lenders party thereto and the remainder for working capital and general corporate purposes, which may include clinical trial expenditures, commercial launch expenditures, commercialization expenditures, research and development expenditures, capital expenditures, expansion of business development activities and other general corporate purposes. We may also use a portion of the proceeds for the potential acquisition of businesses, technologies, and products, although we have no current binding understandings, commitments, or agreements to do so. See "Use of Proceeds" in the Preliminary Prospectus Supplement.
Last Reported Sale Price per Share of the Common Stock on June 3, 2026:	$88.95
Initial Conversion Rate:	8.0302 shares of Common Stock per $1,000 principal amount of the Notes
Initial Conversion Price:	Approximately $124.53 per share of Common Stock
Conversion Premium:	Approximately 40.0% above the last reported sale price of our Common Stock on The Nasdaq Capital Market on June 3, 2026
Joint Book-Running Managers:	Jefferies LLC J.P. Morgan Securities LLC TD Securities (USA) LLC Guggenheim Securities, LLC
Lead Manager:	LifeSci Capital LLC
Co-Managers:	Craig-Hallum Capital Group LLC Nomura Securities International, Inc. WR Securities, LLC
CUSIP/ISIN:	CUSIP: 15102K AB6 / ISIN: US15102KAB61
Denominations/Multiple:	$1,000 / $1,000
Listing:	None

Increase in Conversion Rate in Connection with a Make-Whole Fundamental Change

If a make-whole fundamental change occurs and the conversion date for the conversion of a Note occurs during the related make-whole fundamental change conversion period, then, subject to the provisions described in the Preliminary Prospectus Supplement under the caption "Description of Notes—Conversion Rights—Increase in Conversion Rate in Connection with a Make-Whole Fundamental Change," the conversion rate applicable to such conversion will be increased by a number of shares of Common Stock (the "Additional Shares") set forth in the table below corresponding (after interpolation as described below) to the make-whole fundamental change effective date and the stock price of such make-whole fundamental change:

Make-Whole Fundamental Change Effective Date	Stock Price									
	$88.95	$110.00	$124.53	$142.50	$161.89	$200.00	$300.00	$450.00	$625.00	$825.00
June 8, 2026	3.2120	2.2448	1.8025	1.4066	1.1011	0.7151	0.2764	0.0796	0.0160	0.0000
August 1, 2026	3.2120	2.2448	1.8025	1.4066	1.1002	0.7134	0.2747	0.0786	0.0155	0.0000
August 1, 2027	3.2120	2.2448	1.8025	1.4011	1.0823	0.6858	0.2492	0.0646	0.0102	0.0000
August 1, 2028	3.2120	2.2448	1.8025	1.3665	1.0370	0.6351	0.2117	0.0471	0.0044	0.0000
August 1, 2029	3.2120	2.2448	1.7352	1.2813	0.9458	0.5490	0.1589	0.0267	0.0007	0.0000
August 1, 2030	3.2120	2.1379	1.5830	1.1168	0.7845	0.4130	0.0915	0.0076	0.0000	0.0000
August 1, 2031	3.2120	1.8533	1.2619	0.7979	0.4966	0.2060	0.0223	0.0000	0.0000	0.0000
August 1, 2032	3.2120	1.0607	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

If such make-whole fundamental change effective date or stock price is not set forth in the table above, then:

- if such stock price is between two stock prices in the table above or the make-whole fundamental change effective date is between two dates in the table above, then the number of additional shares will be determined by straight-line interpolation between the numbers of additional shares set forth for the higher and lower stock prices in the table above or the earlier and later dates in the table above, based on a 365- or 366-day year, as applicable; and

- if the stock price is greater than $825.00 (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above are adjusted, as described below under the caption "—Adjustment of Stock Prices and Number of Additional Shares"), or less than $88.95 (subject to adjustment in the same manner), per share of our Common Stock , then no additional shares of our Common Stock will be added to the conversion rate.

Notwithstanding anything to the contrary, in no event will the conversion rate be increased to an amount that exceeds 11.2422 shares of our Common Stock per $1,000 principal amount of notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the conversion rate is required to be adjusted pursuant to the provisions described in the Preliminary Prospectus Supplement under the caption "Description of Notes—Conversion Rights—Conversion Rate Adjustments—Generally."

We have filed a registration statement (including a prospectus) and the Preliminary Prospectus Supplement with the SEC for the offering to which this communication relates. Before you invest, you should read the Preliminary Prospectus Supplement and the prospectus in that registration statement and other documents we have filed with the SEC for more complete information about us and this offering. You may get these documents free by visiting EDGAR on the SEC website at www.sec.gov. Alternatively, we, any underwriter or any dealer participating in the offering will arrange to send you the Preliminary Prospectus Supplement (or, when available, the applicable final prospectus supplement) and the accompanying prospectus upon request to: Jefferies LLC, Attn: Equity Syndicate Prospectus Department, 520 Madison Avenue, New York, NY 10022, by telephone at (877) 821-7388 or by email at prospectus_department@jefferies.com; J.P. Morgan Securities LLC, Attention Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, New York 11717, or by email at prospectus-eq_fi@jpmchase.com and postsalemanualrequests@broadridge.com; TD Securities (USA) LLC, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717 or by email at TDManualrequest@broadridge.com; and Guggenheim Securities, LLC, Attention: Equity Syndicate Department, 330 Madison Avenue, New York, NY 10017, by telephone at (212) 518-9544 or by email at GSEquityProspectusDelivery@guggenheimpartners.com.

The information in this pricing term sheet is not a complete description of the Notes or the Convertible Notes Offering. You should rely only on the information contained or incorporated by reference in the Preliminary Prospectus Supplement and the accompanying prospectus, as supplemented by this pricing term sheet, in making an investment decision with respect to the Notes.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

Exhibit A

FORM OF LOCK-UP AGREEMENT

_____, 2026

Jefferies LLC
J.P. Morgan Securities LLC
TD Securities (USA) LLC
Guggenheim Securities, LLC
As Representatives of the Several Underwriters

c/o Jefferies LLC
520 Madison Avenue
New York, New York 10022

c/o J.P. Morgan Securities LLC
270 Park Avenue
New York, New York 10017

c/o TD Securities (USA) LLC
1 Vanderbilt Avenue
New York, New York 10017

c/o Guggenheim Securities, LLC
330 Madison Avenue
New York, New York 10017

RE: Celcuity Inc. (the "Company")

Ladies and Gentlemen:

The undersigned is an owner of shares of common stock, par value $0.001 per share, of the Company ("**Shares**") or of securities convertible into or exchangeable or exercisable for Shares. The Company proposes to enter into (i) an underwriting agreement (the "**Equity Underwriting Agreement**") with Jefferies LLC ("**Jefferies**"), J.P. Morgan Securities LLC ("**J.P. Morgan**") TD Securities (USA) LLC ("**TD Cowen**") and Guggenheim Securities, LLC (together with Jefferies, J.P. Morgan and TD Cowen, the "**Representatives**"), acting as the representatives of the underwriters (the "**Underwriters**"), providing for the public offering (the "**Equity Offering**") by the several Underwriters of the Shares and (ii) an underwriting agreement (the "**Debt Underwriting Agreement**" and together with the Equity Underwriting Agreement, the "**Underwriting Agreements**") with the Representatives, acting as the representatives of the Underwriters, providing for the public offering (the "**Debt Offering**" and together with the Equity Offering, the "**Offerings**") by the several Underwriters of convertible senior notes (the "**Notes**", and together with the Shares, the "**Securities**"). The Notes will be convertible into Shares. In the event that the Company and the Representatives determine to only commence the Equity Offering, then references herein to the term "Underwriting Agreements," "Offerings" and "Securities" shall mean the "Equity Underwriting Agreement," "Equity Offering" and "Shares," respectively, while if such parties determine to only commence the Debt Offering, then references herein to the term "Underwriting Agreements," "Offerings" and "Securities" shall mean the "Debt Underwriting Agreement," "Debt Offering" and "Notes," respectively. The undersigned recognizes that the Offerings will benefit each of the Company and the undersigned. The undersigned acknowledges that the Underwriters are relying on the representations and agreements of the undersigned contained in this letter agreement in conducting the Offerings and, at a subsequent date, in entering into Underwriting Agreements for the Offerings and other underwriting arrangements with the Company with respect to the Offerings.

Annex A sets forth definitions for capitalized terms used in this letter agreement that are not defined in the body of this letter agreement. Those definitions are a part of this letter agreement.

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agrees that, during the Lock-up Period, the undersigned will not (and will cause any Family Member not to), without the prior written consent of the Representatives, which may withhold their consent in their sole discretion:

- Sell or Offer to Sell any Shares or Related Securities currently or hereafter owned either of record or beneficially (as defined in Rule 13d-3 under the Exchange Act) by the undersigned or such Family Member,

- enter into any Swap,

- make any demand for, or exercise any right with respect to, the registration under the Securities Act of the offer and sale of any Shares or Related Securities, or cause to be filed a registration statement, prospectus or prospectus supplement (or an amendment or supplement thereto) with respect to any such registration, or

- publicly announce any intention to do any of the foregoing.

The foregoing restrictions will not apply to the registration of the offer and sale of the Securities, and the sale of the Securities to the Underwriters, in each case as contemplated by the Underwriting Agreements. In addition, the foregoing restrictions shall not apply to the transfer of Shares or Related Securities (i) by gift, (ii) by will or intestate succession, (iii) to a trust whose beneficiaries consist exclusively of one or more of the undersigned and/or a Family Member, (iv) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity, (A) to another corporation, partnership, limited liability company, trust or other business entity that is a direct or indirect affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned or (B) as distributions of Shares or Related Securities to limited partners, limited liability company members or stockholders of the undersigned, or (v) if the undersigned is a trust, to the beneficiary of such trust; provided, however, that in each case set forth in (i) through (v) above, it shall be a condition to such transfer that:

- each transferee executes and delivers to the Representatives an agreement in form and substance satisfactory to the Representatives stating that such transferee is receiving and holding such Shares and/or Related Securities subject to the provisions of this letter agreement and agrees not to Sell or Offer to Sell such Shares and/or Related Securities, engage in any Swap or engage in any other activities restricted under this letter agreement except in accordance with this letter agreement (as if such transferee had been an original signatory hereto), and

- prior to the expiration of the Lock-up Period, no public disclosure or filing under the Exchange Act by any party to the transfer (donor, donee, transferor or transferee) shall be required, or made voluntarily, reporting a reduction in beneficial ownership of Shares in connection with such transfer (other than any such disclosure required to be made by applicable law, provided, however, any such filing will indicate by footnote disclosure otherwise the nature of the transfer or disposition).

In addition, the foregoing will not apply to (i) the exercise of stock options granted pursuant to the Company's equity incentive plans disclosed in the Company's public filings or the exercise of outstanding warrants disclosed in the Company's public filings; provided that such restrictions shall apply to any Shares issued upon such exercise; (ii) the establishment of any contract, instruction or plan (a "**Plan**") that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; provided that no sales of Shares or Related Securities will be made pursuant to such a Plan prior to the expiration of the Lock-up Period, and to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Shares may be made under such Plan during the Lock-up Period or (iii) sales or transfers made pursuant to any Plan for the transfer of Shares or Related Securities entered into by the undersigned prior to the date of this letter agreement and such Plan has been provided to the Representatives prior to the date hereof; provided that, to the extent a public announcement or filing under the Exchange Act, if any, is required or voluntarily made by or on behalf of the undersigned or the Company regarding any such sales or transfers, such announcement or filing shall include a statement to the effect that the sale or transfer was made pursuant to a trading plan established pursuant to Rule 10b5-1.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of Shares or Related Securities held by the undersigned and the undersigned's Family Members, if any, except in compliance with the foregoing restrictions.

With respect to the Offerings only, the undersigned waives any registration rights relating to registration under the Securities Act of the offer and sale of any Securities and/or any Related Securities owned either of record or beneficially by the undersigned, including any rights to receive notice of the Offerings. The Company shall be a beneficiary of, and entitled to rely upon, the foregoing waiver for all purposes.

The undersigned confirms that the undersigned has not, and has no knowledge that any Family Member has, directly or indirectly, taken any action designed to or that might reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Securities. The undersigned will not, and will cause any Family Member not to take, directly or indirectly, any such action.

The undersigned acknowledges and agrees that the Underwriters have not provided any recommendation or investment advice nor have the Underwriters solicited any action from the undersigned with respect to the Offerings and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate.

Whether or not the Offerings occur as currently contemplated or at all depends on market conditions and other factors. The Offerings will only be made pursuant to the Underwriting Agreements, the terms of which are subject to negotiation between the Company and the Underwriters.

Notwithstanding anything to the contrary contained herein, this letter agreement will automatically terminate and the undersigned will be released from all obligations hereunder upon the earliest to occur, if any, of (i) the Company advises the Representatives in writing, prior to the execution of the Underwriting Agreements, that it has determined not to proceed with the Offerings, (ii) the Underwriting Agreements are executed but are terminated (other than the provisions thereof which survive termination) prior to payment for and delivery of the Securities to be sold thereunder, or (iii) the Underwriting Agreements are not executed on or before June 30, 2026.

The undersigned hereby represents and warrants that the undersigned has full power, capacity, and authority to enter into this letter agreement. This letter agreement is irrevocable and will be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. This letter agreement may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com or www.echosign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

This letter agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Very truly yours,

_____

(Signature)

_____

(Name)

(*Indicate capacity of person signing if signing as custodian or trustee, or on behalf of an entity*)

[Signature page to Lock-Up Letter]

Annex A

Certain Defined Terms Used in Letter Agreement

For purposes of the letter agreement to which this Annex A is attached and of which it is made a part:

- "**Call Equivalent Position**" shall have the meaning set forth in Rule 16a-1(b) under the Exchange Act.
- "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.
- "**Family Member**" shall mean the spouse of the undersigned, an immediate family member of the undersigned or an immediate family member of the undersigned's spouse, in each case living in the undersigned's household or whose principal residence is the undersigned's household (regardless of whether such spouse or family member may at the time be living elsewhere due to educational activities, health care treatment, military service, temporary internship or employment or otherwise). "**Immediate family member**" as used above shall have the meaning set forth in Rule 16a-1(e) under the Exchange Act.
- "**Lock-up Period**" shall mean the period beginning on the date hereof and continuing through the close of trading on the date that is 60 days after the date of the Prospectus (as defined in the Underwriting Agreements).
- "**Put Equivalent Position**" shall have the meaning set forth in Rule 16a-1(h) under the Exchange Act.
- "**Related Securities**" shall mean any options or warrants or other rights to acquire Shares or any securities exchangeable or exercisable for or convertible into Shares, or to acquire other securities or rights ultimately exchangeable or exercisable for or convertible into Shares.
- "**Securities Act**" shall mean the Securities Act of 1933, as amended.
- "**Sell or Offer to Sell**" shall mean to:
    - sell, offer to sell, contract to sell or lend,
    - effect any short sale or establish or increase a Put Equivalent Position or liquidate or decrease any Call Equivalent Position
    - pledge, hypothecate or grant any security interest in, or
    - in any other way transfer or dispose of in each case whether effected directly or indirectly.
- "**Swap**" shall mean any swap, hedge or similar arrangement or agreement that transfers, in whole or in part, the economic risk of ownership of Shares or Related Securities, regardless of whether any such transaction is to be settled in securities, in cash or otherwise.

Capitalized terms not defined in this Annex A shall have the meanings given to them in the body of this letter agreement.

Exhibit B

Directors, Executive Officers and Others Signing Lock-up Agreement

Brian F. Sullivan

Lance G. Laing

Vicky Hahne

Richard E. Buller

David F. Dalvey

Richard J. Nigon

Leo T. Furcht

Polly A. Murphy

Charles Romp

Brightstone Venture Capital Fund, LP

Exhibit 4.2

Execution Version

CELCUITY INC.

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

as Trustee

SECOND SUPPLEMENTAL INDENTURE

Dated as of June 8, 2026

0.250% Convertible Senior Notes due 2032

CROSS REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	N/A
(a)(2)	N/A
(a)(3)	N/A
(a)(4)	N/A
(a)(5)	N/A
(b)	N/A
(c)	N/A
311(a)	N/A
(b)	N/A
(c)	N/A
312(a)	**Section 2.07**
(b)	N/A
(c)	N/A
313(a)	N/A
(b)(1)	N/A
(b)(2)	N/A
(c)	N/A
(d)	N/A
314(a)	**Section 3.02(A)**
(b)	N/A
(c)(1)	N/A
(c)(2)	N/A
(c)(3)	N/A
(d)	N/A
(e)	N/A
(f)	N/A
315(a)	N/A
(b)	N/A
(c)	N/A
(d)	N/A
(e)	**Section 7.13**
316(a) (last sentence)	**Section 2.12**
(a)(1)(A)	**Section 7.07**
(a)(1)(B)	**Section 7.05**
(a)(2)	N/A
(b)	**Section 7.09**
(c)	N/A
317(a)(1)	**Section 7.10**
(a)(2)	**Section 7.11**
(b)	**Section 2.06**
318 (a)	N/A
(b)	N/A
(c)	**Section 10.15**

N/A means not applicable.

* This Cross Reference Table is not part of the Indenture.

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SECOND SUPPLEMENTAL INDENTURE, dated as of June 8, 2026, between Celcuity Inc., a Delaware corporation, as issuer (the "**Company**"), and U.S. Bank Trust Company, National Association, as trustee (the "**Trustee**"), to the Base Indenture (as defined below).

WHEREAS, Sections 2.01, 2.02 and 9.01(g) of the Base Indenture authorize the Company to execute a supplemental indenture thereto to set forth the terms and other provisions of any new series of Securities;

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the establishment of a new series of Securities to be titled the Company's "0.250% Convertible Senior Notes due 2032" (the "**Notes**"), and has duly authorized the issuance of Notes initially in an aggregate principal amount not to exceed five hundred seventy five million dollars ($575,000,000), subject to **Section 2.02(B)**;

WHEREAS, to provide the terms and conditions of the Notes, the Company has duly authorized the execution and delivery of this Supplemental Indenture; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as provided in the Indenture, the valid, binding and legal obligations of the Company, and the Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Supplemental Indenture and the issuance under the Indenture of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH, that to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time (except as otherwise provided in the Indenture) as follows:

Article 1. DEFINITIONS; RULES OF CONSTRUCTION; SCOPE AND INTERPRETATION OF BASE INDENTURE

Section 1.01 Definitions.

Subject to the last paragraph of **Section 1.03**, capitalized terms used in this Supplemental Indenture without definition have the respective meanings ascribed to them in the Base Indenture. The terms defined in this **Section 1.01** or referenced in **Section 1.02** (except as otherwise expressly provided or unless the context otherwise requires) will apply for all purposes of the Indenture (and any further supplement thereto) as it relates to the Notes and will supersede any conflicting definitions in the Base Indenture.

"**Affiliate**" has the meaning set forth in Rule 144 as in effect on the Issue Date.

"**Authorized Denomination**" means, with respect to a Note, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non- U.S. law for the relief of debtors.

"**Base Indenture**" means that certain Indenture, dated as of August 1, 2025, between the Company and Trustee.

"**Bid Solicitation Agent**" means the Person who is required to obtain bids for the Trading Price in accordance with **Section 5.01(C)(i)(2)** and the definition of "Trading Price." The initial Bid Solicitation Agent on the Issue Date will be the Company; *provided*, *however*, that the Company may appoint any other Person (including any of the Company's Subsidiaries) to be the Bid Solicitation Agent at any time after the Issue Date without prior notice to the Holders.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into, or exchangeable for, such equity.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (A) to vote in the election of directors of such Person; or (B) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the common stock, $0.001 par value per share, of the Company, subject to **Section 5.09**.

"**Company**" means the Person named as such in the first paragraph of this Supplemental Indenture and, subject to **Article 6**, its successors and assigns.

"**Company Order**" means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

"**Conversion**" means, with respect to any Note, the conversion of such note pursuant to **Article 5** into Conversion Consideration. The terms "Convert," "Converted," "Convertible," "Converting" and similar capitalized terms have meanings correlative to the foregoing.

"**Conversion Date**" means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** to Convert such Note are satisfied, subject to **Section 5.03(C)**.

"**Conversion Price**" means, as of any time, an amount equal to (A) one thousand dollars ($1,000) *divided by* (B) the Conversion Rate in effect at such time.

"**Conversion Rate**" initially means 8.0302 shares of Common Stock per $1,000 principal amount of Notes; *provided*, *however*, that the Conversion Rate is subject to adjustment pursuant to **Article 5**; *provided*, *further*, that whenever this Supplemental Indenture refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

"**Conversion Share**" means any share of Common Stock issued or issuable upon Conversion of any Note.

"**Daily Cash Amount**" means, with respect to any VWAP Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such VWAP Trading Day.

"**Daily Conversion Value**" means, with respect to any VWAP Trading Day, one-thirtieth (1/30th) of the product of (A) the Conversion Rate on such VWAP Trading Day; and (B) the Daily VWAP per share of Common Stock on such VWAP Trading Day.

"**Daily Maximum Cash Amount**" means, with respect to the Conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such Conversion by (B) thirty (30).

"**Daily Share Amount**" means, with respect to any VWAP Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such VWAP Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such VWAP Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such VWAP Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "CELC <EQUITY> AQR" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company, which may be any of the Underwriters). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Settlement Method**" means, initially, Physical Settlement; *provided*, *however*, that (x) subject to **Section 5.03(A)(iii)**, the Company may, from time to time, change the Default Settlement Method, to any Settlement Method that the Company is then permitted to elect, by sending notice of the new Default Settlement Method to the Holders, the Trustee and the Conversion Agent (if other than the Trustee); (y) the Default Settlement Method will be subject to **Section 5.03(A)(ii)**; and (z) no such change to the Default Settlement Method will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to the Indenture (including pursuant to **Section 5.03(A)**).

"**Depositary**" means The Depository Trust Company or its successor.

"**Depositary Participant**" means any member of, or participant in, the Depositary.

"**Depositary Procedures**" means, with respect to any Conversion, transfer, exchange or other transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depositary applicable to such Conversion, transfer, exchange or transaction.

"**Effective Date**," in relation to a stock split or stock combination of the Common Stock, means the first date on which the shares of Common Stock trade on the relevant stock exchange, regular way, reflecting the relevant stock split or stock combination, as applicable.

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

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

"**Exempted Fundamental Change**" means any Fundamental Change with respect to which, in accordance with **Section 4.02(I)**, the Company does not offer to repurchase any Notes.

"**Fundamental Change**" means any of the following events:

(A) a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or its or their respective employee benefit plans, files any report with the SEC indicating that such person or group has become the direct or indirect "beneficial owner" (as defined below) of shares of the Common Stock representing more than fifty percent (50%) of the voting power of all of the Common Stock;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person, other than solely to one or more of the Company's Wholly Owned Subsidiaries; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided*, *however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly "beneficially owned" (as defined below) all classes of the Company's Common Equity immediately before such transaction directly or indirectly "beneficially own," immediately after such transaction, more than fifty percent (50%) of all classes of Common Equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(D) the Common Stock ceases to be listed on any of the New York Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (or any of their respective successors);

provided, *however*, that a transaction or event described in **clause (A)** or **(B)** above will not constitute a Fundamental Change if at least ninety percent (90%) of the consideration received or to be received by the holders of Common Stock (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event, consists of shares of common stock or other corporate Common Equity interests listed (or depositary receipts representing shares of common stock or other corporate Common Equity interests, which depositary receipts are listed) on any of the New York Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (or any of their respective successors), or that will be so listed when issued or exchanged in connection with such transaction or event, and such transaction or event constitutes a Common Stock Change Event whose Reference Property consists of such consideration.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i)** or **(ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a "**beneficial owner**," whether shares are "**beneficially owned**," and percentage beneficial ownership, will be determined in accordance with Rule 13d-3 under the Exchange Act.

For the avoidance of doubt, references to the "Common Stock" and the Company's "Common Equity" in this definition will be subject to **Section 5.09(A)(1)**.

"**Fundamental Change Repurchase Date**" means the date fixed for the repurchase of any Notes by the Company pursuant to a Repurchase Upon Fundamental Change.

"**Fundamental Change Repurchase Notice**" means a notice (including a notice substantially in the form of the "Fundamental Change Repurchase Notice" set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.02(F)(i)** and **Section 4.02(F)(ii)**.

"**Fundamental Change Repurchase Price**" means the cash price payable by the Company to repurchase any Note upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 4.02(D)**.

"**Global Note**" means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depositary or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depositary.

"**Global Note Legend**" means a legend substantially in the form set forth in **Exhibit B-1**.

"**Holder**" means a person in whose name a Note is registered on the Registrar's books.

"**Indenture**" means the Base Indenture, as amended by this Supplemental Indenture, and as the same may be further amended or supplemented from time to time with respect to the Notes.

"**Interest Payment Date**" means, with respect to a Note, notwithstanding anything to the contrary in Section 1.01 of the Base Indenture, each February 1 and August 1 of each year, commencing on February 1, 2027 (or such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

"**Issue Date**" means June 8, 2026.

"**Last Reported Sale Price**" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company, which may be any of the Underwriters. The "**Last Reported Sale Price**" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session hours. Neither the Trustee nor the Conversion Agent will have any duty to determine the Last Reported Sale Price.

"**Make-Whole Fundamental Change**" means (A) a Fundamental Change (determined after giving effect to the proviso immediately after **clause (D)** of the definition thereof, but without regard to the proviso to **clause (B)(ii)** of such definition); or (B) the sending of a Redemption Notice pursuant to **Section 4.03(F)**; *provided*, *however*, that the sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called (or deemed, pursuant to **Section 4.03(I)**, to be called) for Redemption pursuant to such Redemption Notice and not with respect to any other Notes.

"**Make-Whole Fundamental Change Conversion Period**" has the following meaning:

(A) in the case of a Make-Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, the period from, and including, the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change to, and including, the thirty-fifth (35th) Trading Day after such Make-Whole Fundamental Change Effective Date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change (other than an Exempted Fundamental Change), to, but excluding, the related Fundamental Change Repurchase Date); and

(B) in the case of a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the period from, and including, the Redemption Notice Date for the related Redemption to, and including, the Business Day immediately before the related Redemption Date;

provided, *however*, that if the Conversion Date for the Conversion of a Note that has been called (or deemed, pursuant to **Section 4.03(I)**, to be called) for Redemption occurs during the Make-Whole Fundamental Change Conversion Period for both a Make-Whole Fundamental Change occurring pursuant to **clause (A)** of the definition of "Make-Whole Fundamental Change" and a Make-Whole Fundamental Change resulting from such Redemption pursuant to **clause (B)** of such definition, then, notwithstanding anything to the contrary in **Section 5.07**, solely for purposes of such Conversion, (x) such Conversion Date will be deemed to occur solely during the Make-Whole Fundamental Change Conversion Period for the Make-Whole Fundamental Change with the earlier Make-Whole Fundamental Change Effective Date; and (y) the Make-Whole Fundamental Change with the later Make-Whole Fundamental Change Effective Date will be deemed not to have occurred.

"**Make-Whole Fundamental Change Effective Date**" means (A) with respect to a Make-Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, the date on which such Make-Whole Fundamental Change occurs or becomes effective; and (B) with respect to a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the applicable Redemption Notice Date.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means August 1, 2032.

"**Non-Affiliate Legend**" means a legend substantially in the form set forth in **Exhibit B-2**.

"**Note Agent**" means any Registrar, Paying Agent or Conversion Agent.

"**Notes**" means the 0.250% Convertible Senior Notes due 2032 issued by the Company pursuant to the Indenture.

"**Observation Period**" means, with respect to any Note to be Converted, (A) subject to **clause (B)** below, if the Conversion Date for such Note occurs before May 1, 2032, the thirty (30) consecutive VWAP Trading Days beginning on, and including, the second (2nd) VWAP Trading Day immediately after such Conversion Date; (B) if such Conversion Date occurs on or after the date the Company has sent a Redemption Notice calling all or any Notes for Redemption pursuant to **Section 4.03(F)** and on or before the Business Day before the related Redemption Date, the thirty (30) consecutive VWAP Trading Days beginning on, and including, the thirty-first (31st) Scheduled Trading Day immediately before such Redemption Date; and (C) subject to **clause (B)** above, if such Conversion Date occurs on or after May 1, 2032, the thirty (30) consecutive VWAP Trading Days beginning on, and including, the thirty-first (31st) Scheduled Trading Day immediately before the Maturity Date.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Person**" or "**person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate "person" under the Indenture.

"**Physical Note**" means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by the Trustee.

"**Qualified Successor Entity**" means, with respect to a Business Combination Event, a corporation; *provided*, *however*, that (i) if such Business Combination Event is an Exempted Fundamental Change, a limited liability company, limited partnership or other similar entity will also constitute a Qualified Successor Entity with respect to such Business Combination Event; and (ii) a limited liability company or limited partnership that is the resulting, surviving or transferee Person of such Business Combination Event will also constitute a Qualified Successor Entity with respect to such Business Combination Event; *provided* that, in the case of this clause (ii) all of the following conditions are satisfied: (1) either (x) such limited liability company or limited partnership is treated as a corporation or is a direct or indirect, Wholly Owned Subsidiary of, and disregarded as an entity separate from, a corporation, in each case for U.S. federal income tax purposes; or (y) the Company has received an opinion of a nationally recognized tax counsel to the effect that such Business Combination Event will not be treated as an exchange under Section 1001 of the Internal Revenue Code of 1986, as amended, for Holders or beneficial owners of the Notes; (2) such Business Combination Event constitutes a Common Stock Change Event whose Reference Property consists solely of any combination of cash in U.S. dollars and shares of common stock or other corporate Common Equity interests of an entity that is (x) treated as a corporation for U.S. federal income tax purposes; (y) duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; and (z) a direct or indirect parent of such limited liability company or limited partnership; and (3) if such limited liability company or limited partnership is disregarded as separate from its owner for U.S. federal income tax purposes, its regarded owner for those purposes is an entity described in clause (ii)(2).

"**Redemption**" means the repurchase of any Note by the Company pursuant to **Section 4.03**.

"**Redemption Date**" means the date fixed, pursuant to **Section 4.03(D)**, for the settlement of the repurchase of any Notes by the Company pursuant to a Redemption.

"**Redemption Notice Date**" means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.03(F)**.

"**Redemption Price**" means the cash price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.03(E)**.

"**Regular Record Date**" has the following meaning with respect to an Interest Payment Date: (A) if such Interest Payment Date occurs on February 1, the immediately preceding January 15 (whether or not a Business Day); and (B) if such Interest Payment Date occurs on August 1, the immediately preceding July 15 (whether or not a Business Day).

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section 4.02**.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "Scheduled Trading Day" means a Business Day.

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

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Security**" means any Note or Conversion Share.

"**Settlement Method**" means Cash Settlement, Physical Settlement or Combination Settlement.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"**Special Interest**" means any interest that accrues on any Note pursuant to **Section 7.03**.

"**Specified Dollar Amount**" means, with respect to the Conversion of a Note to which Combination Settlement applies, the maximum cash amount per $1,000 principal amount of such Note deliverable upon such Conversion (excluding cash in lieu of any fractional share of Common Stock).

"**Stock Price**" has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is pursuant to **clause (B)** of the definition of "Fundamental Change," then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change.

"**Subsidiary**" means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Supplemental Indenture**" means this Second Supplemental Indenture, as amended or supplemented from time to time.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Trading Price**" of the Notes on any Trading Day means the average of the secondary market bid quotations, expressed as a cash amount per $1,000 principal amount of Notes, obtained by the Bid Solicitation Agent for one million dollars ($1,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes at approximately 3:30 p.m., New York City time, on such Trading Day from three (3) nationally recognized independent securities dealers selected by the Company, which may include any of the Underwriters; *provided*, *however*, that, if three (3) such bids cannot reasonably be obtained by the Bid Solicitation Agent but two (2) such bids are obtained, then the average of the two (2) bids will be used, and if only one (1) such bid can reasonably be obtained by the Bid Solicitation Agent, then that one (1) bid will be used. If, on any Trading Day, (A) the Bid Solicitation Agent cannot reasonably obtain at least one (1) bid for one million dollars ($1,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes from a nationally recognized independent securities dealer; (B) the Company is not acting as the Bid Solicitation Agent and the Company fails to instruct the Bid Solicitation Agent to obtain bids when required; or (C) the Bid Solicitation Agent fails to solicit bids when required, then, in each case, the Trading Price per $1,000 principal amount of Notes on such Trading Day will be deemed to be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day.

"**Trust Indenture Act**" means the U.S. Trust Indenture Act of 1939, as amended.

"**Trustee**" means the Person named as such in the first paragraph of this Supplemental Indenture until a successor replaces it in accordance with the provisions of the Indenture and, thereafter, means such successor.

"**Underwriters**" has the meaning set forth in the Underwriting Agreement.

"**Underwriting Agreement**" means that certain Underwriting Agreement, dated June 3, 2026, among the Company and Jefferies LLC, J.P. Morgan Securities LLC, TD Securities (USA) LLC and Guggenheim Securities, LLC, as the representatives of the several Underwriters.

"**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

Section 1.02 Other Definitions.

Term	Defined in Section
"Additional Shares"	**Section 5.07(A)**
"Business Combination Event"	**Section 6.01(A)**
"Cash Settlement"	**Section 5.03(A)**
"Combination Settlement"	**Section 5.03(A)**
"Common Stock Change Event"	**Section 5.09(A)**
"Conversion Agent"	**Section 2.05(A)**
"Conversion Consideration"	**Section 5.03(B)**
"Default Interest"	**Section 2.04(B)**
"Defaulted Amount"	**Section 2.04(B)**
"Event of Default"	**Section 7.01(A)**
"Expiration Date"	**Section 5.05(A)(v)**
"Expiration Time"	**Section 5.05(A)(v)**
"Fundamental Change Notice"	**Section 4.02(E)**
"Fundamental Change Repurchase Right"	**Section 4.02(A)**
"Initial Notes"	**Section 2.02(A)**
"Measurement Period"	**Section 5.01(C)(i)(2)**
"Partial Redemption Limitation"	**Section 4.03(B)**
"Paying Agent"	**Section 2.05(A)**
"Physical Settlement"	**Section 5.03(A)**
"Redemption Notice"	**Section 4.03(F)**
"Reference Property"	**Section 5.09(A)**
"Reference Property Unit"	**Section 5.09(A)**
"Register"	**Section 2.05(B)**

"Registrar"	**Section 2.05(A)**
"Reporting Event of Default"	**Section 7.03(A)**
"Specified Courts"	**Section 10.05**
"Spin-Off"	**Section 5.05(A)(iii)(2)**
"Spin-Off Valuation Period"	**Section 5.05(A)(iii)(2)**
"Stated Interest"	**Section 2.04(A)**
"Successor Entity"	**Section 6.01(A)**
"Successor Person"	**Section 5.09(A)**
"Tender/Exchange Offer Valuation Period"	**Section 5.05(A)(v)**
"Trading Price Condition"	**Section 5.01(C)(i)(2)**

Section 1.03 Rules of Construction.

For purposes of the Indenture:

(A) "or" is not exclusive;

(B) "including" means "including without limitation";

(C) "will" expresses a command;

(D) the "average" of a set of numerical values refers to the arithmetic average of such numerical values;

(E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;

(F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

(G) "herein," "hereof" and other words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision of this Supplemental Indenture, unless the context requires otherwise;

(H) each Article, Section, clause or paragraph reference in this Supplemental Indenture that is in bolded typeface refers to the referenced Article, Section, clause or paragraph, as applicable, of this Supplemental Indenture;

(I) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;

(J) the exhibits, schedules and other attachments to this Supplemental Indenture are deemed to form part of the Indenture;

(K) to the extent any provision of this Supplemental Indenture limits, qualifies or conflicts with a provision of the Base Indenture, such provision of this Supplemental Indenture will control; and

(L) the term "**interest**," when used with respect to a Note, includes any Default Interest or Special Interest, unless the context requires otherwise.

For purposes of the Indenture, the following terms of the Trust Indenture Act have the following meanings:

(i) "**Commission**" means the SEC;

(ii) "**indenture securities**" means the Notes;

(iii) "**indenture security holder**" means a Holder;

(iv) "**indenture to be qualified**" means the Indenture;

(v) "**indenture trustee**" or "**institutional trustee**" means the Trustee; and

(vi) "**obligor**" on the indenture securities means the Company.

All other terms used in the Indenture that are defined by the Trust Indenture Act (including by reference to another statute) or the related rules of the SEC, and not defined in the Indenture, have the respective meanings so defined by the Trust Indenture Act or such rules.

Section 1.04 Scope of Supplemental Indenture.

This Supplemental Indenture supplements the provisions of the Base Indenture, to which provisions reference is hereby made. The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture will be applicable only with respect to, and will only govern the terms of, the Notes, which may be issued from time to time, and will not apply to any other Securities that may be issued under the Base Indenture unless a supplemental indenture with respect to such other securities specifically incorporates such changes, modifications and supplements. For all purposes under the Base Indenture, the Notes will constitute a single series of Notes, and with regard to any matter requiring the consent under the Base Indenture of Holders of multiple Series of Notes voting together as a single class, the consent of Holders of the Notes voting as a separate class will also be required and the same threshold will apply. The provisions of this Supplemental Indenture will supersede any conflicting provisions in the Base Indenture.

Article 2. THE NOTES

Section 2.01 Form, Dating and Denominations.

The Notes and the Trustee's certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section 2.08** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes. Global Notes may be exchanged for Physical Notes only as provided in Section 2.11 of the Base Indenture; *provided*, *however*, that the Company, in its sole discretion, may permit the exchange of any beneficial interest in a Global Note for one or more Physical Notes at the request of the owner of such beneficial interest.

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of the Indenture, and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Supplemental Indenture, agree to such terms and to be bound thereby; *provided*, *however*, that, to the extent that any provision of any Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control for purposes of the Indenture and such Note.

Section 2.02 INITIAL NOTES AND ADDITIONAL NOTES.

(A) *Initial Notes*. On the Issue Date, there will be originally issued five hundred seventy five million dollars ($575,000,000) aggregate principal amount of Notes, subject to the provisions of the Indenture (including Section 2.04 of the Base Indenture). Notes issued pursuant to the Underwriting Agreement, and any Notes issued in exchange therefor or in substitution thereof, are referred to in the Indenture as the "**Initial Notes**."

(B) *Additional Notes*. Without the consent of any Holder, the Company may, subject to the provisions of the Indenture (including Section 2.04 of the Base Indenture), originally issue additional Notes with the same terms as the Initial Notes (except, to the extent applicable, with respect to the date on which interest begins to accrue on such additional Notes and the first Interest Payment Date of such additional Notes), which additional Notes will, subject to the foregoing, be considered to be part of the same series of, and rank equally and ratably with all other, Notes issued under this Supplemental Indenture; *provided*, *however*, that if any such additional Notes (and any Notes that are resold after such Notes have been purchased or otherwise acquired by the Company or its Subsidiaries) are not fungible with other Notes issued under this Supplemental Indenture for U.S. federal income tax purposes, for U.S. federal securities law purposes or for purposes of the Depositary Procedures, then such additional or resold Notes will be identified by one or more separate CUSIP numbers or by no CUSIP number. In authenticating additional Notes, the Trustee will receive:

(i) a copy of the resolution or resolutions of the Board of Directors in or pursuant to which the terms and form of the Notes were established, and if the terms and form of such Notes are established by an Officer's Certificate pursuant to general authorization of the Board of Directors, such Officer's Certificate;

(ii) an executed supplemental indenture, if any; and

(iii) an Opinion of Counsel which will state:

(1) that the form and terms of such Notes have been established in conformity with the provisions of the Indenture; and

(2) that such Notes, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles.

Section 2.03 Method of Payment.

(A) *Global Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds no later than the time the same is due as provided in the Indenture.

(B) *Physical Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Physical Note no later than the time the same is due as provided in the Indenture as follows: (i) if the principal amount of such Physical Note is at least two million dollars ($2,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Physical Note entitled to such payment has delivered to the Paying Agent or the Trustee, no later than the time set forth in the immediately following sentence, a written request that the Company make such payment by wire transfer to an account of such Holder within the United States specified in such request, by wire transfer of immediately available funds to such account; and (ii) in all other cases, by check mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register. To be timely, such written request must be so delivered no later than the Close of Business on the following date: (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; (y) with respect to any cash Conversion Consideration, the relevant Conversion Date; and (z) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

Section 2.04 Accrual of Interest; Defaulted Amounts; When Payment Date is Not a BUSINESS DAY.

(A) *Accrual of Interest.* Each Note will accrue interest at a rate per annum equal to 0.250% (the "**Stated Interest**"), plus any Special Interest that may accrue pursuant to **Section 7.03**. Stated Interest on each Note will (i) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the date set forth in the certificate representing such Note as the date from, and including, which Stated Interest will begin to accrue in such circumstance) to, but excluding, the date of payment of such Stated Interest; and (ii) be, subject to **Section 4.02(D)**, **Section 4.03(E)** and **Section 5.02(D)** (but without duplication of any payment of interest), payable semi-annually in arrears on each Interest Payment Date, beginning on the first Interest Payment Date set forth in the certificate representing such Note, to the Holder of such Note as of the Close of Business on the immediately preceding Regular Record Date. Stated Interest, and, if applicable, Special Interest, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts*. If the Company fails to pay any amount (a "**Defaulted Amount**") payable on a Note on or before the due date therefor as provided in the Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest ("**Default Interest**") will accrue on such Defaulted Amount at a rate per annum equal to the rate per annum at which Stated Interest accrues, from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest; and (iii) such Defaulted Amount and Default Interest will be paid, at the Company's election, as provided in **clause (i)** or **(ii)** below.

(i) *Payment of Default Amounts on a Special Payment Date*. The Company will have the right to pay such Defaulted Amount and Default Interest on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that (1) such special record date is no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (2) at least fifteen (15) calendar days before such special record date, the Company sends notice to the Trustee and the Holders that states such special record date, such payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date.

(ii) *Payment of Default Amount in Any Other Lawful Manner*. If not paid in accordance with **Section 2.04(B)(i)**, such Defaulted Amount and Default Interest will be paid by the Company in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this **Section 2.04(B)(ii)**, such manner of payment will be deemed practicable by the Trustee.

(C) *Delay of Payment When Payment Date Is Not a Business Day*. If the due date for a payment on a Note as provided in the Indenture is not a Business Day, then, notwithstanding anything to the contrary in the Indenture or the Notes, such payment may be made on the immediately following Business Day with the same force and effect as if such payment were made on such due date (and, for the avoidance of doubt, no interest will accrue on such payment as a result of the related delay). Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a "Business Day."

(D) *Special Provision for Global Notes*. If the first date on which any Special Interest begins to accrue on a Global Note is on or after the fifth (5th) Business Day before a Regular Record Date and before the next Interest Payment Date, then, notwithstanding anything to the contrary in the Indenture or the Notes, the amount thereof accruing in respect of the period from, and including, such first date to, but excluding, such Interest Payment Date will not be payable on such Interest Payment Date but will instead be deemed to accrue (without duplication) entirely on such Interest Payment Date and be payable on the immediately succeeding Interest Payment Date (and, for the avoidance of doubt, no interest will accrue as a result of the related delay).

Section 2.05 Registrar, Paying Agent and Conversion Agent.

This **Section 2.05** will apply to the Notes in lieu of Section 4.02 of the Base Indenture, which will be deemed to be replaced with this **Section 2.05**, *mutatis mutandis*.

(A) *Generally*. The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the "**Registrar**"); (ii) an office or agency in the continental United States where Notes may be presented for payment (the "**Paying Agent**"); and (iii) an office or agency in the continental United States where Notes may be presented for Conversion (the "**Conversion Agent**"). If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, then the Trustee will act as such and will receive compensation therefor in accordance with the Indenture and any other agreement between the Trustee and the Company. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar, Paying Agent or Conversion Agent, without prior notice to Holders. Notwithstanding anything to the contrary in this **Section 2.05(A)**, each of the Registrar, Paying Agent and Conversion Agent with respect to any Global Note must at all times be a Person that is eligible to act in that capacity under the Depositary Procedures.

(B) *Duties of the Registrar*. The Registrar will keep a record (the "**Register**") of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase, Redemption and Conversion of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company's Right to Appoint Successor Registrars, Paying Agents and Conversion Agents*. The Company may appoint one or more co-Registrars, co-Paying Agents and co-Conversion Agents, each of whom will be deemed to be a Registrar, Paying Agent or Conversion Agent, as applicable, under the Indenture. Subject to **Section 2.05(A)**, the Company may change any Registrar, Paying Agent or Conversion Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) of the name and address of each Note Agent, if any, not a party to the Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of the Indenture that relate to such Note Agent.

(D) *Initial Appointments*. The Company appoints the Trustee as the initial Paying Agent, the initial Registrar and the initial Conversion Agent and designates the office of the Trustee at U.S. Bank Trust Company, National Association, West Side Flats St Paul, 60 Livingston Ave, Saint Paul, MN 55107 | EP-MN-S3MC, Attention: Q. DePompolo (Celcuity Inc. Administrator) as the office for the same (or such other address as the Trustee or applicable Note Agent may designate from time to time by notice to the Holders and the Company).

Section 2.06 Paying Agent and Conversion Agent to Hold Property in Trust.

This **Section 2.06** will apply to the Notes in lieu of Section 4.03 of the Base Indenture, which will be deemed to be replaced with this **Section 2.06** , *mutatis mutandis*.

The Company will require each Paying Agent or Conversion Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of Holders or the Trustee all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee of any default by the Company in making any such payment or delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent or Conversion Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent (if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (A) it will segregate and hold in a separate trust fund for the benefit of the Holders or the Trustee all money and other property held by it as Paying Agent or Conversion Agent; and (B) references in the Indenture or the Notes to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to **clause (viii**) or **(ix**) of **Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent or Conversion Agent), the Trustee will serve as the Paying Agent or Conversion Agent, as applicable, for the Notes.

Section 2.07 Holder Lists.

If the Trustee is not the Registrar, then the Company will furnish to the Trustee, no later than seven (7) Business Days before each Interest Payment Date, and at such other times as the Trustee may request, a list, in such form and as of such date or time as the Trustee may reasonably require, of the names and addresses of the Holders.

Section 2.08 Legends.

(A) *Global Note Legend*. Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with the Indenture, required by the Depositary for such Global Note).

(B) *Non-Affiliate Legend*. Each Note will bear the Non-Affiliate Legend.

(C) *Other Legends*. A Note may bear any other legend or text, not inconsistent with the Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(D) *Acknowledgment and Agreement by the Holders*. A Holder's acceptance of any Note bearing any legend required by this **Section 2.08** will constitute such Holder's acknowledgment of, and agreement to comply with, the restrictions set forth in such legend.

Section 2.09 Certain Transfer Restrictions on Notes Subject to Conversion, Redemption or Repurchase.

Notwithstanding anything to the contrary in the Indenture or the Notes, the Company, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that (i) has been surrendered for Conversion, except to the extent that any portion of such Note is not subject to Conversion; (ii) has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due; or (iii) is subject to a Fundamental Change Repurchase Notice validly delivered, and not withdrawn, pursuant to **Section 4.02(F)**, except to the extent that any portion of such Note is not subject to such notice or the Company fails to pay the applicable Fundamental Change Repurchase Price when due.

Section 2.10 Exchange and Cancellation of Notes to Be Converted, Redeemed or Repurchased.

(A) *Partial Conversions of Physical Notes and Partial Redemptions or Repurchases of Physical Notes*. If only a portion of a Physical Note of a Holder is to be Converted pursuant to **Article 5,** redeemed pursuant to a Redemption or repurchased pursuant to a Repurchase Upon Fundamental Change or, then, as soon as reasonably practicable after such Physical Note is surrendered for such Conversion, redemption or repurchase, as applicable, the Company will cause such Physical Note to be exchanged, pursuant and subject to Section 2.05 of the Base Indenture, for (i) one or more Physical Notes that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so Converted, redeemed or repurchased, as applicable, and deliver such Physical Note(s) to such Holder; and (ii) a Physical Note having a principal amount equal to the principal amount to be so Converted, redeemed or repurchased, as applicable, which Physical Note will be Converted, redeemed or repurchased, as applicable, pursuant to the terms of the Indenture; provided, however, that the Physical Note referred to in this **clause (ii)** need not be issued at any time after which such principal amount subject to such Conversion or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section 2.13**.

(B) *Cancellation of Notes that Are Converted, Redeemed Pursuant to a Redemption and Notes that Are Repurchased Pursuant to a Repurchase Upon Fundamental Change*.

(i) *Physical Notes*. If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.10(A)**) of a Holder is to be Converted pursuant to **Article 5**, redeemed pursuant to a Redemption or repurchased pursuant to a Repurchase Upon Fundamental Change, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.13** and the time such Physical Note is surrendered for such Conversion, redemption or repurchase, as applicable, (1) such Physical Note will be cancelled pursuant to Section 2.08 of the Base Indenture; and (2) in the case of a partial Conversion, redemption or repurchase, as applicable, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with Section 2.04 of the Base Indenture, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so Converted, redeemed or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.08**.

(ii) *Global Notes*. If a Global Note (or any portion thereof) is to be Converted pursuant to **Article 5**, redeemed pursuant to a Redemption or repurchased pursuant to a Repurchase Upon Fundamental Change, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.13**, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so Converted, redeemed or repurchased, as applicable, by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to Section 2.08 of the Base Indenture).

Section 2.11 Registered holders; certain rights with respect to global notes.

Except to the extent rights hereunder are expressly granted to owners of beneficial interests of Notes, only the Holder of a Note will have rights under the Indenture as the owner of such Note. Without limiting the generality of the foregoing, Depositary Participants will have no rights as such under the Indenture with respect to any Global Note held on their behalf by the Depositary or its nominee, or by the Trustee as its custodian, and the Company, the Trustee and the Note Agents, and their respective agents, may treat the Depositary as the absolute owner of such Global Note for all purposes whatsoever; *provided*, *however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depositary Participants and Persons that hold interests in Notes through Depositary Participants, to take any action that such Holder is entitled to take with respect to such Global Note under the Indenture or the Notes; and (B) the Company and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depositary.

Section 2.12 Notes Held by the Company or its Affiliates.

Without limiting the generality of **Section 2.13**, in determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any of its Affiliates will be deemed not to be outstanding; *provided*, *however*, that, for purposes of determining whether the Trustee is protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned will be so disregarded.

Section 2.13 Outstanding Notes.

(A) *Generally*. The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee for cancellation in accordance with Section 2.08 of the Base Indenture; (ii) assigned a principal amount of zero by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of any a Global Note representing such Note; (iii) paid in full (including upon Conversion) in accordance with the Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B**), **(C**) or **(D**) of this **Section 2.13**.

(B) *Replaced Notes*. If a Note is replaced pursuant to Section 2.07 of the Base Indenture, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a "*bona fide* purchaser" under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase*. If, on a Redemption Date, a Fundamental Change Repurchase Date or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price, Fundamental Change Repurchase Price or principal amount, respectively, together, in each case, with the aggregate interest (if any), in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided in **Section 4.02(D)**, **4.03(E)** or **5.02(D)**; and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price, Fundamental Change Repurchase Price or principal amount, as applicable, of, and accrued and unpaid interest on, such Notes (or such portions thereof), in each case as provided in the Indenture.

(D) *Notes to Be Converted*. At the Close of Business on the Conversion Date for any Note (or any portion thereof) to be Converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(B)** or **Section 5.02(D)**, upon such Conversion) be deemed to cease to be outstanding, except to the extent provided in **Section 5.02(D)** or **Section 5.08**.

(E) *Cessation of Accrual of Interest*. Except as provided in **Section 4.02(D)**, **4.03(E)** or **5.02(D)**, interest will cease to accrue on each Note from, and including, the date that such Note is deemed, pursuant to this **Section 2.13**, to cease to be outstanding, unless there occurs a default in the payment or delivery of any cash or other property due on such Note.

Section 2.14 Repurchases by the Company.

Without limiting the generality of Section 2.08 of the Base Indenture, the Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions without delivering prior notice to Holders. Notes that the Company or any of its Subsidiaries have purchased or otherwise acquired will be deemed to remain outstanding (except to the extent provided in **Section 2.12**) until such time as such Notes are delivered to the Trustee for cancellation.

Section 2.15 Cusip and isin Numbers.

This **Section 2.15** will apply to the Notes in lieu of Section 2.12 of the Base Indenture, which will be deemed to be replaced with this **Section 2.15**, *mutatis mutandis*.

The Company may use one or more CUSIP or ISIN numbers to identify any of the Notes, and, if so, the Company and the Trustee will use such CUSIP or ISIN number(s) in notices to Holders; *provided*, *however*, that (i) the Trustee makes no representation as to the correctness or accuracy of any such CUSIP or ISIN number; and (ii) the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number. The Company will promptly notify the Trustee of any change in the CUSIP or ISIN number(s) identifying any Notes.

Article 3. COVENANTS

Subject to **Section 1.03(K)** and except as provided in this **Article 3**, the provisions of Articles 4 and 5 of the Base Indenture, as supplemented by the provisions of this Supplemental Indenture, will apply to the Notes.

Section 3.01 Payment on Notes.

This **Section 3.01** will apply to the Notes in lieu of Section 4.01 of the Base Indenture, which will be deemed to be replaced with this **Section 3.01**, *mutatis mutandis*.

(A) *Generally*. The Company will pay or cause to be paid all the principal of, the Fundamental Change Repurchase Price and Redemption Price for, interest, if any, on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in the Indenture.

(B) *Deposit of Funds*. Before 11:00 A.M., New York City time, on each Redemption Date, each Fundamental Change Repurchase Date, each Interest Payment Date, the Maturity Date and each other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

Section 3.02 Exchange Act Reports.

This **Section 3.02** will apply to the Notes in lieu of Section 5.03 of the Base Indenture, which will be deemed to be replaced with this **Section 3.02**, *mutatis mutandis*.

(A) *Generally*. The Company will send to the Trustee copies of all reports that the Company is required to file with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act (other than Current Reports on Form 8-K or any successor form) within fifteen (15) calendar days after the date that the Company is required to file the same (after giving effect to all applicable grace periods under the Exchange Act); *provided*, *however*, that the Company need not send to the Trustee any material for which the Company has received, or is seeking in good faith and has not been denied, confidential treatment by the SEC. Any such report that the Company files with the SEC through the EDGAR system (or any successor thereto) will be deemed to be sent to the Trustee at the time such report is so filed via the EDGAR system (or such successor). Upon the request of any Holder, the Trustee will provide to such Holder a copy of any report that the Company has sent the Trustee pursuant to this **Section 3.02(A)**, other than a report that is deemed to be sent to the Trustee as a result of the Company filing such report with the SEC through the EDGAR system (or any successor thereto). The Company will also comply with its other obligations under Section 314(a)(1) of the Trust Indenture Act.

The "grace periods" referred to in the preceding paragraph with respect to any report will include the maximum period afforded by Rule 12b-25 (or any successor rule thereto) under the Exchange Act regardless of whether the Company files, or indicates in the related Form 12b-25 (or any successor form thereto) that the Company expects to or will file, such report before the expiration of such maximum period.

(B) *Trustee's Disclaimer*. The Trustee need not determine whether the Company has filed any material via the EDGAR system (or such successor). The sending or filing of reports, information and documents to the Trustee pursuant to **Section 3.02(A)** is for informational purposes only and the receipt of such reports and documents will not constitute actual or constructive notice to the Trustee of any information contained, or determinable from information contained, therein, including the Company's compliance with any of its covenants under the Indenture or the Notes (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee will not be obligated to monitor or confirm, on a continuing basis or otherwise, the Company's compliance with the covenants under the Indenture or the Notes or with respect to any reports or other documents filed with the SEC through the EDGAR system or any website under the Indenture.

Section 3.03 Default Certificates.

This **Section 3.03** will apply to the Notes in lieu of Section 7.14 of the Base Indenture, which will be deemed to be replaced with this **Section 3.03**, *mutatis mutandis*.

If a Default or Event of Default occurs, then the Company will, within thirty (30) days after its first occurrence, deliver an Officer's Certificate to the Trustee describing the same and what action the Company is taking or proposes to take with respect thereto; *provided*, *however*, that the Company will not be required to deliver such Officer's Certificate at any time after such Default or Event of Default is cured or waived.

Section 3.04 Stay, Extension and Usury Laws.

To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of the Indenture; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Trustee by the Indenture, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 3.05 Existence.

Subject to **Article 6**, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect, its corporate existence.

Article 4. REPURCHASE AND REDEMPTION

This **Article 4** will apply to the Notes in lieu of Article 3 of the Base Indenture, which will be deemed to be replaced with this **Article 4**, *mutatis mutandis*.

Section 4.01 No Sinking Fund.

No sinking fund is required to be provided for the Notes.

Section 4.02 Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change*. Subject to the other terms of this **Section 4.02**, if a Fundamental Change occurs, then each Holder will have the right (the "**Fundamental Change Repurchase Right**") to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances*. If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Fundamental Change Repurchase Date for a Repurchase Upon Fundamental Change (including as a result of the payment of the related Fundamental Change Repurchase Price, and any related interest pursuant to the proviso to the first sentence of **Section 4.02(D)**, on such Fundamental Change Repurchase Date), then (i) the Company may not repurchase any Notes pursuant to this **Section 4.02**; and (ii) the Company will cause any Notes theretofore surrendered for such Repurchase Upon Fundamental Change to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes in accordance with the Depositary Procedures).

(C) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company's choosing that is no more than thirty-five (35), nor less than twenty (20), Business Days after the date the Company sends the related Fundamental Change Notice pursuant to **Section 4.02(E)**.

(D) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for any Note to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided*, *however*, that if a such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.04(C)** and such Fundamental Change Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.04(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Fundamental Change Repurchase Price will include interest on the Notes to be repurchased from, and including, such Interest Payment Date.

(E) *Fundamental Change Notice*. On or before the twentieth (20th) calendar day after the effective date of a Fundamental Change, the Company will send to each Holder, the Trustee, the Conversion Agent (if other than the Trustee) and the Paying Agent a notice of such Fundamental Change (a "**Fundamental Change Notice**").

Such Fundamental Change Notice must state:

(i) briefly, the events causing such Fundamental Change;

(ii) the effective date of such Fundamental Change;

(iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.02**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;

(iv) the Fundamental Change Repurchase Date for such Fundamental Change;

(v) the Fundamental Change Repurchase Price per $1,000 principal amount of Notes for such Fundamental Change (and, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to the first sentence of **Section 4.02(D)**);

(vi) the name and address of the Paying Agent and the Conversion Agent;

(vii) the Conversion Rate in effect on the date of such Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change (including pursuant to **Section 5.07**);

(viii) that Notes for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;

(ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be Converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with the Indenture; and

(x) the CUSIP and ISIN numbers, if any, of the Notes.

Neither the failure to deliver a Fundamental Change Notice nor any defect in a Fundamental Change Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(F) *Procedures to Exercise the Fundamental Change Repurchase Right*.

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be Repurchased*. To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

(3) The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices*. Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note; *provided*, *however*, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depositary Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice*. A Holder that has delivered a Fundamental Change Repurchase Notice with respect to a Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or, if the Company fails to pay the related Fundamental Change Repurchase Price for such Note when due, at any time before such Fundamental Change Repurchase Price is paid in full). Such withdrawal notice must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and

(3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination;

(4) *provided*, *however*, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in accordance with **Section 2.10**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depositary Procedures).

(G) *Payment of the Fundamental Change Repurchase Price*. Without limiting the Company's obligation to deposit the Fundamental Change Repurchase Price within the time proscribed by **Section 3.01(B)**, the Company will cause the Fundamental Change Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the later of (i) the applicable Fundamental Change Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be repurchased are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to the first sentence of **Section 4.02(D)** on any Note to be repurchased pursuant to a Repurchase Upon Fundamental Change must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.02(G)**.

(H) *Third Party May Conduct Repurchase Offer In Lieu of the Company*. Notwithstanding anything to the contrary in this **Section 4.02**, the Company will be deemed to satisfy its obligations under this **Section 4.02** if (i) one or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Notes otherwise required by this **Section 4.02** in a manner that would have satisfied the requirements of this **Section 4.02** if conducted directly by the Company; and (ii) an owner of a beneficial interest in any Note repurchased by such third party or parties will not receive a lesser amount (including as a result of withholding or other similar taxes) than such owner would have received had the Company repurchased such Note.

(I) *No Requirement to Conduct an Offer to Repurchase Notes if the Fundamental Change Results in the Notes Becoming Convertible into an Amount of Cash Exceeding the Fundamental Change Repurchase Price*. Notwithstanding anything to the contrary in this **Section 4.02**, the Company will not be required to send a Fundamental Change Notice pursuant to **Section 4.02(E)**, or offer to repurchase or repurchase any Notes pursuant to this **Section 4.02**, in connection with a Common Stock Change Event that constitutes a Fundamental Change pursuant to **clause (B)(ii)** of the definition thereof (regardless of whether such Common Stock Change Event also constitutes a Fundamental Change pursuant to any other clause of such definition), if (i) the Reference Property of such Common Stock Change Event consists entirely of cash in U.S. dollars; (ii) immediately after such Fundamental Change, the Notes become Convertible, pursuant to **Section 5.09(A)** and, if applicable, **Section 5.07**, into consideration that consists solely of U.S. dollars in an amount per $1,000 aggregate principal amount of Notes that equals or exceeds the Fundamental Change Repurchase Price per $1,000 aggregate principal amount of Notes (calculated (x) assuming that such Fundamental Change Repurchase Price includes accrued and unpaid interest to, but excluding, the latest possible Fundamental Change Repurchase Date for such Fundamental Change; and (y) without regard to the proviso to the first sentence of **Section 4.02(D)**); and (iii) the Company timely sends the notice relating to such Fundamental Change and Common Stock Change Event required pursuant to **Section 5.09(B),** and includes, in such notice, the information set forth in **clauses (i), (ii), (vi), (vii) and (x)** of **Section 4.02(E)** and a statement that the Company is relying on this **Section 4.02(I)**.

(J) *Compliance with Applicable Securities Laws*. To the extent applicable, the Company will comply, in all material respects, with all federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in the Indenture; *provided*, *however*, that, to the extent that the Company's obligations pursuant to this **Section 4.02** conflict with any law or regulation that is applicable to the Company and enacted after the Issue Date, the Company's compliance with such law or regulation will not be considered to be a Default of such obligations; rather, the Company will be deemed to be in compliance with such obligations if the Company complies with its obligation to effect Repurchases Upon a Fundamental Change in accordance with this **Section 4.02**, modified as necessary by the Company in good faith to permit compliance with such law or regulation.

(K) *Repurchase in Part*. Subject to the terms of this **Section 4.02**, Notes may be repurchased pursuant to a Repurchase Upon Fundamental Change in part, but only in Authorized Denominations. Provisions of this **Section 4.02** applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

Section 4.03 Right of the Company to Redeem the Notes.

(A) *No Right to Redeem Before August 6, 2029.* The Company may not redeem the Notes at its option at any time before August 6, 2029.

(B) *Right to Redeem the Notes on or After August 6, 2029.* Subject to the terms of this **Section 4.03**, the Company has the right, at its election, to redeem all, or any portion (subject to the Partial Redemption Limitation described below) in an Authorized Denomination, of the Notes, at any time, and from time to time, on a Redemption Date on or after August 6, 2029 and on or before the thirty-first (31st) Scheduled Trading Day immediately before the Maturity Date, for a cash purchase price equal to the Redemption Price, but only if the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price on (x) each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before such Redemption Notice Date; and (y) the Trading Day immediately before such Redemption Notice Date; *provided*, *however*, that the Company will not call less than all of the outstanding Notes for Redemption unless the excess of the principal amount of Notes outstanding as of the time the Company sends the related Redemption Notice over the aggregate principal amount of Notes set forth in such Redemption Notice as being subject to such Redemption is at least fifty million dollars ($50,000,000) (such limitation, the "**Partial Redemption Limitation**"). For the avoidance of doubt, the calling (or the deemed calling, as provided in **Section 4.03(I)**) of any Notes for Redemption will constitute a Make-Whole Fundamental Change with respect to such Notes called (or deemed called) for Redemption (and not with respect to any other Notes) pursuant to **clause (B)** of the definition thereof.

(C) *Redemption Prohibited in Certain Circumstances*. If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Redemption Date (including as a result of the payment of the related Redemption Price, and any related interest pursuant to the proviso to the first sentence of **Section 4.03(E)**, on such Redemption Date), then (i) the Company may not call for Redemption or otherwise redeem any Notes pursuant to this **Section 4.03**; and (ii) the Company will cause any Notes theretofore surrendered for such Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depositary Procedures).

(D) *Redemption Date*. The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than fifty-five (55), nor less than thirty-five (35), Scheduled Trading Days after the Redemption Notice Date for such Redemption.

(E) *Redemption Price*. The Redemption Price for any Note called for Redemption is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Redemption Date for such Redemption; *provided*, *however*, that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.04(C)** and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.04(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date.

(F) *Redemption Notice*. To call any Notes for Redemption, the Company must send to each Holder of such Notes a written notice of such Redemption (a "**Redemption Notice**").

Such Redemption Notice must state:

(i) that such Notes have been called for Redemption, briefly describing the Company's Redemption right under the Indenture;

(ii) the Redemption Date for such Redemption;

(iii) the Redemption Price per $1,000 principal amount of Notes for such Redemption (and, if the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to the first sentence of **Section 4.03(E)**);

(iv) the name and address of the Paying Agent and the Conversion Agent;

(v) that Notes called for Redemption may be Converted at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full);

(vi) the Conversion Rate in effect on the Redemption Notice Date for such Redemption and a description and quantification of any adjustments to the Conversion Rate that may result from such Redemption (including pursuant to **Section 5.07**);

(vii) the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the second (2nd) Business Day before such Redemption Date;

(viii) if applicable, that Conversions of Notes will be settled in the manner set forth in **clause (1)** of the proviso in **Section 5.03(C)**;

(ix) that Notes called for Redemption must be delivered to the Paying Agent (in the case of Physical Notes) or the Depositary Procedures must be complied with (in the case of Global Notes) for the Holder thereof to be entitled to receive the Redemption Price; and

(x) the CUSIP and ISIN numbers, if any, of the Notes.

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee, the Conversion Agent (if other than the Trustee) and the Paying Agent (if other than the Trustee).

(G) *Selection and Conversion of Notes to Be Redeemed in Part.*

(i) If fewer than all Notes then outstanding are called for Redemption, then the Notes to be redeemed will be selected by the Trustee as follows: (1) in the case of Global Notes, in accordance with the Depositary Procedures; and (2) in the case of Physical Notes, pro rata, by lot.

(ii) If only a portion of a Note is subject to Redemption and such Note is Converted in part, then the Converted portion of such Note will be deemed to be from the portion of such Note that was subject to Redemption, subject, in the case of any Global Note, to the Depositary Procedures.

(H) *Payment of the Redemption Price*. Without limiting the Company's obligation to deposit the Redemption Price by the time proscribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date. For the avoidance of doubt, interest payable pursuant to the proviso to the first sentence of **Section 4.03(E)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso.

(I) *Special Provisions for Partial Calls*. If the Company elects to redeem fewer than all of the outstanding Notes pursuant to this **Section 4.03**, and the Holder of any Note, or any owner of a beneficial interest in any Global Note, is reasonably not able to determine, before the Close of Business on the thirty-second (32nd) Scheduled Trading Day immediately before the Redemption Date for such Redemption, whether such Note or beneficial interest, as applicable, is to be redeemed pursuant to such Redemption, then such Holder or owner, as applicable, will be entitled to Convert such Note or beneficial interest, as applicable, at any time before the Close of Business on the Business Day immediately before such Redemption Date, and each such Conversion will be deemed to be of a Note called for Redemption for purposes of this **Section 4.03** and **Section 5.07**, and the definition of Make-Whole Fundamental Change.

(J) *Repurchases or Other Acquisitions Other Than by Redemption Not Affected*. For the avoidance of doubt, nothing in this **Section 4.03** will limit or otherwise apply to any repurchase or other acquisition, by the Company or its Affiliates, or any other Person, of any Notes not effected by Redemption pursuant to this **Section 4.03** (including in open market transactions, private or public tender or exchange offers or otherwise).

Article 5. THE CONVERSION OF NOTES

Section 5.01 Right to Convert.

(A) *Generally*. Subject to the provisions of this **Article 5**, each Holder may, at its option, Convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part*. Subject to the terms of the Indenture, Notes may be Converted in part, but only in Authorized Denominations. Provisions of this **Article 5** applying to the Conversion of a Note in whole will equally apply to Conversions of a permitted portion of a Note.

(C) *When Notes May Be Converted*.

(i) *Generally*. Subject to **Section 5.01(C)(ii)**, a Note may be Converted only in the following circumstances:

(1) *Conversion Upon Satisfaction of Common Stock Sale Price Condition*. A Holder may Convert its Notes during any calendar quarter (and only during such calendar quarter) commencing after the calendar quarter ending on September 30, 2026, if the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price for each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter.

(2) *Conversion Upon Satisfaction of Note Trading Price Condition*. A Holder may Convert its Notes during the five (5) consecutive Business Days immediately after any ten (10) consecutive Trading Day period (such ten (10) consecutive Trading Day period, the "**Measurement Period**") if the Trading Price per $1,000 principal amount of Notes, as determined following a request by a Holder or Holders in accordance with the procedures set forth below, for each Trading Day of the Measurement Period was less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day. The condition set forth in the preceding sentence is referred to in this Supplemental Indenture as the "**Trading Price Condition**."

The Trading Price will be determined by the Bid Solicitation Agent pursuant to this **Section 5.01(C)(i)(2)** and the definition of "Trading Price." The Bid Solicitation Agent (if not the Company) will have no obligation to determine the Trading Price of the Notes unless the Company has requested such determination in writing, and the Company will have no obligation to make such request (or seek bids itself) unless a Holder or Holders provide(s) the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock and the Conversion Rate. If a Holder or Holders provide(s) such evidence, then the Company will (if acting as Bid Solicitation Agent), or will instruct the Bid Solicitation Agent to, determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day. If the Trading Price Condition has been met as set forth above, then the Company will notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the same. If, on any Trading Day after the Trading Price Condition has been met as set forth above, the Trading Price per $1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day, then the Company will notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the same.

(3) *Conversion Upon Specified Corporate Events.*

(a) *Certain Distributions*. If, before May 1, 2032, the Company elects to:

(I) distribute, to all or substantially all holders of Common Stock, any rights, options or warrants (other than rights issued pursuant to a stockholder rights plan, so long as such rights have not separated from the Common Stock and are not exercisable until the occurrence of a triggering event, except that such rights will be deemed to be distributed under this **clause (I)** upon their separation from the Common Stock or upon the occurrence of such triggering event) entitling them, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced (determined in the manner set forth in the third paragraph of **Section 5.05(A)(ii)**); or

(II) distribute, to all or substantially all holders of Common Stock, assets or securities of the Company or rights to purchase the Company's securities, which distribution per share of Common Stock has a value, as reasonably determined by the Board of Directors, exceeding ten percent (10%) of the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before the date such distribution is announced,

then, in either case, (x) the Company will send written notice of such distribution, and of the related right to Convert Notes, to Holders, the Trustee and the Conversion Agent (if other than the Trustee) at least thirty-five (35) Scheduled Trading Days before the Ex-Dividend Date for such distribution (or, if later in the case of any such separation of rights issued pursuant to a stockholder rights plan or the occurrence of any such triggering event under a stockholder rights plan, as soon as reasonably practicable after the Company becomes aware that such separation or triggering event has occurred or will occur); and (y) once the Company has sent such notice, Holders may Convert their Notes at any time until the earlier of the Close of Business on the Business Day immediately before such Ex-Dividend Date and the Company's announcement that such distribution will not take place; *provided*, *however*, that the Notes will not become Convertible pursuant to **clause (y)** above (but the Company will be required to send notice of such distribution pursuant to **clause (x)** above) on account of such distribution if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder, in such distribution without having to Convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the record date for such distribution; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such record date.

(b) *Certain Corporate Events*. If a Fundamental Change, Make-Whole Fundamental Change (other than a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof) or Common Stock Change Event occurs (other than a merger or other business combination transaction that is effected solely to change the Company's jurisdiction of incorporation and that does not constitute a Fundamental Change or a Make-Whole Fundamental Change), then, in each case, Holders may Convert their Notes at any time from, and including, the effective date of such transaction or event to, and including, the thirty-fifth (35th) Trading Day after such effective date (or, if such transaction or event also constitutes a Fundamental Change (other than an Exempted Fundamental Change), to, but excluding, the related Fundamental Change Repurchase Date); *provided*, *however*, that if the Company does not provide the notice referred to in the immediately following sentence by the second (2nd) Business Day after such effective date, then the last day on which the Notes are Convertible pursuant to this sentence will be extended by the number of Business Days from, and including, the second (2nd) Business Day after the effective date to, but excluding, the date the Company provides such notice. No later than the second (2nd) Business Day after the effective date, the Company will send written notice to the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such transaction or event, such effective date and the related right to Convert Notes.

(4) *Conversion Upon Redemption*. If the Company calls any Note for Redemption, then the Holder of such Note may Convert such Note at any time before the Close of Business on the Business Day immediately before the related Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full).

(5) *Conversions During Free Convertibility Period*. A Holder may Convert its Notes at any time from, and including, May 1, 2032 until the Close of Business on the Scheduled Trading Day immediately before the Maturity Date.

For the avoidance of doubt, the Notes may become Convertible pursuant to any one or more of the preceding sub-paragraphs of this **Section 5.01(C)(i)** and the Notes ceasing to be Convertible pursuant to a particular sub-paragraph of this **Section 5.01(C)(i)** will not preclude the Notes from being Convertible pursuant to any other sub-paragraph of this **Section 5.01(C)(i)**.

(ii) *Limitations and Closed Periods*. Notwithstanding anything to the contrary in the Indenture or the Notes:

(1) Notes may be surrendered for Conversion during a period where the Notes are Convertible pursuant to **Section 5.01(C)(i)** only after the Open of Business and before the Close of Business on a day that is a Business Day;

(2) in no event may any Note be Converted after the Close of Business on the Scheduled Trading Day immediately before the Maturity Date;

(3) if the Company calls any Note for Redemption pursuant to **Section 4.03**, then the Holder of such Note may not Convert such Note after the Close of Business on the Business Day immediately before the applicable Redemption Date, except to the extent the Company fails to pay the Redemption Price for such Note in accordance with this Supplemental Indenture; and

(4) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 4.02(F)** with respect to any Note, then such Note may not be Converted, except to the extent (a) such Note is not subject to such notice; (b) such notice is withdrawn in accordance with **Section 4.02(F)**; or (c) the Company fails to pay the Fundamental Change Repurchase Price for such Note in accordance with this Supplemental Indenture (or a third party fails to make such payment in lieu of the Company in accordance with **Section 4.02(H)**).

Section 5.02 Conversion Procedures.

(A) *Generally*.

(i) *Global Notes*. To Convert a beneficial interest in a Global Note that is Convertible pursuant to **Section 5.01(C)(i)**, the owner of such beneficial interest must (1) comply with the Depositary Procedures for Converting such beneficial interest (at which time such Conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(ii) *Physical Notes*. To Convert all or a portion of a Physical Note that is Convertible pursuant to **Section 5.01(C)(i)**, the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the Conversion Notice attached to such Physical Note or a facsimile of such Conversion Notice; (2) deliver such Physical Note to the Conversion Agent (at which time such Conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(B) *Effect of Converting a Note*. At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be Converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest, if any, due, pursuant to **Section 5.03(B)**) or **5.02(D)**, upon such Conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to be a Holder of such Note (or such portion thereof) as of the Close of Business on such Conversion Date), except to the extent provided in **Section 5.02(D).**

(C) *Holder of Record of Conversion Shares*. The Person in whose name any share of Common Stock is issuable upon Conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on (i) the Conversion Date for such Conversion, in the case of Physical Settlement; or (ii) the last VWAP Trading Day of the Observation Period for such Conversion, in the case of Combination Settlement.

(D) *Interest Payable Upon Conversion in Certain Circumstances*. If the Conversion Date of a Note is after a Regular Record Date and before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Conversion (and, for the avoidance of doubt, notwithstanding anything set forth in the proviso to this sentence), to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (ii) the Holder surrendering such Note for Conversion must deliver to the Conversion Agent, at the time of such surrender, an amount of cash equal to the amount of such interest referred to in clause (i) above; *provided*, *however*, that the Holder surrendering such Note for Conversion need not deliver such cash (v) with respect to any Note called for Redemption, if the Company has specified a Redemption Date that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; (w) if such Conversion Date occurs after the Regular Record Date immediately before the Maturity Date; (x) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; or (y) to the extent of any overdue interest or interest that has accrued on any overdue interest. For the avoidance of doubt, as a result of, and without limiting the generality of, the foregoing, if a Note is Converted with a Conversion Date that is after the Regular Record Date immediately before the Maturity Date, then the Company will pay, as provided above, interest that would have accrued on such Note to, but excluding, the Maturity Date (or, if the Maturity Date is not a Business Day, the next Business Day) as if such Note had not been Converted. For the avoidance of doubt, if the Conversion Date of a Note to be Converted is on an Interest Payment Date, then the Holder of such Note at the Close of Business on the Regular Record Date immediately before such Interest Payment Date will be entitled to receive, on such Interest Payment Date, the unpaid interest that has accrued on such Note to, but excluding, such Interest Payment Date, and such Note, when surrendered for Conversion, need not be accompanied by any cash amount pursuant to the first sentence of this **Section 5.02(D)**.

(E) *Taxes and Duties*. If a Holder Converts a Note, the Company will pay or cause to be paid any documentary, stamp or similar issue or transfer tax or duty due on the issue or delivery of any shares of Common Stock upon such Conversion; *provided*, *however*, that if any tax or duty is due because such Holder requested such shares to be registered in a name other than such Holder's name, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Conversion Agent may refuse to deliver any such shares to be issued in a name other than that of such Holder.

(F) *Conversion Agent to Notify Company of Conversions*. If any Note is submitted for Conversion to the Conversion Agent or the Conversion Agent receives any notice of Conversion with respect to a Note, then the Conversion Agent will promptly notify the Company and the Trustee (if other than the Conversion Agent) of such occurrence, together with any other information reasonably requested by the Company, and will cooperate with the Company to determine the Conversion Date for such Note.

Section 5.03 Settlement Upon Conversion.

(A) *Settlement Method*. Upon the Conversion of any Note, the Company will settle such Conversion by paying or delivering, as applicable and as provided in this **Article 5**, either (x) shares of Common Stock, together, if applicable, with cash in lieu of fractional shares, as provided in **Section 5.03(B)(i)(1)** (a "**Physical Settlement**"); (y) solely cash as provided in **Section 5.03(B)(i)(2)** (a "**Cash Settlement**"); or (z) a combination of cash and shares of Common Stock, together, if applicable, with cash in lieu of fractional shares, as provided in **Section 5.03(B)(i)(3)** (a "**Combination Settlement**").

(i) *The Company's Right to Elect Settlement Method*. The Company will have the right to elect the Settlement Method applicable to any Conversion of a Note; *provided*, *however*, that:

(1) subject to **clause (3)** below, all Conversions of Notes with a Conversion Date that occurs on or after May 1, 2032 will be settled using the same Settlement Method, and the Company will send notice of such Settlement Method to Holders, the Trustee and the Conversion Agent (if other than the Trustee) no later than the Open of Business on May 1, 2032;

(2) subject to **clause (3)** below, if the Company elects a Settlement Method with respect to the Conversion of any Note whose Conversion Date occurs before May 1, 2032, then the Company will send notice of such Settlement Method to the Holder of such Note, the Trustee and the Conversion Agent (if other than the Trustee) no later than the Close of Business on the Business Day immediately after such Conversion Date;

(3) if any Notes are called for Redemption, then (a) the Company will specify, in the related Redemption Notice (and, in the case of a Redemption of fewer than all outstanding Notes, in a notice simultaneously sent to all Holders of Notes not called for Redemption) sent pursuant to **Section 4.03(F)**, the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after the related Redemption Notice Date and on or before the Business Day immediately before the related Redemption Date; and (b) if such Redemption Date occurs on or after May 1, 2032, then such Settlement Method must be the same Settlement Method that, pursuant to **clause (1)** above, applies to all Conversions of Notes with a Conversion Date that occurs on or after May 1, 2032;

(4) the Company will use the same Settlement Method for all Conversions of Notes with the same Conversion Date (and, for the avoidance of doubt, the Company will not be obligated to use the same Settlement Method with respect to Conversions of Notes with different Conversion Dates, except as provided in **clause (1)** or **(3)** above);

(5) if the Company does not timely elect a Settlement Method with respect to the Conversion of a Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a Default or Event of Default); and

(6) if the Company timely elects Combination Settlement with respect to the Conversion of a Note but does not timely notify the Holder of such Note of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such Conversion will be deemed to be $1,000 per $1,000 principal amount of Notes (and, for the avoidance of doubt, the failure to timely send such notification will not constitute a Default or Event of Default).

At or before the time the Company sends any notice referred to in this **Section 5.03(A)(i)**, the Company will send a copy of such notice to the Trustee and the Conversion Agent (if other than the Trustee), but the failure to timely send such copy will not affect the validity of any Settlement Method election.

(ii) *The Company's Right to Irrevocably Fix or Eliminate Settlement Methods*. The Company will have the right, exercisable at its election by sending notice of such exercise to the Holders (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)), to (1) irrevocably fix the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders; or (2) irrevocably eliminate any one or more (but not all) Settlement Methods (including eliminating Combination Settlement with a particular Specified Dollar Amount or range of Specified Dollar Amounts) with respect to all Conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders, *provided*, in each case, that (w) the Settlement Method so elected pursuant to **clause (1)** above, or the Settlement Method(s) remaining after any elimination pursuant to **clause (2)** above, as applicable, must be a Settlement Method or Settlement Method(s), as applicable, that the Company is then permitted to elect (for the avoidance of doubt, including pursuant to, and subject to, the other provisions of this **Section 5.03(A)**); (x) no such irrevocable election or Default Settlement Method change will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to the Indenture (including pursuant to **Section 8.01(G)** or this **Section 5.03(A)**); (y) upon any such irrevocable election pursuant to **clause (1)** above, the Default Settlement Method will automatically be deemed to be set to the Settlement Method so fixed; and (z) upon any such irrevocable election pursuant to **clause (2)** above, the Company will, if needed, simultaneously change the Default Settlement Method to a Settlement Method that is consistent with such irrevocable election. Such notice, if sent, must set forth the applicable Settlement Method(s) so elected or eliminated, as applicable, and the Default Settlement Method applicable immediately after such election, and expressly state that the election is irrevocable and applicable to all Conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders. For the avoidance of doubt, such an irrevocable election, if made, will be effective without the need to amend the Indenture or the Notes, including pursuant to **Section 8.01(G)** (it being understood, however, that the Company may nonetheless choose to execute such an amendment at its option).

(iii) *Requirement to Publicly Disclose the Fixed or Default Settlement Method.* If the Company changes the Default Settlement Method pursuant to **clause (x)** of the proviso to the definition of such term or irrevocably fixes the Settlement Method(s) pursuant to **Section 5.03(A)(ii)**, then the Company will, substantially concurrently, either post the Default Settlement Method or fixed Settlement Method(s), as applicable, on its website or disclose the same in a Current Report on Form 8-K (or any successor form) that is filed with, or furnished to, the SEC.

(B) *Conversion Consideration.*

(i) *Generally*. Subject to **Sections 5.03(B)(ii)**, **5.03(B)(iii)** and **5.09(A)(2)**, the type and amount of consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of a Note to be Converted will be as follows:

(1) if Physical Settlement applies to such Conversion, subject to **Section 5.03(B)(ii)**, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such Conversion;

(2) if Cash Settlement applies to such Conversion, cash in an amount equal to the sum of the Daily Conversion Values for each VWAP Trading Day in the Observation Period for such Conversion; or

(3) if Combination Settlement applies to such Conversion, consideration consisting, subject to **Section 5.03(B)(ii),** of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each VWAP Trading Day in the Observation Period for such Conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each VWAP Trading Day in such Observation Period.

(ii) *Cash in Lieu of Fractional Shares*. If Physical Settlement or Combination Settlement applies to the Conversion of any Note and the number of shares of Common Stock deliverable pursuant to **Section 5.03(B)(i)** upon such Conversion is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such Conversion, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) (x) the Daily VWAP on the Conversion Date for such Conversion (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), in the case of Physical Settlement; or (y) the Daily VWAP on the last VWAP Trading Day of the Observation Period for such Conversion, in the case of Combination Settlement.

(iii) *Conversion of Multiple Notes by a Single Holder*. If a Holder Converts more than one (1) Note on a single Conversion Date, then the Conversion Consideration due in respect of such Conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depositary Procedures) be computed based on the total principal amount of Notes Converted on such Conversion Date by such Holder.

(iv) *Notice of Calculation of Conversion Consideration*. If Cash Settlement or Combination Settlement applies to the Conversion of any Note, then the Company will determine the Conversion Consideration due thereupon promptly following the last VWAP Trading Day of the applicable Observation Period and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the calculation thereof in reasonable detail. Neither the Trustee nor the Conversion Agent will have any duty to make any such determination.

(C) *Delivery of the Conversion Consideration*. Except as set forth in **Sections 5.05(D)** and **5.09**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon the Conversion of any Note to the Holder as follows: (i) if Cash Settlement or Combination Settlement applies to such Conversion, on or before the second (2nd) Business Day immediately after the last VWAP Trading Day of the Observation Period for such Conversion; and (ii) if Physical Settlement applies to such Conversion, on or before the second (2nd) Business Day immediately after the Conversion Date for such Conversion; *provided*, *however*, that if (1) any Note is Converted with a Conversion Date occurring after the Regular Record Date immediately preceding the Maturity Date; and (2) Physical Settlement applies to such Conversion, then (x) the Company will settle such Conversion on the Maturity Date (or, if the Maturity Date is not a Business Day, the next Business Day), as applicable; and (y) the Conversion Date will instead be deemed to be the Scheduled Trading Day immediately before the Maturity Date.

(D) *Deemed Payment of Principal and Interest; Settlement of Accrued Interest Notwithstanding Conversion*. If a Holder Converts a Note, then the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on such Note, and, except as provided in **Section 5.02(D)**, the Company's delivery of the Conversion Consideration due in respect of such Conversion will be deemed to fully satisfy and discharge the Company's obligation to pay the principal of, and accrued and unpaid interest on, such Note to, but excluding the relevant Conversion Date. As a result, except as provided in **Section 5.02(D)**, any accrued and unpaid interest on a Converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In addition, subject to **Section 5.02(D)**, upon Conversion, accrued and unpaid interest is first paid by any cash paid upon such Conversion (other than cash paid in lieu of a fractional share) and thereafter by shares of Common Stock.

Section 5.04 Reserve and Status of Common Stock Issued Upon Conversion.

(A) *Stock Reserve*. At all times when any Notes are outstanding, the Company will reserve (out of its authorized and not outstanding shares of Common Stock that are not reserved for other purposes) a number of shares of Common Stock equal to the product of (i) the aggregate principal amount (expressed in thousands) of all then-outstanding Notes; and (ii) the Conversion Rate then in effect (assuming, for these purposes, that Physical Settlement will apply to such Conversion and the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to **Section 5.07**). To the extent the Company delivers shares of Common Stock held in its treasury in settlement of the Conversion of any Notes, each reference in the Indenture or the Notes to the issuance of shares of Common Stock in connection therewith will be deemed to include such delivery, *mutatis mutandis*.

(B) *Status of Conversion Shares; Listing*. Each Conversion Share, if any, delivered upon Conversion of any Note will be a newly issued or treasury share (except that any Conversion Share delivered by a designated financial institution pursuant to **Section 5.08** need not be a newly issued or treasury share) and will be duly authorized, validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder of such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will use commercially reasonable efforts to cause each Conversion Share, when delivered upon Conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

Section 5.05 Adjustments to the Conversion Rate.

(A) *Events Requiring an Adjustment to the Conversion Rate*. The Conversion Rate will be adjusted from time to time as follows:

(i) *Stock Dividends, Splits and Combinations*. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the Effective Date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or Effective Date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 5.05(A)(i)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants*. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which **Sections 5.05(A)(iii)(1)** and **5.05(F)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, options or warrants.

For purposes of this **Section 5.05(A)(ii)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Company in good faith and in a commercially reasonable manner.

(iii) Spin-Offs and Other Distributed Property.

(1) *Distributions Other than Spin-Offs*. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(a) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(i)**) or **5.05(A)(ii)**;

(b) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iv)**;

(c) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 5.05(F)**;

(d) Spin-Offs for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iii)(2)**;

(e) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply; and

(f) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Company in good faith and in a commercially reasonable manner), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, *however*, that if *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each $1,000 principal amount of Notes held by such Holder on the record date for such distribution, at the same time and on the same terms as holders of Common Stock, and without having to Convert its Notes, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received in such distribution if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which **Section 5.09** will apply; or (y) a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "**Spin-Off Valuation Period**") beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

Notwithstanding anything to the contrary in this **Section 5.05(A)(iii)(2)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose Conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such Conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose Conversion will be settled pursuant to Physical Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Consideration due in respect of such Conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date.

To the extent any dividend or distribution of the type set forth in this **Section 5.05(A)(iii)(2)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date for such dividend or distribution;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date for such dividend or distribution; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, *however*, that if D is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each $1,000 principal amount of Notes held by such Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, and without having to Convert its Notes, the amount of cash that such Holder would have received in such dividend or distribution if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers*. If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Company in good faith and in a commercially reasonable manner) of the cash and other consideration paid or payable per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;

AC = the aggregate value (determined as of the time (the "**Expiration Time**") such tender or exchange offer expires by the Company in good faith and in a commercially reasonable manner) of all cash and other consideration paid or payable for shares of Common Stock purchased or exchanged in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, *however*, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 5.05(A)(v)**, except to the extent provided in the immediately following paragraph. Notwithstanding anything to the contrary in this **Section 5.05(A)(v)**, if (i) any VWAP Trading Day of the Observation Period for a Note whose Conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such Conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, such VWAP Trading Day and (ii) if the Conversion Date for a Note whose Conversion will be settled pursuant to Physical Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Consideration due in respect of such Conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date.

To the extent such tender or exchange offer is announced but not consummated (including as a result of being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(B) *No Adjustments in Certain Cases.*

(i) *Where Holders Participate in the Transaction or Event Without Conversion*. Notwithstanding anything to the contrary in **Section 5.05(A)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 5.05(A)** (other than a stock split or combination of the type set forth in **Section 5.05(A)(i)** or a tender or exchange offer of the type set forth in **Section 5.05(A)(v)**) if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder of Notes, in such transaction or event without having to Convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such date.

(ii) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section 5.05** or **Section 5.07**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(1) except as otherwise provided in **Section 5.05**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(2) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;

(3) the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(4) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Issue Date;

(5) solely a change in the par value of the Common Stock; or

(6) accrued and unpaid interest on the Notes.

(C) *Adjustment Deferral*. If an adjustment to the Conversion Rate otherwise required by this **Article 5** would result in a change of less than one percent (1%) to the Conversion Rate, then, notwithstanding anything to the contrary in this **Article 5**, the Company may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (i) when all such deferred adjustments would, had they not been so deferred and carried forward, result in a change of at least one percent (1%) to the Conversion Rate; (ii) the Conversion Date of any Note (in the case of Physical Settlement), or each VWAP Trading Day of an Observation Period for any Note (in the case of Cash Settlement or Combination Settlement); (iii) the date a Fundamental Change or Make-Whole Fundamental Change occurs; (iv) the date the Company calls any Notes for Redemption; and (v) May 1, 2032.

(D) *Adjustments Not Yet Effective*. Notwithstanding anything to the contrary in the Indenture or the Notes, if:

(i) a Note is to be Converted and Physical Settlement or Combination Settlement applies to such Conversion;

(ii) the record date, Effective Date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.05(A)** has occurred on or before the Conversion Date for such Conversion (in the case of Physical Settlement) or on or before any VWAP Trading Day in the Observation Period for such Conversion (in the case of Combination Settlement), but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date or VWAP Trading Day, as applicable;

(iii) the Conversion Consideration due upon such Conversion includes whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement); and

(iv) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise), then, solely for purposes of such Conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement). In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such Conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such Conversion until the second (2nd) Business Day after such first date.

(E) *Conversion Rate Adjustments Where Converting Holders Participate in the Relevant Transaction or Event*. Notwithstanding anything to the contrary in the Indenture or the Notes, if:

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.05(A)**;

(ii) a Note is to be Converted pursuant to Physical Settlement or Combination Settlement;

(iii) the Conversion Date for such Conversion (in the case of Physical Settlement) or any VWAP Trading Day in the Observation Period for such Conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the Conversion Consideration due upon such Conversion includes any whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement), in each case based on a Conversion Rate that is adjusted for such dividend or distribution; and

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.02(C)**),

then:

(x) in the case of Physical Settlement, such Conversion Rate adjustment will not be given effect for such Conversion and the shares of Common Stock issuable upon such Conversion based on such unadjusted Conversion Rate will not be entitled to participate in such dividend or distribution, but there will be added, to the Conversion Consideration otherwise due upon such Conversion, the same kind and amount of consideration that would have been delivered in such dividend or distribution with respect to such shares of Common Stock had such shares been entitled to participate in such dividend or distribution; and

(y) in the case of Combination Settlement, the Conversion Rate adjustment relating to such Ex-Dividend Date will be made for such Conversion in respect of such VWAP Trading Day, but the shares of Common Stock issuable with respect to such VWAP Trading Day based on such adjusted Conversion Rate will not be entitled to participate in such dividend or distribution.

(F) *Stockholder Rights Plans*. If any shares of Common Stock are to be issued upon Conversion of any Note and, at the time of such Conversion, the Company has in effect any stockholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under the Indenture upon such Conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 5.05(A)(iii)(1)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to potential readjustment in accordance with the last paragraph of **Section 5.05(A)(iii)(1)**.

(G) *Limitation on Effecting Transactions Resulting in Certain Adjustments*. The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 5.05(A)** or **Section 5.07** to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(H) *Equitable Adjustments to Prices*. Whenever any provision of the Indenture requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, the Daily VWAPs, the Daily Conversion Values, the Daily Cash Amounts or the Daily Share Amounts over a period of multiple days (including over an Observation Period, to calculate an adjustment to the Conversion Rate and the period, if any, for determining the Stock Price for purposes of a Make-Whole Fundamental Change), the Company will, acting in good faith and in a commercially reasonable manner, make appropriate adjustments, if any, to those calculations to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or Expiration Date, as applicable, of the event occurs, at any time during such period or Observation Period, as applicable.

(I) *Calculation of Number of Outstanding Shares of Common Stock*. For purposes of **Section 5.05(A)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(J) *Calculations*. All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward) or to the nearest cent (with 0.5 of a cent rounded upward), as applicable.

(K) *Notice of Conversion Rate Adjustments*. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.05(A)**, the Company will promptly send notice to the Holders, the Trustee and the Conversion Agent (if other than the Trustee) containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

Section 5.06 Voluntary Adjustments.

(A) *Generally*. To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (x)the Board of Directors determines that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(B) *Notice of Voluntary Increases*. If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 5.06(A)**, then, no later than the first Business Day of the related twenty (20) or more Business Day period referred to in **Section 5.06(A)**, the Company will send notice to each Holder, the Trustee and the Conversion Agent of such increase, the amount thereof and the period during which such increase will be in effect.

Section 5.07 Adjustments to the Conversion Rate in Connection with a Make-Whole Fundamental Change.

(A) *Generally*. If a Make-Whole Fundamental Change occurs and the Conversion Date for the Conversion of a Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this **Section 5.07**, the Conversion Rate applicable to such Conversion will be increased by a number of shares (the "**Additional Shares**") set forth in the table below corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Fundamental Change Effective Date and the Stock Price of such Make-Whole Fundamental Change:

Make-Whole Fundamental	**Stock Price**									
Change Effective Date	**$88.95**	**$110.00**	**$124.53**	**$142.50**	**$161.89**	**$200.00**	**$300.00**	**$450.00**	**$625.00**	**$825.00**
June 8, 2026	3.2120	2.2448	1.8025	1.4066	1.1011	0.7151	0.2764	0.0796	0.0160	0.0000
August 1, 2026	3.2120	2.2448	1.8025	1.4066	1.1002	0.7134	0.2747	0.0786	0.0155	0.0000
August 1, 2027	3.2120	2.2448	1.8025	1.4011	1.0823	0.6858	0.2492	0.0646	0.0102	0.0000
August 1, 2028	3.2120	2.2448	1.8025	1.3665	1.0370	0.6351	0.2117	0.0471	0.0044	0.0000
August 1, 2029	3.2120	2.2448	1.7352	1.2813	0.9458	0.5490	0.1589	0.0267	0.0007	0.0000
August 1, 2030	3.2120	2.1379	1.5830	1.1168	0.7845	0.4130	0.0915	0.0076	0.0000	0.0000
August 1, 2031	3.2120	1.8533	1.2619	0.7979	0.4966	0.2060	0.0223	0.0000	0.0000	0.0000
August 1, 2032	3.2120	1.0607	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

If such Make-Whole Fundamental Change Effective Date or Stock Price is not set forth in the table above, then:

(i) if such Stock Price is between two Stock Prices in the table above or the Make-Whole Fundamental Change Effective Date is between two dates in the table above, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the table above or the earlier and later dates in the table above, based on a 365- or 366-day year, as applicable; and

(ii) if the Stock Price is greater than $825.00 (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above are adjusted pursuant to **Section 5.07(B)**), or less than $88.95 (subject to adjustment in the same manner), per share of Common Stock, then no Additional Shares of Common Stock will be added to the Conversion Rate.

Notwithstanding anything to the contrary in the Indenture or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds 11.2422 shares of Common Stock per $1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.05(A)**.

For the avoidance of doubt, but subject to **Section 4.03(I)**, (x) the sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called (or deemed called) for Redemption pursuant to such Redemption Notice, and not with respect to any other Notes; and (y) the Conversion Rate applicable to the Notes not so called (or deemed called) for Redemption will not be subject to increase pursuant to this **Section 5.07** on account of such Redemption Notice.

(B) *Adjustment of Stock Prices and Number of Additional Shares*. The Stock Prices in the first row (*i.e.*, the column headers) of the table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of **Section 5.05(A)**. The adjusted Stock Prices will equal the Stock Prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The numbers of Additional Shares in the table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to **Section 5.05(A)**.

(C) *Notice of the Occurrence of a Make-Whole Fundamental Change*. If a Make-Whole Fundamental Change occurs pursuant to **clause (A)** of the definition thereof, then, promptly and in no event later than the second Business Day immediately after the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change, the Company will notify the Holders of the occurrence of such Make-Whole Fundamental Change and of such Make-Whole Fundamental Change Effective Date, briefly stating the circumstances under which the Conversion Rate will be increased pursuant to this **Section 5.07** in connection with such Make-Whole Fundamental Change. The Company will notify the Holders of each Make-Whole Fundamental Change occurring pursuant to **clause (B)** of the definition thereof in the related Optional Redemption Notice in accordance with **Section 4.03(F)** (with a copy to the Trustee and the Conversion Agent, if other than the Trustee).

(D) *Settlement of Cash Make-Whole Fundamental Changes*. For the avoidance of doubt, if holders of Common Stock receive solely cash in a Make-Whole Fundamental Change, then, pursuant to **Section 5.09**, Conversions of Notes will thereafter be settled no later than the second (2nd) Business Day after the relevant Conversion Date.

Section 5.08 Exchange in Lieu of Conversion.

Notwithstanding anything to the contrary in this **Article 5**, and subject to the terms of this **Section 5.08**, if a Note is submitted for Conversion, the Company may elect to arrange to have such Note exchanged in lieu of Conversion by a financial institution designated by the Company. To make such election, the Company must send notice of such election to the Holder of such Note, the Trustee and the Conversion Agent (if other than the Trustee) before the Close of Business on the Business Day immediately following the Conversion Date for such Note. If the Company has made such election, then:

(A) no later than the Business Day immediately following such Conversion Date, the Company must deliver (or cause the Conversion Agent to deliver) such Note, together with delivery instructions for the Conversion Consideration due upon such Conversion (including wire instructions, if applicable), to a financial institution designated by the Company that has agreed to deliver such Conversion Consideration in the manner and at the time the Company would have had to deliver the same pursuant to this **Article 5**;

(B) if such Note is a Global Note, then (i) such designated institution will send written confirmation to the Conversion Agent promptly after wiring the cash Conversion Consideration, if any, and delivering any other Conversion Consideration, due upon such Conversion to the Holder of such Note; and (ii) the Conversion Agent will as soon as reasonably practicable thereafter contact such Holder's custodian with the Depositary to confirm receipt of the same; and

(C) such Note will not cease to be outstanding by reason of such exchange in lieu of Conversion;

provided, *however*, that if such financial institution does not accept such Note or fails to timely deliver such Conversion Consideration, then the Company will be responsible for delivering such Conversion Consideration in the manner and at the time provided in this **Article 5** as if the Company had not elected to make an exchange in lieu of Conversion.

Section 5.09 Effect of Common Stock Change Event.

(A) *Generally*. If there occurs any:

(i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in the Indenture or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration due upon Conversion of any Note, and the conditions to any such Conversion, will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Article 5** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 4.03**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definitions of "Fundamental Change" and "Make-Whole Fundamental Change," references to "Common Stock" and the Company's "Common Equity" will be deemed to refer to the Common Equity (including depositary receipts representing Common Equity), if any, forming part of such Reference Property;

(2) if such Reference Property Unit consists entirely of cash, then (I) each Conversion of any Note with a Conversion Date that occurs on or after the effective date of such Common Stock Change Event will be settled entirely in cash in an amount, per $1,000 principal amount of such Note being Converted, equal to the product of (x) the Conversion Rate in effect on such Conversion Date (including, for the avoidance of doubt, any increase to such Conversion Rate pursuant to **Section 5.07**, if applicable); and (y) the amount of cash constituting such Reference Property Unit; and (II) the Company will settle each such Conversion no later than the second (2nd) Business Day after the relevant Conversion Date; and

(3) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of Common Equity securities will be determined by reference to the definition of "Daily VWAP," substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of Common Equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith and in a commercially reasonable manner by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

At or before the effective time of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver to the Trustee a supplemental indenture pursuant to **Section 8.01(F)**, which supplemental indenture will (x) provide for subsequent Conversions of Notes in the manner set forth in this **Section 5.09**; (y) provide for subsequent adjustments to the Conversion Rate pursuant to **Section 5.05(A)** in a manner consistent with this **Section 5.09**; and (z) contain such other provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to the provisions of this **Section 5.09(A)**. If the Reference Property includes shares of stock or other securities or assets (other than cash) of a Person other than the Successor Person, then such other Person will also execute such supplemental indenture and such supplemental indenture will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders.

(B) *Notice of Common Stock Change Events*. The Company will provide notice of each Common Stock Change Event to Holders, the Trustee and the Conversion Agent (if other than the Trustee) no later than the second (2nd) Business Day after the effective date of such Common Stock Change Event, including a brief description of such Common Stock Change Event, its effective date and a brief description of the anticipated change in the Conversion right of the Notes.

(C) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 5.09**.

Article 6. SUCCESSORS

This **Article 6** will apply to the Notes in lieu of Article 10 of the Base Indenture, which will be deemed to be replaced with this **Article 6**, *mutatis mutandis*.

Section 6.01 When the Company May Merge, Etc.

(A) *Generally*. The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person (a "**Business Combination Event**"), unless:

(i) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a Qualified Successor Entity (such Qualified Successor Entity, the "**Successor Entity**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Trustee, at or before the effective time of such Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)**) all of the Company's obligations under the Indenture and the Notes; and

(ii) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

(B) *Delivery of Officer's Certificate and Opinion of Counsel to the Trustee*. At or before the effective time of any Business Combination Event, the Company will deliver to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that (i) such Business Combination Event (and, if applicable, the related supplemental indenture) comply with **Section 6.01(A)**; and (ii) all conditions precedent to such Business Combination Event provided in the Indenture have been satisfied.

Section 6.02 Successor Entity Substituted.

At the effective time of any Business Combination Event that complies with **Section 6.01**, the Successor Entity (if not the Company) will succeed to, and may exercise every right and power of, the Company under the Indenture and the Notes with the same effect as if such Successor Entity had been named as the Company in the Indenture and the Notes, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under the Indenture and the Notes.

Section 6.03 Exclusion for Asset Transfers with Wholly Owned Subsidiaries.

Notwithstanding anything to the contrary in this **Article 6**, this **Article 6** will not apply to any transfer of assets (other than by merger or consolidation) between or among the Company and any one or more of its Wholly Owned Subsidiaries.

Article 7. DEFAULTS AND REMEDIES

This **Article 7** will apply to the Notes in lieu of Article 6 of the Base Indenture, which will be deemed to be replaced with this **Article 7**, *mutatis mutandis*.

Section 7.01 Events of Default.

(A) *Definition of Events of Default*. "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due (whether at maturity, upon Redemption or Repurchase Upon Fundamental Change or otherwise) of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, any Note;

(ii) a default for thirty (30) consecutive days in the payment when due of interest on any Note;

(iii) the Company's failure to deliver, when required by the Indenture, a Fundamental Change Notice, or a notice pursuant to **Section 5.01(C)(i)(3)**, if (in the case of any notice other than a notice pursuant to **Section 5.01(C)(i)(3)(a)),** such failure is not cured within three (3) Business Days after its occurrence (or, in the case of a notice pursuant to **Section 5.01(C)(i)(3)(a)**, when due);

(iv) a default in the Company's obligation to Convert a Note in accordance with **Article 5** upon the exercise of the Conversion right with respect thereto, if such default is not cured within three (3) Business Days after its occurrence;

(v) a default in the Company's obligations under **Article 6**;

(vi) a default in any of the Company's obligations or agreements under the Indenture or the Notes (other than a default set forth in **clause (i)**, **(ii)**, **(iii)**, **(iv)** or **(v)** of this **Section 7.01(A)**) where such default is not cured or waived within sixty (60) days after notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default, demand that it be remedied and state that such notice is a "Notice of Default";

(vii) a default by the Company or any of the Company's Significant Subsidiaries with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least sixty million dollars ($60,000,000) (or its foreign currency equivalent) in the aggregate of the Company or any of the Company's Significant Subsidiaries, whether such indebtedness exists as of the Issue Date or is thereafter created, where such default:

(1) constitutes a failure to pay the principal of such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case after the expiration of any applicable grace period; or

(2) results in such indebtedness becoming or being declared due and payable before its stated maturity,

in each case where such default is not cured or waived within thirty (30) days after notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding;

(viii) a final judgment being rendered against the Company or any of its Significant Subsidiaries for the payment of at least sixty million dollars ($60,000,000) (or its foreign currency equivalent) (excluding any amounts covered by insurance), where such judgment is not discharged or stayed within sixty (60) days after (i) the date on which the right to appeal the same has expired, if no such appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished;

(ix) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(x) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 7.01(A)(x)**, such order or decree remains unstayed and in effect for at least sixty (60) days.

For the avoidance of doubt, any failure by the Company to provide any notice under the Indenture other than as set forth in **Section 7.01(A)(iii)** above shall be subject to **Section 7.01(A)(vi)** above (including the 60-day cure period contained therein).

(B) *Cause Irrelevant*. Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

Section 7.02 Acceleration.

(A) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 7.01(A)(ix)** or **7.01(A)(x)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration*. Subject to **Section 7.03**, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(ix)** or **7.01(A)(x)** with respect to the Company and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, then the Trustee, by notice to the Company, or Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding to become due and payable immediately. For the avoidance of doubt, if such Event of Default is not continuing at the time such notice is provided (that is, such Event of Default has been cured or waived as of such time), then such notice will not be effective to cause such amounts to become due and payable immediately.

(C) *Rescission of Acceleration*. Notwithstanding anything to the contrary in the Indenture or the Notes, the Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (except the non-payment of principal of, or interest, if any, on, the Notes that has become due solely because of such acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 7.03 Sole Remedy for a Failure to Report.

(A) *Generally*. Notwithstanding anything to the contrary in the Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a "**Reporting Event of Default**") pursuant to **Section 7.01(A)(vi)** arising from the Company's failure to comply with **Section 3.02** (including the Company's obligations under Section 314(a)(1) of the Trust Indenture Act) will, for each of the first three hundred and sixty five (365) calendar days on which such Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section 7.02** on account of the relevant Reporting Event of Default from, and including, the three hundred and sixty-sixth (366th) calendar day on which such Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such three hundred sixty-sixth (366th) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.04(B)**).

(B) *Amount and Payment of Special Interest*. Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first one hundred and eighty (180) days on which such Reporting Event of Default is continuing and Special Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof, to, and including, the three hundred and sixty-fifth (365th) calendar day on which such Reporting Event of Default is continuing and Special Interest accrues. For the avoidance of doubt, any Special Interest that accrues on a Note will be in addition to the Stated Interest that accrues on such Note.

(C) *Notice of Election*. To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent (if other than the Trustee), before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes the report(s) that the Company failed to file with the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest; and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee's Disclaimer*. If Special Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default*. No election pursuant to this **Section 7.03** with respect to a Reporting Event of Default will affect the rights of any Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default.

Section 7.04 Other Remedies.

(A) *Trustee May Pursue All Remedies*. If an Event of Default occurs and is continuing, then the Trustee may pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of the Indenture or the Notes.

(B) *Procedural Matters*. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

Section 7.05 Waiver of Past Defaults.

An Event of Default pursuant to **clause (i)**, **(ii)**, **(iv)** or **(vi)** of **Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Holders of a majority in aggregate principal amount of the Notes then outstanding. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

Section 7.06 Cure of Defaults; Ability to Cure or Waive Before Event of Default Occurs.

For the avoidance of doubt, and without limiting the manner in which any Default can be cured, (A) a Default or Event of Default consisting of a failure to send a notice in accordance with the Indenture will be cured upon the sending of such notice; (B) a Default or Event of Default in making any payment on (or delivering any other consideration in respect of) any Note will be cured upon the delivery, in accordance with the Indenture, of such payment (or other consideration) together, if applicable, with Default Interest thereon; and (C) a Default or Event of Default that is (or, after notice, passage of time or both, would be) a Reporting Event of Default will be cured upon the filing of the relevant report(s) giving rise to such Reporting Event of Default; *provided* that (i) the cure of any Event of Default shall not invalidate any acceleration of the Notes on account of such Event of Default that was properly effected prior to such time as such Event of Default was cured and (ii) the cure of any Reporting Event of Default shall not affect the Company's obligation to pay any Special Interest that accrues prior to the time of such cure. In addition, for the avoidance of doubt, if a Default that is not an Event of Default is cured or waived before such Default would have constituted an Event of Default, then no Event of Default will result from such Default.

Section 7.07 Control by Majority.

Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law, the Indenture or the Notes, or that, subject to Section 7.01 of the Base Indenture, the Trustee determines may be unduly prejudicial to the rights of other Holders or may involve the Trustee in liability, unless the Trustee is offered (and, if requested, provided with) security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such direction.

Section 7.08 Limitation on Suits.

No Holder may pursue any remedy with respect to the Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or interest on, any Notes; or (y) the Company's obligations to Convert any Notes pursuant to **Article 5**), unless:

(A) such Holder has previously delivered to the Trustee notice that an Event of Default is continuing;

(B) Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding deliver a written request to the Trustee to pursue such remedy;

(C) such Holder or Holders offer and, if requested, provide to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such request;

(D) the Trustee does not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and

(E) during such sixty (60) calendar day period, Holders of a majority in aggregate principal amount of the Notes then outstanding do not deliver to the Trustee a direction that is inconsistent with such request.

A Holder of a Note may not use the Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. The Trustee will have no duty to determine whether any Holder's use of the Indenture complies with the preceding sentence.

Section 7.09 Absolute Right of Holders to Institute Suit for the Enforcement of the Right to Receive Payment and Conversion Consideration.

Notwithstanding anything to the contrary in the Indenture or the Notes (but without limiting **Section 8.01**), the right of each Holder of a Note to receive payment or delivery, as applicable, of the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or any interest on, or the Conversion Consideration due pursuant to **Article 5** upon Conversion of, such Note on or after the respective due dates therefor provided in the Indenture and the Notes, or to bring suit for the enforcement of any such payment or delivery on or after such respective due dates, will not be impaired or affected without the consent of such Holder.

Section 7.10 Collection Suit by Trustee.

The Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i)**, **(ii)** or **(iv)** of **Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or Fundamental Change Repurchase Price or Redemption Price for, or any interest on, or Conversion Consideration due pursuant to **Article 5** upon Conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including all amounts owed to it under Section 7.06 of the Base Indenture.

Section 7.11 Trustee May File Proofs of Claim.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, and its agents and counsel, and any other amounts payable to the Trustee pursuant to Section 7.06 of the Base Indenture. To the extent that the payment of any such compensation, expenses, disbursements, advances and other amounts out of the estate in such proceeding, is denied for any reason, payment of the same will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in the Indenture will be deemed to authorize the Trustee to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 7.12 Priorities.

The Trustee will pay or deliver in the following order any money or other property that it collects pursuant to this **Article 7**:

First: to the Trustee and its agents and attorneys for amounts due hereunder, including payment of all fees and compensation of, and all expenses and liabilities incurred, and all advances made, by, the Trustee (in each of its capacities under the Indenture, including as Note Agent) and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes, including the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or any interest on, or any Conversion Consideration due upon Conversion of, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.12**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder and the Trustee a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

Section 7.13 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under the Indenture or the Notes or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit; and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided*, *however*, that this **Section 7.13** does not apply to any suit by the Trustee, any suit by a Holder pursuant to **Section 7.09** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

Section 7.14 Notice of Defaults.

This **Section 7.14** will apply to the Notes in lieu of Section 7.14 of the Base Indenture, which will be deemed to be replaced with this **Section 7.14**, *mutatis mutandis*.

If a Default or Event of Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, then the Trustee will send Holders a notice of such Default or Event of Default within ninety (90) days after it occurs or, if it is not actually known to a Responsible Officer of the Trustee at such time, promptly (and in any event within ten (10) Business Days) after it becomes actually known to a Responsible Officer of the Trustee; *provided*, *however*, that, except in the case of a Default or Event of Default in the payment of the principal of, or interest on, any Note, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders. For the avoidance of doubt, the Trustee will not be required to deliver such notice at any time after such Default or Event of Default is cured or waived.

Article 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01 and **Section 8.02** will apply to the Notes in lieu of Section 9.01 and Section 9.02, respectively, of the Base Indenture, which will be deemed to be replaced with **Section 8.01** and **Section 8.02**, respectively, *mutatis mutandis*.

Section 8.01 Without the Consent of Holders.

Notwithstanding anything to the contrary in **Section 8.02**, the Company and the Trustee may amend or supplement the Indenture or the Notes without the consent of any Holder to:

(A) cure any ambiguity or correct any omission, defect or inconsistency in the Indenture or the Notes;

(B) add guarantees with respect to the Company's obligations under the Indenture or the Notes;

(C) secure the Notes;

(D) add to the Company's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company;

(E) provide for the assumption of the Company's obligations under the Indenture and the Notes pursuant to, and in compliance with, **Article 6**;

(F) enter into supplemental indentures pursuant to, and in accordance with, **Section 5.09** in connection with a Common Stock Change Event;

(G) irrevocably elect or eliminate any Settlement Method or Specified Dollar Amount; *provided*, *however*, that no such election or elimination will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to **Section 5.03(A)**;

(H) evidence or provide for the acceptance of the appointment, under the Indenture, of a successor Trustee;

(I) conform the provisions of the Indenture and the Notes to the "Description of Notes" section of the Company's preliminary prospectus supplement, dated June 3, 2026, as supplemented by the related pricing term sheet, dated June 3, 2026;

(J) provide for or confirm the issuance of additional Notes pursuant to **Section 2.02(B)**;

(K) provide for any transfer restrictions that apply to any Notes issued under the Indenture (other than the Initial Notes) that, at the time of their original issuance, constitute "restricted securities" within the meaning of Rule 144 or that are originally issued in reliance upon Regulation S under the Securities Act;

(L) comply with any requirement of the SEC in connection with effecting or maintaining the qualification of the Indenture or any supplemental indenture under the Trust Indenture Act, as then in effect; or

(M) make any other change to the Indenture or the Notes that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders, as such, in any material respect, as determined by the Company in good faith.

At the written request of any Holder of a Note or owner of a beneficial interest in a Global Note, the Company will provide a copy of the "Description of Notes" section and pricing term sheet referred to in **Section 8.01(I)**.

Section 8.02 With the Consent of Holders.

(A) *Generally*. Subject to **Sections 8.01**, **7.05** and **7.09** and the immediately following sentence, the Company and the Trustee may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes. Notwithstanding anything to the contrary in the foregoing sentence, but subject to **Section 8.01**, without the consent of each affected Holder, no amendment or supplement to the Indenture or the Notes, or waiver of any provision of the Indenture or the Notes, may:

(i) reduce the principal, or change the stated maturity, of any Note;

(ii) reduce the Redemption Price or Fundamental Change Repurchase Price for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company;

(iii) reduce the rate, or extend the time for the payment, of interest on any Note;

(iv) make any change that adversely affects the Conversion rights of any Note;

(v) impair the rights of any Holder set forth in **Section 7.09** (as such section is in effect on the Issue Date);

(vi) change the ranking of the Notes;

(vii) make any Note payable in money, or at a place of payment, other than that stated in the Indenture or the Note;

(viii) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or

(ix) make any direct or indirect change to any amendment, supplement, waiver or modification provision of the Indenture or the Notes that requires the consent of each affected Holder.

For the avoidance of doubt, pursuant to clauses **(i)**, **(ii)**, **(iii)** and **(iv)** of this **Section 8.02(A)**, no amendment or supplement to the Indenture or the Notes, or waiver of any provision of the Indenture or the Notes, may change the amount or type of consideration due on any Note (whether on an Interest Payment Date, Redemption Date, Fundamental Change Repurchase Date or the Maturity Date or upon Conversion, or otherwise), or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder.

(B) *Holders Need Not Approve the Particular Form of any Amendment*. A consent of any Holder pursuant to this **Section 8.02** need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

Section 8.03 Notice of Amendments, Supplements and Waivers.

As soon as reasonably practicable after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.04 Revocation, Effect and Solicitation of Consents; Special Record Dates; Etc.

(A) *Revocation and Effect of Consents*. The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates*. The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided*, *however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents*. For the avoidance of doubt, each reference in the Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect*. Each amendment, supplement or waiver pursuant to this **Article 8** will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

Section 8.05 Notations and Exchanges.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with Section 2.04 of the Base Indenture, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.06 Trustee to Execute Supplemental Indentures.

The Trustee will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided*, *however*, that the Trustee need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that adversely affects the Trustee's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee will be entitled to receive, and will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by the Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company in accordance with its terms.

Article 9. SATISFACTION AND DISCHARGE

This **Article 9** will apply to the Notes in lieu of Article 11 of the Base Indenture, which will be deemed to be replaced with this **Article 9**, *mutatis mutandis*.

Section 9.01 Termination of Company's Obligations.

The Company's obligations with respect to the Notes under the Indenture will be discharged, and the Indenture will cease to be of further effect as to all Notes issued under the Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to Section 2.07 of the Base Indenture) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, a Fundamental Change Repurchase Date, the Maturity Date, upon Conversion or otherwise) for an amount of cash or Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent (or, with respect to Conversion Consideration, the Conversion Agent), in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be Converted, Conversion Consideration) sufficient to satisfy all amounts or other property due on all Notes then outstanding (other than Notes replaced pursuant to Section 2.07 of the Base Indenture);

(C) the Company has paid all other amounts payable by it under the Indenture; and

(D) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of the Indenture have been satisfied;

provided, *however*, that Article 7 of the Base Indenture and **Section 10.01** will survive such discharge and, until no Notes remain outstanding, Section 2.08 of the Base Indenture and the obligations of the Trustee, the Paying Agent and the Conversion Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request, the Trustee will acknowledge the satisfaction and discharge of the Indenture.

Section 9.02 Repayment to Company.

Subject to applicable unclaimed property law, the Trustee, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's request, promptly deliver to the Company) any cash, Conversion Consideration or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other property must look to the Company for payment as a general creditor of the Company.

Section 9.03 Reinstatement.

If the Trustee, the Paying Agent or the Conversion Agent is unable to apply any cash or other property deposited with it pursuant to **Section 9.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of the Indenture pursuant to **Section 9.01** will be rescinded; *provided*, *however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee, the Paying Agent or the Conversion Agent, as applicable.

Article 10. MISCELLANEOUS

Section 10.01 Notices.

Any notice or communication by the Company or the Trustee to the other will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

Celcuity Inc.
16305 36th Avenue North, Suite 100
Minneapolis, Minnesota 55446
Attention: Brian F. Sullivan
Email: bsullivan@celcuity.com

with a copy (which will not constitute notice) to:
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center 90 South Seventh Street
Minneapolis, Minnesota 55402
Attention: Jonathan R. Zimmerman
E-mail: jon.zimmerman@faegredrinker.com

If to the Trustee:

U.S. Bank Trust Company, National Association
West Side Flats St Paul
60 Livingston Ave
Saint Paul, MN 55107 | EP-MN-S3MC
Attention: Q. DePompolo (Celcuity Inc. Administrator)
E-mail: quinn.depompolo@usbank.com

with a copy (which will not constitute notice) to:
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919
Attention: Nathan Plotkin
E-mail: nplotkin@goodwin.com

Notwithstanding anything to the contrary in the preceding paragraph, notices to the Trustee or any Note Agent must be in writing and will be deemed to have been given upon actual receipt by the Trustee or such Note Agent, as applicable.

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

The Trustee will not have any duty to confirm that the person sending any notice, instruction or other communication by electronic transmission (including by e-mail, facsimile transmission, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by the Trustee to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee) will be deemed original signatures for all purposes. Any person that uses electronic signatures or electronic methods to send communications to the Trustee assumes all risks arising out of such use, including the risk of the Trustee acting on an unauthorized communication and the risk of interception or misuse by third parties. Notwithstanding anything to the contrary in this paragraph, the Trustee may, in any instance and in its sole discretion, require that an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any such electronic communication.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt is acknowledged, if transmitted by facsimile, electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

All notices or communications required to be made to a Holder pursuant to the Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Register; *provided*, *however*, that a notice or communication to a Holder of a Global Note will instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary in the Indenture or the Notes, (A) whenever any provision of the Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities (and, for purposes of the interpretation of the Indenture, such notice will be deemed to have been duly sent at the time otherwise required by the Indenture); and (B) whenever any provision of the Indenture requires a party to send notice to more than one receiving party, and each receiving party is the same Person acting in different capacities, then only one such notice need be sent to such Person.

Section 10.02 Rules by the Trustee, the Registrar, the Paying Agent and the Conversion Agent.

The Trustee may make reasonable rules for action by or at a meeting of Holders. Each of the Registrar, the Paying Agent and the Conversion Agent may make reasonable rules and set reasonable requirements for its functions.

Section 10.03 No Personal Liability of Directors, Officers, Employees and Stockholders.

No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

Section 10.04 Governing law; waiver of jury trial.

This **Section 10.04** will, with respect to the Notes, supersede Section 13.05 of the Base Indenture in its entirety.

THE INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE INDENTURE OR THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE TRUSTEE IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED BY THE INDENTURE OR THE NOTES.

Section 10.05 Submission to Jurisdiction.

Any legal suit, action or proceeding arising out of or based upon the Indenture or the transactions contemplated by the Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party's address set forth in **Section 10.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, the Trustee and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

Section 10.06 No Adverse Interpretation of Other Agreements.

Neither the Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret the Indenture or the Notes.

Section 10.07 Successors.

All agreements of the Company in the Indenture and the Notes will bind its successors. All agreements of the Trustee in the Indenture will bind its successors.

Any organization or entity into which the Trustee may be merged or converted or with which it may be consolidated, or any organization or entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any organization or entity succeeding to all or substantially all of the corporate trust business of the Trustee, will be the successor of the Trustee under the Indenture, without the need for the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such organization or entity is otherwise qualified and eligible under Section 7.09 of the Base Indenture and Section 310 of the Trust Indenture Act.

Section 10.08 Force Majeure.

The Trustee and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under the Indenture or the Notes by reason of any occurrence beyond its control (including any act or provision of any present or future law or regulation or governmental authority, act of God or war, civil unrest, local or national disturbance or disaster, act of terrorism or unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 10.09 U.S.A. Patriot Act.

The Company acknowledges that, in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions, in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Company agrees to provide the Trustee with such information as it may request to enable the Trustee to comply with the U.S.A. PATRIOT Act.

Section 10.10 Calculations.

Except as otherwise provided in the Indenture, the Company will be responsible for making all calculations called for under the Indenture or the Notes, including determinations of the Stock Price, Last Reported Sale Price, the Daily Conversion Value, the Daily Cash Amount, the Daily Share Amount, the Daily VWAP, the Trading Price, accrued interest on the Notes, including any Special Interest, the Redemption Price, the Fundamental Change Repurchase Price and the Conversion Rate (including adjustments to the Conversion Rate).

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee will promptly forward a copy of each such schedule to a Holder upon its written request therefor. For the avoidance of doubt, the Trustee will not be obligated to make or confirm any calculations or other amounts called for under the Indenture or the Notes.

Section 10.11 Severability.

If any provision of the Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of the Indenture or the Notes will not in any way be affected or impaired thereby.

Section 10.12 Counterparts.

The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Supplemental Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually or electronically executed counterpart.

Section 10.13 Table of Contents, Headings, Etc.

The table of contents and the headings of the Articles and Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of the Indenture and will in no way modify or restrict any of the terms or provisions of the Indenture.

Section 10.14 Withholding Taxes.

Each Holder of a Note agrees, and each beneficial owner of an interest in a Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of such Holder or beneficial owner as a result of an adjustment or the non-occurrence of an adjustment to the Conversion Rate, then the Company or such withholding agent, as applicable, may, at its option, set off such payments against payments of cash or the delivery of other Conversion Consideration on such Note, any payments on the Common Stock or sales proceeds received by, or other funds or assets of, such Holder or the beneficial owner of such Note.

Section 10.15 Trust Indenture Act Controls.

If any provision of the Indenture limits, qualifies or conflicts with another provision that is required or deemed to be included in the Indenture by the Trust Indenture Act, such required or deemed provision of the Trust Indenture Act will control.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

IN WITNESS WHEREOF, the parties to this Supplemental Indenture have caused this Supplemental Indenture to be duly executed as of the date first written above.

CELCUITY, INC.

By: /s/ *Vicky Hahne*
Name: Vicky Hahne
Title: Chief Financial Officer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE

By: /s/ *Quinton M. DePompolo*
Name: Quinton M. DePompolo
Title: Vice President

[Signature Page to Second Supplemental Indenture]

EXHIBIT A

FORM OF NOTE

[*Insert Global Note Legend, if applicable*]

[*Insert Non-Affiliate Legend*]

CELCUITY INC.

0.250% Convertible Senior Note due 2032

CUSIP No.: [__] Certificate No. [__]
ISIN No.: [__]

Celcuity Inc., a Delaware corporation, for value received, promises to pay to [Cede & Co.], or its registered assigns, the principal sum of [__] dollars ($[__]) [(as revised by the attached Schedule of Exchanges of Interests in the Global Note)]* on August 1, 2032 and to pay interest thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates: February 1 and August 1 of each year, commencing on [__].

Regular Record Dates: January 15 and July 15.

Additional provisions of this Note are set forth on the other side of this Note.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

* Insert bracketed language for Global Notes only

IN WITNESS WHEREOF, Celcuity Inc. has caused this instrument to be duly executed as of the date set forth below.

CELCUITY INC.

Date: _____

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank Trust Company, National Association, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____

Authorized Signatory

CELCUITY INC.
0.250% Convertible Senior Note due 2032

This Note is one of a duly authorized issue of notes of Celcuity Inc., a Delaware corporation (the "**Company**"), designated as its 0.250% Convertible Senior Notes due 2032 (the "**Notes**"), all issued or to be issued pursuant to an indenture (the "**Base Indenture**"), dated as of August 1, 2025, and a second supplemental indenture (as the same may be amended from time to time, the "**Supplemental Indenture**," and the Base Indenture, as amended and supplemented by the Supplemental Indenture, and as the same may be further amended or supplemented from time to time with respect to the Notes, the "**Indenture**"), dated as of June 8, 2026, each between the Company and U.S. Bank Trust Company, National Association, as trustee. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Trustee and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest**. This Note will accrue interest at a rate and in the manner set forth in Section 2.04 of the Supplemental Indenture. Stated Interest on this Note will begin to accrue from, and including, [*date*].

2. **Maturity**. This Note will mature on August 1, 2032, unless earlier repurchased, redeemed or Converted.

3. **Method of Payment**. Cash amounts due on this Note will be paid in the manner set forth in Section 2.03 of the Supplemental Indenture.

4. **Persons Deemed Owners**. The Holder of this Note will be treated as the owner of this Note for all purposes.

5. **Denominations; Transfers and Exchanges**. All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.

6. **Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change**. If a Fundamental Change (other than an Exempted Fundamental Change) occurs, then each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Supplemental Indenture.

7. **Right of the Company to Redeem the Notes**. The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.03 of the Supplemental Indenture.

8. **Conversion**. The Holder of this Note may Convert this Note into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Supplemental Indenture.

9. **When the Company May Merge, Etc**. Article 6 of the Supplemental Indenture places limited restrictions on the Company's ability to be a party to a Business Combination Event.

10. **Defaults and Remedies**. If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Supplemental Indenture.

11. **Amendments, Supplements and Waivers**. The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Article 8 of the Supplemental Indenture.

12. **No Personal Liability of Directors, Officers, Employees and Stockholders**. No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

13. **Authentication**. No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

14. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

15. **Governing Law**. THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Celcuity Inc.
16305 36th Avenue North, Suite 100
Minneapolis, Minnesota 55446
Attention: Chief Financial Officer

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*
INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: $[__]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee

* Insert for Global Notes only.

CONVERSION NOTICE

CELCUITY INC.

0.250% Convertible Senior Notes due 2032

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to Convert (check one):

☐ the entire principal amount of

☐ $ _____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that if the Conversion Date of a Note to be Converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for Conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

Date: _____ _____

(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

CELCUITY INC.

0.250% Convertible Senior Notes due 2032

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ $ _____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

CELCUITY INC.

0.250% Convertible Senior Notes due 2032

Subject to the terms of the Indenture, the undersigned Holder of the Note identified below assigns (check one):

☐ the entire principal amount of

☐ $ _____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____, and all rights thereunder, to:

Name: _____

Address: _____

Social security or tax id. #: _____

and irrevocably appoints: _____

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ _____

(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

EXHIBIT B-1

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE SUPPLEMENTAL INDENTURE HEREINAFTER REFERRED TO.

EXHIBIT B-2

FORM OF NON-AFFILIATE LEGEND

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY OR PERSON OR ENTITY THAT WAS AN AFFILIATE (AS DEFINED UNDER RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY WITHIN THE THREE MONTHS IMMEDIATELY PRECEDING, MAY PURCHASE OR OTHERWISE ACQUIRE THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN.

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE SUPPLEMENTAL INDENTURE HEREINAFTER REFERRED TO.

CELCUITY INC.

0.250% Convertible Senior Note due 2032

CUSIP No.: 15102K AB6 Certificate No. _____
ISIN No.: US15102KAB61

Celcuity Inc., a Delaware corporation, for value received, promises to pay to Cede & Co., or its registered assigns, the principal sum of _____ dollars ($_____) (as revised by the attached Schedule of Exchanges of Interests in the Global Note) on August 1, 2032 and to pay interest thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates: February 1 and August 1 of each year, commencing on February 1, 2027.

Regular Record Dates: January 15 and July 15.

Additional provisions of this Note are set forth on the other side of this Note.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

IN WITNESS WHEREOF, Celcuity Inc. has caused this instrument to be duly executed as of the date set forth below.

CELCUITY INC.

Date: _____

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank Trust Company, National Association, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____

Authorized Signatory

CELCUITY INC.

0.250% Convertible Senior Note due 2032

This Note is one of a duly authorized issue of notes of Celcuity Inc., a Delaware corporation (the "**Company**"), designated as its 0.250% Convertible Senior Notes due 2032 (the "**Notes**"), all issued or to be issued pursuant to an indenture (the "**Base Indenture**"), dated as of August 1, 2025, and a second supplemental indenture (as the same may be amended from time to time, the "**Supplemental Indenture**," and the Base Indenture, as amended and supplemented by the Supplemental Indenture, and as the same may be further amended or supplemented from time to time with respect to the Notes, the "**Indenture**"), dated as of June 8, 2026, each between the Company and U.S. Bank Trust Company, National Association, as trustee. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Trustee and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest**. This Note will accrue interest at a rate and in the manner set forth in Section 2.04 of the Supplemental Indenture. Stated Interest on this Note will begin to accrue from, and including, June 8, 2026.

2. **Maturity**. This Note will mature on August 1, 2032, unless earlier repurchased, redeemed or Converted.

3. **Method of Payment**. Cash amounts due on this Note will be paid in the manner set forth in Section 2.03 of the Supplemental Indenture.

4. **Persons Deemed Owners**. The Holder of this Note will be treated as the owner of this Note for all purposes.

5. **Denominations; Transfers and Exchanges**. All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.

6. **Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change**. If a Fundamental Change (other than an Exempted Fundamental Change) occurs, then each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Supplemental Indenture.

7. **Right of the Company to Redeem the Notes**. The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.03 of the Supplemental Indenture.

8. **Conversion**. The Holder of this Note may Convert this Note into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Supplemental Indenture.

9. **When the Company May Merge, Etc**. Article 6 of the Supplemental Indenture places limited restrictions on the Company's ability to be a party to a Business Combination Event.

10. **Defaults and Remedies**. If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Supplemental Indenture.

11. **Amendments, Supplements and Waivers**. The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Article 8 of the Supplemental Indenture.

12. **No Personal Liability of Directors, Officers, Employees and Stockholders**. No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

13. **Authentication**. No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

14. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

15. **Governing Law**. THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Celcuity Inc.
16305 36th Avenue North, Suite 100
Minneapolis, Minnesota 55446
Attention: Chief Financial Officer

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE
INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: $[__]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee

CONVERSION NOTICE

CELCUITY INC.

0.250% Convertible Senior Notes due 2032

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to Convert (check one):

☐ the entire principal amount of

☐ $ _____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that if the Conversion Date of a Note to be Converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for Conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

Date: _____ _____

(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

CELCUITY INC.

0.250% Convertible Senior Notes due 2032

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ $ _____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

CELCUITY INC.

0.250% Convertible Senior Notes due 2032

Subject to the terms of the Indenture, the undersigned Holder of the Note identified below assigns (check one):

☐ the entire principal amount of

☐ $ _____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____, and all rights thereunder, to:

Name: _____

Address: _____

Social security or tax id. #: _____

and irrevocably appoints: _____

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ _____

(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

Exhibit 5.1

faegredrinker.com

Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, Minnesota 55402
+1 612 766 7000 main
+1 612 766 1600 fax

June 8, 2026

Celcuity Inc.
2800 Campus Drive, Suite 140
Minneapolis, Minnesota 55441

Ladies and Gentlemen:

We have acted as counsel to Celcuity Inc., a Delaware corporation (the "Company"), in connection with the issuance and sale by the Company of $575,000,000 aggregate principal amount of 0.250% Convertible Senior Notes due 2032 (the "Notes"), convertible, at the Company's election, into cash, common stock, par value $0.001 per share, of the Company (the "Common Stock") or a combination of cash and Common Stock. The Notes are being offered pursuant to the Registration Statement on Form S-3 (File No. 333-292646) filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), on January 9, 2026 (as so filed, the "Registration Statement"), the base prospectus, dated January 9, 2026, included in the Registration Statement (the "Base Prospectus"), the preliminary prospectus supplement, dated June 3, 2026, filed with the Commission pursuant to Rule 424(b) under the Act (together with the Base Prospectus, the "Preliminary Prospectus Supplement") and the final prospectus supplement, dated June 3, 2026, filed with the Commission pursuant to Rule 424(b) under the Act (together with the Base Prospectus, the "Prospectus"). The Notes are being issued pursuant to, and are governed by, an indenture (the "Base Indenture"), dated as of August 1, 2025, between the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), as supplemented by a second supplemental indenture (the "Supplemental Indenture," and the Base Indenture, as supplemented by the Supplemental Indenture, the "Indenture"), dated as of June 8, 2026, between the Company and the Trustee, and are being sold pursuant to an underwriting agreement, dated June 3, 2026, by and among Jefferies LLC, J.P. Morgan Securities LLC, TD Securities (USA) LLC and Guggenheim Securities, LLC as the representatives of the several underwriters listed on Schedule A thereto, and the Company (the "Underwriting Agreement").

This opinion letter is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K.

In rendering the opinions expressed herein, we have examined or are otherwise familiar with the Certificate of Incorporation of the Company, as amended to the date hereof, and the Bylaws of the Company, and we have reviewed originals, or copies certified or otherwise authenticated to our satisfaction, of (i) the Registration Statement, (ii) the Preliminary Prospectus Supplement, (iii) the Prospectus, (iv) the Underwriting Agreement, (v) the Indenture, (vi) executed copies of the global notes evidencing the Notes and (vii) the corporate actions taken by the Company in connection with the authorization of the Underwriting Agreement, the Notes, the Indenture and the shares of Common Stock issuable upon conversion of the Notes. We have also examined originals, or copies certified or otherwise authenticated to our satisfaction, of such corporate records of the Company and other instruments, certificates of public officials and representatives of the Company, and other documents as we have deemed necessary as a basis for the opinions hereinafter expressed and have made such examination of statutes and decisions and reviewed such questions of law as we have considered necessary or appropriate for the purposes of this opinion letter.

Based on and subject to the foregoing and to the other assumptions, qualifications and limitations set forth herein, we are of the opinion that:

1) The Notes have been duly authorized by all necessary corporate action on the part of the Company and have been duly executed by the Company and, when authenticated by the Trustee in accordance with the provisions of the Indenture, and delivered to and paid for by the Underwriters pursuant to the terms of the Underwriting Agreement, the Notes will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the same may be limited by the effect of bankruptcy, insolvency, receivership, voidable transactions, fraudulent conveyance, fraudulent transfer, reorganization, moratorium, assignment for the benefit of creditors and other similar laws now or hereafter in effect relating to or affecting creditors' rights generally and equitable principles of general applicability (regardless of whether enforceability is considered in a proceeding in equity or at law) and except further as enforcement thereof may be limited by any governmental authority that limits, delays or prohibits the making of payments outside the United States.

2) All necessary action on the part of the Company has been taken to authorize the issuance of the shares of Common Stock of the Company initially issuable upon conversion of the Notes (the "Underlying Shares"), and, (i) when any Underlying Shares are issued by the Company upon due and proper conversion of the Notes by the applicable holder thereof in accordance with the terms of the Notes and the Indenture, and (ii) upon the due registration of issuance and constructive delivery through book entry of such Underlying Shares by the transfer agent and registrar therefor, then, upon the happening of such events, such Underlying Shares will be validly issued, fully paid and non-assessable.

We have relied, as to certain relevant facts, upon representations made by the Company in the Underwriting Agreement, the Indenture and the Notes, upon the assumptions set forth herein, and upon certificates of public officials and officers of the Company reasonably believed by us to be appropriate sources of information, as to the accuracy of such factual matters, in each case without independent verification thereof or other investigation. We have also relied, without investigation, upon the following assumptions: (i) natural persons acting on behalf of the Company have sufficient legal capacity to enter into and perform, on behalf of the Company, the transaction in question and to carry out their role in the transaction; (ii) each party to agreements or instruments relevant hereto (other than the Company) has satisfied those legal requirements that are applicable to it to the extent necessary to make such agreements or instruments enforceable against it; (iii) each party to or having rights under agreements or instruments relevant hereto (other than the Company) has complied with all legal requirements pertaining to its status (such as legal investment laws, foreign qualification statutes and business activity reporting requirements) as such status relates to its rights to enforce such agreements or instruments against the Company; (iv) each document submitted to us for review is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original and all signatures on each such document, including electronic signatures, are genuine; (v) all statutes, judicial and administrative decisions and rules and regulations of governmental agencies, constituting the law of the opining jurisdictions, are publicly available to lawyers practicing in the relevant jurisdiction; (vi) all relevant statutes, rules, regulations or agency actions are constitutional and valid unless a reported decision in the relevant jurisdiction has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity; (vii) there are no agreements or understandings among the parties, written or oral, and there is no usage of trade or course of dealing among the parties that would, in either case, define, supplement or qualify the agreements or instruments relevant hereto; and (viii) the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the General Corporation Law of the State of Delaware.

Without limiting any other qualifications set forth herein, the opinion expressed herein regarding the enforceability of the Notes is subject to the effect of generally applicable laws that (i) provide for the enforcement of oral waivers or modifications where a material change of position in reliance thereon has occurred or provide that a course of performance may operate as a waiver; (ii) limit the enforcement of provisions of instruments or agreements that purport to require waiver of the obligations of good faith, fair dealing, diligence and reasonableness; (iii) limit the availability of a remedy under certain circumstances where another remedy has been elected; (iv) limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification of or contribution to a party for, liability for its own action or inaction, to the extent the action or inaction involves negligence, recklessness, willful misconduct or unlawful conduct or insofar as such provisions otherwise contravene public policy; (v) may, where less than all of an instrument or agreement may be unenforceable, limit the enforceability of the balance of the instrument or agreement to circumstances in which the unenforceable portion is not an essential part of the agreed exchange; (vi) govern and afford judicial discretion regarding the determination of damages and entitlement to attorneys' fees and other costs; (vii) may permit a party who has materially failed to render or offer performance required by an instrument or agreement to cure that failure unless either permitting a cure would unreasonably hinder the aggrieved party from making substitute arrangements for performance or it is important under the circumstances to the aggrieved party that performance occur by the date stated in the instrument or agreement; (viii) may limit the enforceability of provisions for the payment of premiums upon mandatory prepayment to the extent any such payment constitutes, or is deemed to constitute, a penalty or forfeiture; (ix) may require mitigation of damages; (x) provide a time limitation after which a remedy may not be enforced (i.e., statutes of limitation); and (xi) may require that a claim with respect to any debt securities that are payable other than in U.S. dollars (or a foreign currency judgment in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law.

We express no opinion as to the enforceability or effect in the Notes of (i) any agreement to submit to the jurisdiction of any particular court or other governmental authority (either as to personal jurisdiction or subject matter jurisdiction) (except to the extent such agreement would be enforceable based on Section 5-1402 of the General Obligations Law of the State of New York), any provision restricting access to courts (including without limitation agreements to arbitrate disputes), any waivers of the right to jury trial, any waivers of service of process requirements that would otherwise be applicable, any provision relating to evidentiary standards, any agreement that a judgment rendered by a court in one jurisdiction may be enforced in another jurisdiction or any provision otherwise affecting the jurisdiction or venue of courts; (ii) any provision waiving or otherwise modifying legal, statutory or equitable defenses or other procedural, judicial or substantive rights; or (iii) any provision that authorizes one party to act as attorney-in-fact for another party.

With respect to our opinion regarding the Underlying Shares, we express no opinion to the extent that, notwithstanding the Company's current reservation of the maximum number of Underlying Shares as of the date hereof, future issuances of securities of the Company, including the Underlying Shares, and/or antidilution adjustments to outstanding securities of the Company, including the Notes, may cause the Notes to be convertible for more shares of Common Stock than the number that then remain authorized but unissued.

Our opinions set forth herein are limited to the laws of the State of New York and the General Corporation Law of the State of Delaware, and we express no opinion as to the effect on the matters covered by our opinions of any other law.

This opinion letter is rendered as of the date first written above, and we assume no responsibility for updating this opinion letter or the opinions set forth herein to take into account any event, action, interpretation or change in law or facts occurring subsequent to the date hereof that may affect the validity of such opinions. This opinion letter 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, the Notes or the Underlying Shares.

We hereby consent to the filing of this opinion letter as an exhibit to the Current Report on Form 8-K of the Company filed with the Commission on the date hereof and thereby incorporated by reference into the Registration Statement and to being named in the Prospectus included therein under the caption "Legal Matters" with respect to matters stated therein. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder with respect to any part of the Registration Statement, including this opinion letter.

Very truly yours,

/s/ *Faegre Drinker Biddle & Reath LLP*

FAEGRE DRINKER BIDDLE & REATH LLP

Exhibit 99.1

Celcuity Inc. Announces Public Offering of Convertible Senior Notes Due 2032

MINNEAPOLIS, June 3, 2026 – Celcuity Inc. (Nasdaq: CELC) ("Celcuity" or the "Company"), a clinical-stage biotechnology company focused on the development of targeted therapies for the treatment of multiple solid tumor indications, today announced a proposed underwritten public offering of $400,000,000 aggregate principal amount of its convertible senior notes due 2032 (the "Convertible Notes").

The Company intends to grant the underwriters of the offering a 30-day option to purchase up to an additional $60,000,000 aggregate principal amount of Convertible Notes, solely to cover over-allotments, if any.

The Convertible Notes will be general, unsecured, senior obligations of the Company and interest will be payable semi-annually in arrears. The Convertible Notes will mature on August 1, 2032, unless earlier converted, redeemed or repurchased by the Company. Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock (the "Common Stock") or a combination of cash and shares of Common Stock, at its election. The interest rate, conversion rate, offering price and other terms are to be determined upon the pricing of the Convertible Notes.

The Company intends to use the net proceeds from the offering to repay in full all outstanding obligations under its amended and restated loan agreement with Oxford Finance, LLC, as collateral agent, and the lenders party thereto, and the remainder for working capital and general corporate purposes. General corporate purposes may include clinical trial expenditures, commercial launch expenditures, commercialization expenditures, research and development expenditures, capital expenditures, expansion of business development activities and other general corporate purposes. The Company may also use a portion of the proceeds for the potential acquisition of businesses, technologies, and products, although we have no current binding understandings, commitments, or agreements to do so.

The closing of the offering is subject to market and other conditions, and there can be no assurance as to whether or when the offering may be completed, or as to the actual size or terms of the offering.

Jefferies, J.P. Morgan, TD Cowen and Guggenheim Securities are acting as joint book-running managers for the offering. LifeSci Capital is acting as lead manager for the offering. Craig-Hallum and Wolfe | Nomura Alliance are acting as co-managers for the offering.

The Company has filed a registration statement (including a prospectus) with the Securities and Exchange Commission (the "SEC") as well as a preliminary prospectus supplement with respect to the offering to which this communication relates. Before you invest, you should read the preliminary prospectus supplement and the prospectus in that registration statement and other documents the Company has filed with the SEC for more complete information about the Company and the offering. You may obtain these documents by visiting EDGAR on the SEC's website at *www.sec.gov*. Alternatively, the Company, any underwriter or any dealer participating in the offering will arrange to send you the preliminary prospectus supplement (or, when available, the final prospectus supplement) and the accompanying prospectus upon request to: Jefferies LLC, Attn: Equity Syndicate Prospectus Department, 520 Madison Avenue, New York, NY 10022, by telephone at (877) 821-7388, or by email at prospectus_department@jefferies.com; J.P. Morgan Securities LLC, Attention: Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717, or by email at prospectus-eq_fi@jpmchase.com and postsalemanualrequests@broadridge.com; TD Securities (USA) LLC, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717 or by email at TDManualrequest@broadridge.com; and Guggenheim Securities, LLC, Attention: Equity Syndicate Department, 330 Madison Avenue, New York, NY 10017, by telephone at (212) 518-9544 or by email at GSEquityProspectusDelivery@guggenheimpartners.com.

This press release does not constitute an offer to sell or a solicitation of an offer to buy the Convertible Notes, any shares of Common Stock issuable upon conversion of the Convertible Notes or any other securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such an offer, solicitation or sale would be unlawful prior to the registration and qualification under the securities laws of such state or jurisdiction.

"Wolfe | Nomura Alliance" is the marketing name used by Wolfe Research Securities and Nomura Securities International, Inc. in connection with certain equity capital markets activities conducted jointly by the firms. Both Nomura Securities International, Inc. and WR Securities, LLC are serving as underwriters in the offering described herein. In addition, WR Securities, LLC and certain of its affiliates may provide sales support services, investor feedback, investor education, and/or other independent equity research services in connection with this offering.

ABOUT CELCUITY

Celcuity is a clinical-stage biotechnology company focused on the development of targeted therapies for the treatment of multiple solid tumor indications. The Company's lead therapeutic candidate is gedatolisib, a kinase inhibitor of the PI3K/AKT/mTOR ("PAM") pathway that binds to all class I PI3K isoforms and the mTOR complexes, mTORC1 and mTORC2. By targeting all class I PI3K isoforms and mTORC1/2, gedatolisib induces comprehensive inhibition of the PAM pathway. Its mechanism of action and pharmacokinetic properties are differentiated from other currently approved and investigational therapies that target PI3Kα, AKT, or mTORC1 alone or together. The Company's Phase 3 clinical trial, VIKTORIA-1, evaluating gedatolisib in combination with fulvestrant with or without palbociclib in patients with hormone receptor positive ("HR+"), human epidermal growth factor receptor 2 negative ("HER2-") locally advanced or metastatic breast cancer ("ABC"), has reported detailed results for both Study 1, which evaluated patients with *PIK3CA* wild-type ("WT") tumors, and Study 2, which evaluated patients with *PIK3CA* mutant-type ("MT") tumors. The Company's Phase 3 clinical trial, VIKTORIA-2, is ongoing and incorporates two independent studies, Study 1 and Study 2, evaluating two separate cohorts of patients with ABC who are treatment-naive in the advanced setting. Study 1 is evaluating gedatolisib combined with palbociclib and fulvestrant as first-line treatment for patients with endocrine-resistant HR+/HER2- ABC. Study 2 is evaluating gedatolisib combined with palbociclib and letrozole as first-line treatment for patients with endocrine-sensitive HR+/HER2- ABC. The Company's Phase 1b/2 clinical trial, CELC-G-201, evaluating gedatolisib in combination with darolutamide in patients with metastatic castration-resistant prostate cancer, is ongoing. The Company is headquartered in Minneapolis, Minnesota.

FORWARD-LOOKING STATEMENTS

This press release contains statements that constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 including statements relating to the offering and the proposed size and terms thereof; the Company's ability to complete the offering on the anticipated timeline or at all and the anticipated use of the net proceeds therefrom; the potential therapeutic benefits of gedatolisib; the size, design and timing of the Company's clinical trials; the Company's interpretation of clinical trial data; the status and timing of the U.S. Food and Drug Administration's (the "FDA") review of the Company's New Drug Application ("NDA") for gedatolisib, including the Prescription Drug User Fee Act ("PDUFA") goal date assigned by the FDA; the ability of the Company's data to support the filing of supplemental New Drug Application ("sNDA") with the FDA and comparable filings with other regulatory authorities outside the U.S.; the market opportunity for gedatolisib; the Company's expectations regarding the timing of and its ability to obtain FDA approval to commercialize gedatolisib; the Company's strategy, marketing and commercialization plans, including the benefits of strategic decisions regarding studies and trials; other expectations with respect to gedatolisib, including subcutaneous formulations to support potential future indications for gedatolisib regimens; the Company's anticipated use of cash; and the strength of the Company's balance sheet. Words such as, but not limited to, "look forward to," "believe," "expect," "anticipate," "estimate," "intend," "confidence," "encouraged," "potential," "plan," "targets," "likely," "may," "will," "would," "should" and "could," and similar expressions or words identify forward-looking statements. The forward-looking statements included in this press release are based on management's current expectations and beliefs which are subject to a number of risks, uncertainties and factors, including that the Company's topline clinical results are based on an ongoing analysis of key efficacy and safety data, and such data may change following a more comprehensive review of the data related to the clinical trial; unforeseen delays in the Company's clinical trials or the FDA's review of the Company's NDA for gedatolisib; the Company's ability to obtain and maintain regulatory approvals to commercialize gedatolisib, and the market acceptance of gedatolisib; the development of therapies and tools competitive with gedatolisib; and the Company's ability to access capital on favorable terms. In addition, all forward-looking statements are subject to other risks detailed in the Company's Annual Report on Form 10-K for the year ended December 31, 2025, and in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2026, as such risks may be updated in the Company's subsequent filings with the Securities and Exchange Commission. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All forward-looking statements are qualified in their entirety by these cautionary statements, and the Company undertakes no obligation to revise or update this press release to reflect events or circumstances after the date hereof.

CONTACTS:

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Exhibit 99.2

Celcuity Inc. Announces Pricing of Upsized Public Offering of 0.250% Convertible Senior Notes Due 2032

MINNEAPOLIS, June 3, 2026 – Celcuity Inc. (Nasdaq: CELC) ("Celcuity" or the "Company"), a clinical-stage biotechnology company focused on the development of targeted therapies for the treatment of multiple solid tumor indications, today announced the pricing of its upsized underwritten public offering of $500,000,000 aggregate principal amount of its 0.250% convertible senior notes due 2032 (the "Convertible Notes"). The aggregate principal amount of the offering was increased from the previously announced offering size of $400,000,000.

The Company has granted the underwriters of the offering a 30-day option to purchase up to an additional $75,000,000 aggregate principal amount of the Convertible Notes, solely to cover over-allotments. The offering is expected to close on June 8, 2026, subject to satisfaction of customary closing conditions.

The Convertible Notes will be general, unsecured, senior obligations of the Company. The Convertible Notes will accrue interest payable semi-annually in arrears on February 1 and August 1 of each year, beginning on February 1, 2027, at a rate equal to 0.250% per year. The Convertible Notes will mature on August 1, 2032, unless earlier converted, redeemed or repurchased by the Company. The Convertible Notes will be convertible at the option of the holders if certain conditions are met and during certain periods, based on an initial conversion rate of 8.0302 shares of the Company's common stock (the "Common Stock") per $1,000 principal amount of the Convertible Notes, which is equivalent to an initial conversion price of approximately $124.53 per share of Common Stock and represents a conversion premium of approximately 40.0% above the last reported sale price of the Common Stock on June 3, 2026. The Company will settle conversions of the Convertible Notes by paying or delivering, as applicable, cash, common stock or a combination of cash and shares of Common Stock, at the Company's election, based on the applicable conversion rate. If a "make-whole fundamental change" (as defined in the indenture that will govern the Convertible Notes) occurs, then the Company will in certain circumstances increase the conversion rate for a specified period of time.

The Convertible Notes will be redeemable, in whole or in part (subject to certain limitations), at the Company's option at any time, and from time to time, on a redemption date on or after August 6, 2029 and on or before the 31st scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Common Stock exceeds 130% of the conversion price for the Convertible Notes on (1) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice; and (2) the trading day immediately before the date the Company sends such notice. In addition, calling any note for redemption will constitute a make-whole fundamental change with respect to that note, in which case the conversion rate applicable to the conversion of that note will be increased in certain circumstances if it is converted after it is called for redemption.

If a "fundamental change" (as defined in the indenture that will govern the Convertible Notes) occurs, then, subject to certain exceptions, noteholders may require the Company to repurchase their Convertible Notes at a cash repurchase price equal to the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date.

The Company estimates that the net proceeds from the offering will be approximately $484.3 million (or approximately $557.0 million if the underwriters of the offering exercise their over-allotment option in full), after deducting underwriting discounts and commissions and the Company's estimated offering expenses. The Company intends to use the net proceeds from the offering to repay in full all outstanding obligations under its amended and restated loan agreement with Oxford Finance, LLC, as collateral agent, and the lenders party thereto, and the remainder for working capital and general corporate purposes. General corporate purposes may include clinical trial expenditures, commercial launch expenditures, commercialization expenditures, research and development expenditures, capital expenditures, expansion of business development activities and other general corporate purposes. The Company may also use a portion of the proceeds for the potential acquisition of businesses, technologies, and products, although it has no current binding understandings, commitments, or agreements to do so.

Jefferies, J.P. Morgan, TD Cowen and Guggenheim Securities are acting as joint book-running managers for the offering. LifeSci Capital is acting as lead manager for the offering. Craig-Hallum and Wolfe | Nomura Alliance are acting as co-managers for the offering.

The Company has filed a registration statement (including a prospectus) with the Securities and Exchange Commission (the "SEC") as well as a preliminary prospectus supplement with respect to the offering to which this communication relates. Before you invest, you should read the preliminary prospectus supplement and the prospectus in that registration statement and other documents the Company has filed with the SEC for more complete information about the Company and the offering. You may obtain these documents by visiting EDGAR on the SEC's website at *www.sec.gov*. Alternatively, the Company, any underwriter or any dealer participating in the offering will arrange to send you the preliminary prospectus supplement (or, when available, the final prospectus supplement) and the accompanying prospectus upon request to: Jefferies LLC, Attn: Equity Syndicate Prospectus Department, 520 Madison Avenue, New York, NY 10022, by telephone at (877) 821-7388, or by email at prospectus_department@jefferies.com; J.P. Morgan Securities LLC, Attention: Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717, or by email at prospectus-eq_fi@jpmchase.com and postsalemanualrequests@broadridge.com; TD Securities (USA) LLC, c/o Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717 or by email at TDManualrequest@broadridge.com; and Guggenheim Securities, LLC, Attention: Equity Syndicate Department, 330 Madison Avenue, New York, NY 10017, by telephone at (212) 518-9544 or by email at GSEquityProspectusDelivery@guggenheimpartners.com.

This press release does not constitute an offer to sell or a solicitation of an offer to buy the Convertible Notes, any shares of Common Stock issuable upon conversion of the Convertible Notes or any other securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such an offer, solicitation or sale would be unlawful prior to the registration and qualification under the securities laws of such state or jurisdiction.

"Wolfe | Nomura Alliance" is the marketing name used by Wolfe Research Securities and Nomura Securities International, Inc. in connection with certain equity capital markets activities conducted jointly by the firms. Both Nomura Securities International, Inc. and WR Securities, LLC are serving as underwriters in the offering described herein. In addition, WR Securities, LLC and certain of its affiliates may provide sales support services, investor feedback, investor education, and/or other independent equity research services in connection with this offering.

ABOUT CELCUITY

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This press release contains statements that constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 including statements relating to the offering; the Company's ability to complete the offering on the anticipated timeline or at all and the expected net proceeds from the offering and the anticipated use of such proceeds; the potential therapeutic benefits of gedatolisib; the size, design and timing of the Company's clinical trials; the Company's interpretation of clinical trial data; the status and timing of the U.S. Food and Drug Administration's (the "FDA") review of the Company's New Drug Application ("NDA") for gedatolisib, including the Prescription Drug User Fee Act ("PDUFA") goal date assigned by the FDA; the ability of the Company's data to support the filing of supplemental New Drug Application ("sNDA") with the FDA and comparable filings with other regulatory authorities outside the U.S.; the market opportunity for gedatolisib; the Company's expectations regarding the timing of and its ability to obtain FDA approval to commercialize gedatolisib; the Company's strategy, marketing and commercialization plans, including the benefits of strategic decisions regarding studies and trials; other expectations with respect to gedatolisib, including subcutaneous formulations to support potential future indications for gedatolisib regimens; the Company's anticipated use of cash; and the strength of the Company's balance sheet. Words such as, but not limited to, "look forward to," "believe," "expect," "anticipate," "estimate," "intend," "confidence," "encouraged," "potential," "plan," "targets," "likely," "may," "will," "would," "should" and "could," and similar expressions or words identify forward-looking statements. The forward-looking statements included in this press release are based on management's current expectations and beliefs which are subject to a number of risks, uncertainties and factors, including that the Company's topline clinical results are based on an ongoing analysis of key efficacy and safety data, and such data may change following a more comprehensive review of the data related to the clinical trial; unforeseen delays in the Company's clinical trials or the FDA's review of the Company's NDA for gedatolisib; the Company's ability to obtain and maintain regulatory approvals to commercialize gedatolisib, and the market acceptance of gedatolisib; the development of therapies and tools competitive with gedatolisib; and the Company's ability to access capital on favorable terms. In addition, all forward-looking statements are subject to other risks detailed in the Company's Annual Report on Form 10-K for the year ended December 31, 2025, and in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2026, as such risks may be updated in the Company's subsequent filings with the Securities and Exchange Commission. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All forward-looking statements are qualified in their entirety by these cautionary statements, and the Company undertakes no obligation to revise or update this press release to reflect events or circumstances after the date hereof.

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