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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

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

For the quarterly period ended September 30, 2024

OR

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

For the transition period from _____ to _____

Commission file number: 001-39421

ORCHESTRA BIOMED HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**92-2038755**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

150 Union Square Drive
New Hope, Pennsylvania 18938
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (215) 862-5797

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value $0.0001 per share	OBIO	The Nasdaq Global Market

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

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

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

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

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

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

As of November 7, 2024, the registrant had 38,013,526 shares of common stock, $0.0001 par value per share, outstanding.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (this "Quarterly Report") contains forward-looking statements. All statements other than statements of historical facts contained in this report, including statements regarding our future results of operations and financial position, business strategy, product candidates, planned preclinical studies and clinical trials, results of clinical trials, research and development costs, regulatory approvals, timing, and likelihood of success, as well as plans and objectives of management for future operations, are forward-looking statements. These statements involve known and unknown risks, uncertainties, and other important factors that are in some cases beyond our control and may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "would," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "potential," or "continue" or the negative of these terms or other similar expressions. Forward-looking statements contained in this report include, but are not limited to, statements about:

- our ability to raise financing in the future, including our ability to borrow additional funds under the Loan and Security Agreement we entered into in November 2024 with, among others, Hercules Capital, Inc.;
- our success in retaining or recruiting, or changes required in, our officers, key employees or directors;
- our ability and/or the ability of third-party vendors and partners to manufacture our product candidates;
- our ability to source critical components or materials for the manufacture of our product candidates;
- our ability to achieve and sustain profitability;
- our ability to achieve our projected development and commercialization goals;
- the rate of progress, costs and results of our clinical studies and research and development activities;
- market acceptance of our product candidates, if approved;
- our ability to compete successfully with larger companies in a highly competitive industry;
- changes in our operating results, which make future operations results difficult to predict;
- serious adverse events, undesirable side effects that could halt the clinical development, regulatory approval or certification, of our product candidates;
- our ability to manage growth or control costs related to growth;
- economic conditions that may adversely affect our business, financial condition and stock price;
- our reliance on third parties to drive successful marketing and sale of our initial product candidates, if approved;
- our reliance on third parties to manufacture and provide important materials and components for our products and product candidates;
- our and our partners' abilities to obtain necessary regulatory approvals and certifications for our product candidates in an uncomplicated and inexpensive manner;

- our ability to maintain compliance with regulatory and post-marketing requirements;
- adverse medical events, failure or malfunctions in connection with our product candidates and possible subjection to regulatory sanctions;
- healthcare costs containment pressures and legislative or administrative reforms which affect coverage and reimbursement practices of third-party payors;
- our ability to protect or enforce our intellectual property, unpatented trade secrets, know-how and other proprietary technology;
- our ability to obtain necessary intellectual property rights from third parties;
- our ability to protect our trademarks, trade names and build our names recognition;
- our ability to maintain the listing of our common stock on The Nasdaq Stock Market LLC ("Nasdaq");
- our ability to fund our operations into the second half of 2026 based on our cash, cash equivalents, marketable securities, and potential future payments or revenues discussed under the heading "Liquidity and Capital Resources—Funding Requirements" in Item 2 (Management's Discussion and Analysis of Financial Condition and Results of Operations) of this Quarterly Report;
- the success of our licensing agreements; and
- our public securities' liquidity and trading.

We have based these forward-looking statements largely on our current expectations and projections about our business, the industry in which we operate and financial trends that we believe may affect our business, financial condition, results of operations, and prospects, and these forward-looking statements are not guarantees of future performance or development. These forward-looking statements speak only as of the date of this report and are subject to a number of risks, uncertainties, and assumptions described under the headings "Item 1A. Risk Factors" in Part I of our Annual Report on Form 10-K for the year ended December 31, 2023 (the "2023 10-K"), and "Item 1A. Risk Factors" in Part II of this Quarterly Report, as well as elsewhere in this Quarterly Report. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. We do not plan to publicly update or revise any forward-looking statements contained herein whether as a result of any new information, future events, or otherwise, except as required by law.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this report, and, while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain, and you are cautioned not to unduly rely upon these statements.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

ORCHESTRA BIOMED HOLDINGS, INC.
Condensed Consolidated Balance Sheets
(in thousands, except share and per share data)
(Unaudited)

	September 30, 2024	December 31, 2023
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	$ 25,605	$ 30,559
Marketable securities	41,321	56,968
Strategic investments, current portion	—	68
Accounts receivable, net	115	99
Inventory	234	146
Prepaid expenses and other current assets	1,278	1,274
Total current assets	68,553	89,114
Property and equipment, net	1,254	1,279
Right-of-use assets	1,714	1,555
Strategic investments, less current portion	2,495	2,495
Deposits and other assets	1,303	769
TOTAL ASSETS	$ 75,319	$ 95,212
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	$ 4,723	$ 2,900
Accrued expenses and other liabilities	7,034	5,149
Operating lease liability, current portion	395	649
Deferred revenue, current portion	4,066	2,510
Total current liabilities	16,218	11,208
Deferred revenue, less current portion	11,439	14,923
Operating lease liability, less current portion	1,443	1,038
TOTAL LIABILITIES	29,100	27,169
STOCKHOLDERS' EQUITY		
Preferred stock, $0.0001 par value per share; 10,000,000 shares authorized; none issued or outstanding at September 30, 2024 and December 31, 2023.	—	—
Common stock, $0.0001 par value per share; 340,000,000 shares authorized; 37,942,905 and 35,777,412 shares issued and outstanding as of September 30, 2024 and December 31, 2023, respectively.	4	4
Additional paid-in capital	339,840	316,903
Accumulated other comprehensive income (loss)	98	(10)
Accumulated deficit	(293,723)	(248,854)
TOTAL STOCKHOLDERS' EQUITY	46,219	68,043
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 75,319	$ 95,212

The accompanying notes are an integral part of these condensed consolidated financial statements.

ORCHESTRA BIOMED HOLDINGS, INC.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(in thousands, except share and per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue:				
Partnership revenue	$ 803	$ 271	$ 1,928	$ 2,018
Product revenue	184	148	457	480
Total revenue	987	419	2,385	2,498
Expenses:				
Cost of product revenues	68	41	146	139
Research and development	11,595	8,558	31,833	25,311
Selling, general and administrative	5,666	6,344	18,030	16,073
Total expenses	17,329	14,943	50,009	41,523
Loss from operations	(16,342)	(14,524)	(47,624)	(39,025)
Other income (expense):				
Interest income, net	916	915	2,834	2,741
Loss on fair value adjustment of warrant liability	—	—	—	(294)
Gain (loss) on fair value of strategic investments	—	293	(68)	276
Other expense	—	—	(11)	—
Total other income	916	1,208	2,755	2,723
Net loss	$ (15,426)	$ (13,316)	$ (44,869)	$ (36,302)
Net loss per share				
Basic and diluted	$ (0.41)	$ (0.38)	$ (1.23)	$ (1.11)
Weighted-average shares used in computing net loss per share, basic and diluted	37,621,495	35,243,598	36,406,635	32,586,431
Comprehensive loss				
Net loss	$ (15,426)	$ (13,316)	$ (44,869)	$ (36,302)
Unrealized gain (loss) on marketable securities	121	19	108	(69)
Comprehensive loss	$ (15,305)	$ (13,297)	$ (44,761)	$ (36,371)

The accompanying notes are an integral part of these condensed consolidated financial statements.

ORCHESTRA BIOMED HOLDINGS, INC.
Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(in thousands, except share and per share data)
(Unaudited)

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
Balance, January 1, 2024	—	$ —	35,777,412	$ 4	$ 316,903	$ (10)	$ (248,854)	$ 68,043
Unrealized gain on marketable securities	—	—	—	—	—	2	—	2
Stock-based compensation	—	—	—	—	2,588	—	—	2,588
Exercise of stock options	—	—	7,585	—	18	—	—	18
Net loss	—	—	—	—	—	—	(13,463)	(13,463)
Balance, March 31, 2024	—	$ —	35,784,997	$ 4	$ 319,509	$ (8)	$ (262,317)	$ 57,188
Unrealized loss on marketable securities	—	—	—	—	—	(15)	—	(15)
Stock-based compensation	—	—	—	—	2,761	—	—	2,761
Restricted stock unit vesting	—	—	2,000	—	—	—	—	—
Exercise of stock options	—	—	37,574	—	171	—	—	171
Net loss	—	—	—	—	—	—	(15,980)	(15,980)
Balance, June 30, 2024	—	$ —	35,824,571	$ 4	$ 322,441	$ (23)	$ (278,297)	$ 44,125
At-the-Market offering, net of issuance costs of $465	—	—	2,000,000	—	15,035	—	—	15,035
Unrealized gain on marketable securities	—	—	—	—	—	121	—	121
Stock-based compensation	—	—	—	—	2,364	—	—	2,364
Restricted stock unit vesting	—	—	118,334	—	—	—	—	—
Net loss	—	—	—	—	—	—	(15,426)	(15,426)
Balance, September 30, 2024	—	$ —	37,942,905	$ 4	$ 339,840	$ 98	$ (293,723)	$ 46,219

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount				
Balance, January 1, 2023 (as previously reported)	35,694,179	$ 165,923	2,522,214	$ —	$ 86,353	$ (8)	$ (199,734)	$ (113,389)
Retroactive application of reverse capitalization (Note 3)	(35,694,179)	(165,923)	17,665,636	2	165,921	—	—	165,923
Balance, January 1, 2023 effect of Merger	—	—	20,187,850	2	252,274	(8)	(199,734)	52,534
Effect of Merger and recapitalization (refer to Note 3)	—	—	11,422,741	1	54,301	—	—	54,302
Reclassification of Legacy Orchestra common stock warrants to stockholders' equity	—	—	—	—	2,373	—	—	2,373
Unrealized loss on marketable securities	—	—	—	—	—	(27)	—	(27)
Stock-based compensation	—	—	—	—	1,489	—	—	1,489
Exercise of stock options	—	—	2,325	—	10	—	—	10
Exercise of warrants	—	—	128,231	—	11	—	—	11
Net loss	—	—	—	—	—	—	(10,940)	(10,940)
Balance, March 31, 2023	—	$ —	31,741,147	$ 3	$ 310,458	$ (35)	$ (210,674)	$ 99,752
Issuance of shares in settlement of earnout	—	—	3,999,987	1	—	—	—	1
Unrealized loss on marketable securities	—	—	—	—	—	(61)	—	(61)
Stock-based compensation	—	—	—	—	1,707	—	—	1,707
Exercise of stock options	—	—	15,500	—	64	—	—	64
Exercise of warrants	—	—	32,279	—	22	—	—	22
Forfeiture of restricted stock awards	—	—	(45,906)	—	—	—	—	—
Net loss	—	—	—	—	—	—	(12,046)	(12,046)
Balance, June 30, 2023	—	$ —	35,743,007	$ 4	$ 312,251	$ (96)	$ (222,720)	$ 89,439
Unrealized gain on marketable securities	—	—	—	—	—	19	—	19
Stock-based compensation	—	—	—	—	3,510	—	—	3,510
Exercise of stock options	—	—	965	—	4	—	—	4
Net loss	—	—	—	—	—	—	(13,316)	(13,316)
Balance, September 30, 2023	—	$ —	35,743,972	$ 4	$ 315,765	$ (77)	$ (236,036)	$ 79,656

The accompanying notes are an integral part of these condensed consolidated financial statements.

ORCHESTRA BIOMED HOLDINGS, INC.
Condensed Consolidated Statements of Cash Flows
(in thousands, except share and per share data)
(Unaudited)

	Nine Months Ended September 30,	
	2024	2023
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (44,869)	$ (36,302)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	224	215
Stock-based compensation	7,713	6,706
Loss on fair value adjustment of warrant liability	—	294
Loss (gain) on fair value of strategic investments	68	(276)
Accretion and interest related to marketable securities	(1,270)	(3,181)
Non-cash lease expense	505	473
Amortization of deferred financing fees	—	109
Other	11	—
Changes in operating assets and liabilities:		
Accounts receivable	(16)	10
Inventory	(88)	139
Prepaid expenses and other assets	(537)	(458)
Accounts payable, accrued expenses and other liabilities	3,681	(348)
Operating lease liabilities – current and non-current	(514)	(516)
Deferred revenue	(1,928)	(2,018)
Net cash used in operating activities	(37,020)	(35,153)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(183)	(81)
Sales of marketable securities	69,401	115,690
Purchases of marketable securities	(52,376)	(138,073)
Net cash provided by (used in) investing activities	16,842	(22,464)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from At-The-Market offering, net of issuance costs	15,035	—
Proceeds from exercise of warrants	—	23
Proceeds from exercise of stock options	189	78
Effect of merger, net of transaction costs (Note 3)	—	56,810
Net cash provided by financing activities	15,224	56,911
Net decrease in cash and cash equivalents	(4,954)	(706)
Cash and cash equivalents, beginning of the period	30,559	19,784
Cash and cash equivalents, end of the period	$ 25,605	$ 19,078
Supplemental Disclosures of Cash Flow Information		
Cash paid during the nine months ended September 30:		
Interest	$ —	$ 1,098
Supplemental disclosure of noncash activities		
Operating lease right-of-use asset obtained in exchange for new operating lease liabilities	$ 665	$ —
Increase in accounts payable, accrued expenses and other liabilities related to fixed assets	$ 27	$ —

The accompanying notes are an integral part of these condensed consolidated financial statements.

ORCHESTRA BIOMED HOLDINGS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. Organization and Basis of Presentation

Orchestra BioMed Holdings, Inc. (collectively, with its subsidiaries, "Orchestra" or the "Company") (formerly known as Health Sciences Acquisitions Corporation 2) is a biomedical innovation company accelerating high-impact technologies to patients through risk-reward sharing partnerships with leading medical device companies. The Company's partnership-enabled business model focuses on forging strategic collaborations with leading medical device companies to drive successful global commercialization of products it develops. The Company's flagship product candidates are atrioventricular interval modulation ("AVIM") therapy (also known as BackBeat Cardiac Neuromodulation Therapy ("BackBeat CNT")), for the treatment of hypertension ("HTN"), a significant risk factor for death worldwide, and Virtue Sirolimus AngioInfusion Balloon ("Virtue SAB") for the treatment of atherosclerotic artery disease, the leading cause of mortality worldwide.

Prior to January 26, 2023, the Company was a special purpose acquisition company formed for the purpose of entering into a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities. On January 26, 2023 (the "Closing Date"), the Company consummated the business combination contemplated by the Agreement and Plan of Merger, dated as of July 4, 2022 (as amended by Amendment No. 1 to Agreement and Plan of Merger, dated July 21, 2022, and Amendment No. 2 to Agreement and Plan of Merger, dated November 21, 2022, the "Merger Agreement") by and among Health Sciences Acquisitions Corporation 2, a special purpose acquisition company incorporated as a Cayman Islands exempted company in 2020 ("HSAC2"), HSAC Olympus Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of HSAC2 ("Merger Sub"), and Orchestra BioMed, Inc. ("Legacy Orchestra"). Pursuant to the Merger Agreement, (i) HSAC2 deregistered in the Cayman Islands in accordance with the Companies Act (2022 Revision) (As Revised) of the Cayman Islands and domesticated as a Delaware corporation in accordance with Section 388 of the Delaware General Corporation Law (the "Domestication") and (ii) Merger Sub merged with and into Legacy Orchestra, with Legacy Orchestra as the surviving company in the merger and, after giving effect to such merger, continuing as a wholly owned subsidiary of Orchestra (the "Merger" and, together with the Domestication and the other transactions contemplated by the Merger Agreement, the "Business Combination"). As part of the Domestication, the Company's name was changed from "Health Sciences Acquisitions Corporation 2" to "Orchestra BioMed Holdings, Inc." See Note 3 for additional information.

Legacy Orchestra, the Company's wholly owned subsidiary, was incorporated in Delaware in January 2017 and was formed to acquire operating and other assets as well as to raise capital conducted through private placements. In May 2018, Legacy Orchestra concurrently completed its formation mergers (the "Formation Mergers") with Caliber Therapeutics, Inc., a Delaware corporation, BackBeat Medical, Inc., a Delaware Corporation, and FreeHold Surgical, Inc., a Delaware corporation. Legacy Orchestra completed the conversions of BackBeat Medical, Inc. to BackBeat Medical, LLC ("BackBeat"), a Delaware limited liability company, of FreeHold Surgical, Inc. to FreeHold Surgical, LLC ("FreeHold") and of Caliber Therapeutics, Inc. to Caliber Therapeutics, LLC ("Caliber"), a Delaware limited liability company, in 2019.

Caliber

Caliber Therapeutics, Inc. was incorporated in Delaware in October 2005 and began development of its lead product Virtue SAB in 2008. Virtue SAB is a patented drug/device combination product candidate for the treatment of artery disease that delivers a proprietary extended release formulation of sirolimus called SirolimusEFR to the vessel wall during balloon angioplasty without any coating on the balloon surface or the need for leaving a permanent implant such as a stent in the artery. In 2019, Legacy Orchestra entered into a distribution agreement with Terumo Medical Corporation ("Terumo") for global development and commercialization of Virtue SAB (the "Terumo Agreement") (see Note 4).

BackBeat

BackBeat Medical, Inc. was incorporated in Delaware in January 2010 and began development of its lead product AVIM therapy that same year. AVIM therapy is a patented implantable cardiac stimulation-based treatment for hypertension that is designed to immediately, substantially and persistently lower blood pressure while simultaneously modulating autonomic nervous system responses that normally drive and maintain blood pressure higher. Refer to Note 5 for details regarding the Exclusive License and Collaboration Agreement, dated as of June 30, 2022, by and among, Legacy Orchestra, BackBeat and Medtronic, Inc. (an affiliate of Medtronic plc) (the "Medtronic Agreement").

FreeHold

FreeHold Surgical, Inc. was incorporated in Delaware in May 2010 and began development of its hands-free, intracorporeal retractor device for minimally-invasive surgery in 2012. FreeHold is engaged in the development, sales and marketing of its retractor products that provide optimized visual and total surgeon control during laparoscopic and robotic procedures.

Basis of Presentation and Liquidity

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulation of the U.S. Securities and Exchange Commission ("SEC") for interim financial reporting. These condensed statements are unaudited and, in the opinion of management, include all adjustments (consisting of normal recurring adjustments and accruals) necessary to fairly present the results of the interim periods. The condensed consolidated balance sheet at December 31, 2023 has been derived from the audited financial statements at that date. Operating results and cash flows for the nine months ended September 30, 2024 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2024 or any other future period. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") have been omitted in accordance with the rules and regulations for interim reporting of the SEC. These unaudited interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023 filed with the SEC on March 27, 2024 together with the related notes thereto.

The Company has a limited operating history and the sales and income potential of its businesses and markets are unproven. As of September 30, 2024, the Company had an accumulated deficit of $293.7 million and has experienced net losses each year since its inception. The Company expects to incur substantial operating losses in future periods and will require additional capital as it seeks to advance its products to commercialization. The Company is subject to a number of risks and uncertainties similar to those of other companies of the same size within the biomedical device industry, such as uncertainty of clinical trial outcomes, uncertainty of additional funding, and history of operating losses.

The Company follows the provisions of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 205-40, *Presentation of Financial Statements — Going Concern*, which requires management to assess the Company's ability to continue as a going concern within one year after the date the financial statements are issued.

Based on the available balance of cash and cash equivalents and marketable securities as of September 30, 2024, and subsequent proceeds received (see Note 16), management has concluded that sufficient capital is available to fund its operations and meet cash requirements through the one-year period subsequent to the issuance date of these financial statements. Management may consider plans to raise capital beyond the one-year period subsequent to the issuance date of these financial statements through issuance of equity securities, debt securities, and/or additional development and commercialization partnerships for other products within the Company's development pipeline. The source, timing and availability of any future financing will depend principally upon market conditions, and, more specifically, on the progress of the Company's research and development programs.

2. Summary of Significant Accounting Policies

Reverse Recapitalization

The Business Combination is accounted for as a reverse recapitalization in accordance with U.S. GAAP (the "Reverse Recapitalization"). Under this method of accounting, HSAC2 is treated as the "acquired" company, and Legacy Orchestra is treated as the acquirer for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination was treated as the equivalent of Legacy Orchestra issuing stock for the net assets of HSAC2, accompanied by a recapitalization. As a result, the consolidated assets, liabilities and results of operations prior to the Reverse Recapitalization are those of Legacy Orchestra. Additionally, the shares and corresponding capital amounts and losses per share, prior to the Business Combination, have been retroactively restated based on the exchange ratio established in the Merger Agreement (the "Exchange Ratio"). For additional information on the Business Combination and the Exchange Ratio, see Note 3 to these unaudited condensed consolidated financial statements.

Emerging Growth Company and Smaller Reporting Company Status

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act of 1933 (the "Securities Act"), as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). As such, it is eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company's condensed consolidated financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

The Company will remain an emerging growth company until the earliest of (1) the last day of the fiscal year following the fifth anniversary of the closing of the initial public offering of HSAC2, (2) the last day of the fiscal year in which the Company has total annual gross revenue of at least $1.235 billion, (3) the last day of the fiscal year in which the Company is deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of the common stock of the Company, par value $0.0001 per share ("Company Common Stock") held by non-affiliates exceeded $700.0 million as of the last business day of the second fiscal quarter of such year, or (4) the date on which the Company has issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

The Company is also a "smaller reporting company" as defined in the Exchange Act. The Company may continue to be a smaller reporting company even after the Company is no longer an emerging growth company. The Company may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as (i) the market value of the Company's voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of the Company's second fiscal quarter, or (ii)(a) the Company's annual revenue is less than $100.0 million during the most recently completed fiscal year

and (b) the market value of the Company's voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of the Company's second fiscal quarter.

Use of Estimates

The preparation of the condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures in the condensed consolidated financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates. Areas where significant estimates exist include, but are not limited to, the fair value of stock-based compensation, research and development costs incurred, the fair value of the warrant liability, and the estimated costs to complete the combined performance obligation pursuant to the Terumo Agreement (see Note 4).

Cash and Cash Equivalents

Cash and cash equivalents are held in banks or in custodial accounts with banks. Cash equivalents are defined as all liquid investments and money market funds with maturity from date of purchase of 90 days or less that are readily convertible into cash.

Marketable Securities

The Company accounts for its marketable securities with remaining maturities of less than one year, or where its intent is to use the investments to fund current operations or to make them available for current operations, as short-term investments. These investments represent debt investments in corporate or government securities that are designated as available-for-sale and are carried at fair value, with unrealized gains and losses reported in stockholders' equity as accumulated other comprehensive income (loss). The disclosed fair value related to the Company's investments is based on market prices from a variety of industry standard data providers and generally represent quoted prices for similar assets in active markets or have been derived from observable market data.

Strategic Investments

Management has made investments in affiliated companies and assesses whether the Company exerts significant influence over its strategic investments. The Company considers the nature and magnitude of its investment, any voting and protective rights it holds, any participation in the governance of the other company, and other relevant factors such as the presence of a collaboration or other business relationships. To date, the Company has concluded that it does not have the ability to exercise significant influence over its strategic investments.

The Company's strategic investments consist of preferred shares of Vivasure Medical Limited ("Vivasure"), a privately-held company and related party. The investments in Vivasure do not have readily determinable fair values and are recorded at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for identical or similar investments of the same issuer. Additionally, as the investments in Vivasure are not readily marketable, the Company categorized the investments as non-current assets. As of September 30, 2024 and December 31, 2023, the carrying value of the investments in Vivasure was $2.5 million. The Company's strategic investments previously included shares held in Motus GI Holdings, Inc. ("Motus GI"), formerly a publicly held company which announced its liquidation and dissolution in the second quarter of 2024. The Company had classified these strategic investments in Motus GI on its balance sheet as current assets.

Fair Value of Financial Instruments

The Company applies ASC 820, *Fair Value Measurement* ("ASC 820"), which establishes a framework for measuring fair value and clarifies the definition of fair value within that framework. ASC 820 defines fair value as an exit price, which is the price that would be received for an asset or paid to transfer a liability in the Company's principal or most advantageous market in an orderly transaction between market participants on the measurement date. The fair value

hierarchy established in ASC 820 generally requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Observable inputs reflect the assumptions that market participants would use in pricing the asset or liability and are developed based on market data obtained from sources independent of the reporting entity. Unobservable inputs reflect the entity's own assumptions based on market data and the entity's judgments about the assumptions that market participants would use in pricing the asset or liability and are to be developed based on the best information available in the circumstances.

The carrying value of the Company's cash and cash equivalents, accounts receivable, prepaid expense, accounts payable, and accrued expenses approximate fair value because of the short-term maturity of these financial instruments. In addition, the Company records its investment in marketable securities, and warrant liabilities at fair value. See Note 6 for additional information regarding fair value measurements.

The valuation hierarchy is composed of three levels. The classification within the valuation hierarchy is based on the lowest level of input that is significant to the fair value measurement. The levels within the valuation hierarchy are described below:

Level 1 — Assets and liabilities with unadjusted, quoted prices listed on active market exchanges. Inputs to the fair value measurement are observable inputs, such as quoted prices in active markets for identical assets or liabilities.

Level 2 — Inputs to the fair value measurement are determined using prices for recently traded assets and liabilities with similar underlying terms, as well as direct or indirect observable inputs, such as interest rates and yield curves that are observable at commonly quoted intervals.

Level 3 — Inputs to the fair value measurement are unobservable inputs, such as estimates, assumptions, and valuation techniques when little or no market data exists for the assets or liabilities.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable represent amounts due from customers. The allowance for doubtful accounts is recorded for estimated losses by evaluating various factors, including relative creditworthiness of each customer, historical collections experience and aging of the receivable. As of September 30, 2024 and December 31, 2023, an allowance for doubtful accounts was not deemed necessary.

Inventory

Inventory is stated at the lower of standard cost (which approximates actual cost on a first-in, first-out basis) and net realizable value. Net realizable value represents the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. The Company analyzes its inventory levels and writes down inventory that has become obsolete or has a cost basis in excess of its expected net realizable value or inventory quantities in excess of expected requirements. Excess requirements are determined based on comparison of existing inventories to forecasted sales, with consideration given to inventory shelf life. Expired inventory is disposed of, and the related costs are recognized in cost of goods sold. As of September 30, 2024 and December 31, 2023, an impairment charge as a result of obsolete inventory was not deemed necessary.

Research and Development Prepayments, Accruals and Related Expenses

The Company incurs costs of research and development activities conducted by its third-party service providers, which include the conduct of preclinical and clinical studies. The Company is required to estimate its prepaid and accrued research and development costs at each reporting date. These estimates are made as of the reporting date of the work completed over the life of the individual study in accordance with agreements established with the Company's service providers. The Company determines the estimates of research and development activities incurred at the end of each reporting period through discussion with internal personnel and outside service providers, as to the progress or stage of completion of trials or services, as of the end of the reporting period, pursuant to contracts with the third parties and the

agreed upon fee to be paid for such services. Nonrefundable advance payments for goods or services to be received in the future for use in research and development activities are deferred and capitalized. The capitalized amounts are expensed as the related goods are accepted by the Company or the services are performed. Accruals are recorded for the amounts of services provided that have not yet been invoiced.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation and amortization. Depreciation and amortization is computed using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over the lesser of their useful life or the remaining life of the lease. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation and amortization are removed from the balance sheet and any resulting gain or loss is reflected in operations in the period realized. Maintenance and repairs are charged to operations as incurred.

Asset category	Depreciable life
Manufacturing equipment	10 years
Office equipment	3 – 7 years
Research and development equipment	7 years

Leases

At the inception of an arrangement, the Company determines whether the arrangement is or contains a lease based on the terms of the arrangement. The Company accounts for a contract as a lease when it has the right to control the asset for a period of time while obtaining substantially all of the asset's economic benefits. The Company determines the initial classification and measurement of its operating right-of-use ("ROU") assets and operating lease liabilities at the lease commencement date, and thereafter if modified. The lease term includes any renewal options that the Company is reasonably assured to exercise. The Company's policy is to not record leases with a lease term of 12 months or less on its balance sheets.

The ROU asset represents the right to use the leased asset for the lease term. The lease liability represents the present value of the lease payments under the lease. The present value of lease payments is determined by using the interest rate implicit in the lease, if that rate is readily determinable; otherwise, the Company uses its estimated secured incremental borrowing rate for that lease term. Lease expense for operating leases is recognized on a straight-line basis over the reasonably assured lease term based on the total lease payments and is included in operating expense in the statements of operations.

Payments due under each lease agreement include fixed and variable payments. Variable payments relate to the Company's share of the lessor's operating costs associated with the underlying asset and are recognized when the event on which those payments are assessed occurs. Variable payments have been excluded from the lease liability and associated right-of-use asset.

The interest rate implicit in lease agreements is typically not readily determinable, and as such, the Company utilizes the incremental borrowing rate to calculate lease liabilities, which is the rate incurred to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment.

Debt Discount and Debt Issuance Costs

Debt discounts and debt issuance costs incurred in connection with the issuance of debt are capitalized and reflected as a reduction to the related debt liability. The costs are amortized to interest expense over the term of the debt using the effective-interest method.

Impairment of Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that

the carrying amount of an asset may not be recoverable. Recoverability is measured by comparing the carrying amount to the future net undiscounted cash flows that the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the projected discounted future net cash flows arising from the asset. The Company has not identified any such impairment losses to date.

Warrants

The Company evaluates its warrants to determine if the contracts qualify as liabilities in accordance with ASC 480-10, *Distinguishing Liabilities from Equity,* and ASC 815, *Derivatives and Hedging* ("ASC 815"). If the warrant is determined to meet the criteria to be liability classified, the warrant liability is marked-to-market each balance sheet date and recorded as a liability, with the change in fair value recorded in the Company's condensed consolidated statements of operations and comprehensive loss as gain (loss) on fair value adjustment of warrant liability within other income or expense.

In bundled transactions, the proceeds received from any debt instruments and liability classified warrants are allocated to the warrant at fair value first, and the residual value is then allocated to the debt instrument. Upon conversion or exercise of a warrant that is subject to liability treatment, the instrument is marked to fair value at the conversion or exercise date and the fair value is reclassified to equity. Equity classified warrants are recorded within additional paid-in capital at the time of issuance at fair value as of the issuance date and are not subject to subsequent remeasurement.

Revenue Recognition

The Company recognizes revenue under the core principle according to ASC 606, *Revenue from Contracts with Customers* ("ASC 606"), to depict the transfer of control to the Company's customers in an amount reflecting the consideration the Company expects to be entitled to. In order to achieve that core principle, the Company applies the following five step approach: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract and (5) recognize revenue when a performance obligation is satisfied.

The Company's revenues are currently comprised of partnership revenues from the Terumo Agreement related to the development and commercialization of Virtue SAB, and product revenue from the sale of FreeHold's intracorporeal organ retractors.

Partnership Revenues

To date, the Company's partnership revenues have related to the Terumo Agreement as further described in Note 4. In future periods, partnership revenues may also include revenues related to the Medtronic Agreement as discussed in Note 5.

The Company assessed whether the Terumo Agreement fell within the scope of ASC 808, *Collaborative Arrangements* ("ASC 808") based on whether the arrangement involved joint operating activities and whether both parties have active participation in the arrangement and are exposed to significant risks and rewards. The Company determined that the Terumo Agreement did not fall within the scope of ASC 808. The Company then analyzed the arrangement pursuant to the provisions of ASC 606 and determined that the arrangement represents a contract with a customer and is therefore within the scope of ASC 606.

The promised goods or services in the Terumo Agreement include (i) license rights to the Company's intellectual property, and (ii) research and development services. The Company also has optional additional items in the Terumo Agreement which are considered marketing offers and are accounted for as separate contracts with the customer if such option is elected by the customer, unless the option provides a material right which would not be provided without entering into the contract. Performance obligations are promised goods or services in a contract to transfer a distinct good or service to the customer. Promised goods or services are considered distinct when (i) the customer can benefit from the good or service on its own or together with other readily available resources or (ii) the promised good or service is separately identifiable from other promises in the contract. In assessing whether promised goods or services are distinct in the Terumo

Agreement, the Company considered factors such as the stage of development of the underlying intellectual property, the capabilities of the customer to develop the intellectual property on their own or whether the required expertise is readily available.

The Company estimates the transaction price for the Terumo Agreement performance obligations based on the amount expected to be received for transferring the promised goods or services in the contract. The consideration includes both fixed consideration and variable consideration. At the inception of the Terumo Agreement, as well as at each reporting period, the Company evaluates the amount of potential payments and the likelihood that the payments will be received. The Company utilizes either the most likely amount method or expected amount method to estimate the amount expected to be received based on which method better predicts the amount expected to be received. If it is probable that a significant revenue reversal would not occur, the variable consideration is included in the transaction price.

The Terumo Agreement contains development and regulatory milestone payments. At contract inception and at each reporting period, the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. At the end of each subsequent reporting period, the Company re-evaluates the probability of achievement of such development milestones and any related constraint, and if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect partnership revenues and earnings in the period of adjustment.

The Terumo Agreement also includes sales-based royalties and the license is deemed to be the predominant item to which the royalties relate. Accordingly, the Company will recognize royalty revenue when the related sales occur. To date, the Company has not recognized any royalty revenue under the arrangement.

The Company has determined that intellectual property licensed to Terumo and the research and development services to be provided to support the premarket approval by the U.S. Food and Drug Administration (the "FDA") for the in-stent restenosis ("ISR") indication represent a combined performance obligation that is satisfied over time, and that the appropriate method of measuring progress for purposes of recognizing revenues relates to a proportional performance model that measures the proportional performance based on the costs incurred to date relative to the total costs expected to be incurred through the completion of the performance obligation. The Company evaluates the measure of progress at each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

The Company receives payments from Terumo based on billing schedules established in the contract. Such billings for milestone related events have 10-day terms from the date the milestone is achieved, royalty payments are 20-day terms after the close of each quarter, any optional services are 20 days after receipt of an invoice and any sales of the SirolimusEFR are within 30 days after receipt of the shipping invoices. Upfront payments are recorded as deferred revenue upon receipt or when due until the Company performs its obligations under these arrangements. Amounts are recorded as accounts receivable when the right to consideration is unconditional.

Product Revenues

Product revenues related to sales of FreeHold's intracorporeal organ retractors are recognized at a point-in-time upon the shipment of the product to the customer, and there are no significant estimates or judgments related to estimating the transaction price. The product revenues consist of a single performance obligation, and the payment terms are typically 30 days. Product revenues are recognized solely in the United States.

Stock-Based Compensation

The Company applies ASC 718-10, *Compensation — Stock Compensation*, which requires the measurement and recognition of compensation expenses for all stock-based payment awards made to employees and directors including employee stock options under the Company's stock plans based on estimated fair values (see Note 11). Each award vests over the subsequent period during which the recipient is required to provide service in exchange for the award (the vesting period). The cost of each award is recognized as an expense in the financial statements over the respective vesting period on a straight-line basis.

Under the requirements of ASU 2018-07, the Company accounts for stock-based compensation to nonemployees under the fair value method, which requires all such compensation to be calculated based on the fair value at the measurement date (generally the grant date) and recognized in the Company's condensed consolidated statements of operations and comprehensive loss over the requisite service period. The Company accounts for forfeitures of stock-based awards as they occur.

Net Loss Per Share

Basic and diluted net loss per share is calculated by dividing net loss by the weighted-average number of shares of common stock outstanding for the period, without consideration of potential dilutive shares of common stock. Since the Company was in a loss position for the periods presented, basic net loss is the same as diluted net loss since the effects of potentially dilutive securities are antidilutive. Potentially dilutive securities include all outstanding warrants, stock options, Earnout Consideration (see Note 3), unvested restricted stock awards and restricted stock units. Shares of Company Common Stock outstanding but subject to forfeiture and cancellation by the Company (e.g., the Forfeitable Shares (as defined in Note 3)) are excluded from the weighted-average number of shares until the period in which such shares are no longer subject to forfeiture. In periods in which there is net income, the Company would apply the two-class method to compute net income per share. Under this method, earnings are allocated to common stock and participating securities based on their respective rights to receive dividends, as if all undistributed earnings for the period were distributed. The two-class method does not apply in periods in which a net loss is reported.

Income Taxes

The Company accounts for income taxes using the asset-and-liability method in accordance with ASC 740, *Income Taxes* ("ASC 740"). Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on the deferred tax assets and liabilities of a change in tax rate is recognized in the period that includes the enactment date. A valuation allowance is recorded if it is more-likely-than-not that some portion or all the deferred tax assets will not be realized in future periods. At September 30, 2024 and December 31, 2023, the Company recorded a full valuation allowance on its deferred tax assets.

The Company follows the guidance in ASC Topic 740-10 in assessing uncertain tax positions. The standard applies to all tax positions and clarifies the recognition of tax benefits in the financial statements by providing for a two-step approach of recognition and measurement. The first step involves assessing whether the tax position is more-likely-than-not to be sustained upon examination based upon its technical merits. The second step involves measurement of the amount to be recognized. Tax positions that meet the more-likely than-not threshold are measured at the largest amount of tax benefit that is greater than 50% likely of being realized upon ultimate finalization with the taxing authority. The Company recognizes the impact of an uncertain income tax position in the financial statements if it believes that the position is more likely than not to be sustained by the relevant taxing authority. The Company will recognize interest and penalties related to tax positions in income tax expense as applicable.

Deferred Offering and Merger Costs

Offering and merger costs, consisting of legal, accounting, printer and filing fees were deferred to be offset against proceeds received when the Business Combination was completed. As of December 31, 2023, there were no deferred transaction costs because upon the close of the Business Combination, they were recorded against net proceeds in additional paid-in capital. For further discussion on the Business Combination, see Note 3.

Defined Contribution Plan

The Company has a defined retirement savings plan under Section 401(k) of the Internal Revenue Code. This plan allows eligible employees to defer a portion of their annual compensation on a pre-tax basis. Effective January 1, 2023, the Company participates in a matching safe harbor 401(k) Plan with a Company contribution of up to 3.5% of each

eligible participating employee's compensation. Safe harbor contributions vest immediately for each participant. During the three and nine months ended September 30, 2024, the Company made $85,000 and $307,000, respectively, in contributions under this safe harbor 401(k) Plan. During the three and nine months ended September 30, 2023, the Company made $98,000 and $279,000, respectively, in contributions under this safe harbor 401(k) Plan.

Comprehensive Loss

Comprehensive loss is comprised of net loss and changes in unrealized gains and losses on the Company's available-for-sale investments.

Segment Reporting

Operating segments are defined as components of an entity for which separate financial information is available and that is regularly reviewed by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources to an individual segment and in assessing performance. The Company's CODM is its Chief Executive Officer. The Company has determined it operates in one segment.

New Accounting Standards

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures* ("ASU 2023-07") to update reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses and information used to assess segment performance. ASU 2023-07 requires companies to disclose all annual disclosures about segments in interim periods. The amendments in ASU 2023-07 are effective for all public entities for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. The Company is currently evaluating the effect of this update on its consolidated financial statements and related disclosures.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* ("ASU 2023-09"), which requires additional income tax disclosures in the annual consolidated financial statements. The amendments in ASU 2023-09 are intended to enhance the transparency and decision usefulness of income tax disclosures. For public entities, ASU 2023-09 is effective for annual periods beginning after December 15, 2024, with early adoption permitted. As an emerging growth company that has not opted out of the extended transition period for complying with new or revised financial accounting standards, the amendments in ASU 2023-09 are effective for the Company for fiscal years beginning after December 15, 2025, with early adoption permitted.

3. Business Combination and Recapitalization

On January 26, 2023, Legacy Orchestra and HSAC2 consummated the Business Combination, with Legacy Orchestra surviving as a wholly owned subsidiary of HSAC2. As part of the Business Combination, HSAC2 changed its name to Orchestra BioMed Holdings, Inc. Upon the closing of the Business Combination (the "Closing"), the Company's certificate of incorporation provided for, among other things, a total number of authorized shares of capital stock of 350,000,000 shares, of which 340,000,000 shares were designated Company Common Stock, and of which 10,000,000 shares were designated preferred stock, $0.0001 par value per share.

The Business Combination is accounted for as a reverse recapitalization in accordance with U.S. GAAP. Under this method of accounting, HSAC2 is treated as the "acquired" company and Legacy Orchestra is treated as the acquirer for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination was treated as the equivalent of Legacy Orchestra issuing stock for the net assets of HSAC2, accompanied by a recapitalization. The net assets of HSAC2 are stated at historical cost, with no goodwill or intangible assets recorded.

In connection with the Business Combination, HSAC2 Holdings, LLC (the "Sponsor") agreed that 25% or 1,000,000 shares of its shares of Company Common Stock will be forfeited to the Company (the "Forfeitable Shares") on the first business day following the fifth anniversary of the Closing unless, as to 500,000 shares, the volume-weighted average price of the Company Common Stock is greater than or equal to $15.00 per share over any 20

trading days within any 30-trading day period (the "Initial Milestone Event"), and as to the remaining 500,000 shares, the volume-weighted average price of the Company Common Stock is greater than or equal to $20.00 per share over any 20 trading days within any 30-trading day period (the "Final Milestone Event"). Further, the Sponsor and HSAC2's other initial shareholders prior to HSAC2's initial public offering (the "HSAC2 IPO") agreed to subject (i) the 4,000,000 shares of Company Common Stock issued to HSAC2's initial shareholders prior to the HSAC2 IPO (the "Insider Shares") and (ii) the 450,000 shares of Company Common Stock purchased in a private placement simultaneously with the HSAC2 IPO (the "Private Shares") to a lock-up for up to 12 months following the Closing, and the Sponsor forfeited 50% of its 1,500,000 warrants in HSAC2 purchased upon consummation of the HSAC2 IPO (the "Private Warrants"), comprising 750,000 Private Warrants, for no consideration, immediately prior to the Closing (the "Sponsor Forfeiture"). Pursuant to the terms of the Merger Agreement, immediately following the Sponsor Forfeiture and prior to the Closing, HSAC2 issued 750,000 warrants to purchase Company Common Stock to eleven specified employees and directors of Legacy Orchestra (the "Officer and Director Warrants"). The Officer and Director Warrants have substantially similar terms to the forfeited Private Warrants, except that 50% of the Officer and Director Warrants will become exercisable 24 months after the Closing and the remaining 50% will become exercisable 36 months after the Closing, in each case, subject to the holder's continued employment or service with the Company or one of its subsidiaries through such date. As of the issuance date of these financial statements, 90,000 Officer and Director Warrants have been forfeited as a result of the departures of an executive officer and a director of the Company. On April 12, 2023, the Initial Milestone Event was achieved, and, as a result, 500,000 of the Forfeitable Shares are no longer subject to forfeiture.

In connection with the Business Combination, existing Legacy Orchestra stockholders also had the opportunity to elect to participate in an earnout (the "Earnout") pursuant to which each such electing stockholder (an "Earnout Participant") may receive a portion of additional contingent consideration of up to 8,000,000 shares of Company Common Stock in the aggregate ("Earnout Consideration"). Each Earnout Participant agreed to extend their applicable lock-up period from 6 months to 12 months after the Closing, pursuant to an Earnout Election Agreement and such Earnout Participants will collectively be entitled to receive: (i) 4,000,000 shares of the Earnout Consideration, in the aggregate, in the event that, from the time beginning immediately after the Closing until the fifth anniversary of the Closing Date (the "Earnout Period"), the Initial Milestone Event occurs; and (ii) an additional 4,000,000 shares of the Earnout Consideration, in the aggregate, in the event that, during the Earnout Period, the Final Milestone Event occurs. Approximately 91% of Legacy Orchestra stockholders elected to participate in the Earnout. On April 12, 2023, the Initial Milestone Event was achieved, and each Earnout Participant was issued their Pro Rata Portion (as such term is defined in the Merger Agreement) of 4,000,000 shares of Company Common Stock, resulting in a total of 3,999,987 shares of Company Common Stock being issued (less than 4,000,000 due to rounding).

Simultaneously with the execution of the Merger Agreement, HSAC2 and Legacy Orchestra entered into separate forward purchase agreements (each, as amended, a "Forward Purchase Agreement" and, together, the "Forward Purchase Agreements") with certain funds managed by RTW Investments, LP (the "RTW Funds") and Covidien Group S.à.r.l., an affiliate of Medtronic plc ("Medtronic" and the RTW Funds, each a "Purchasing Party"), pursuant to which each of the Purchasing Parties agreed to purchase $10 million of ordinary shares of HSAC2 ("HSAC2 Ordinary Shares") immediately prior to the Domestication (as defined below), less the dollar amount of HSAC2 Ordinary Shares holding redemption rights that the Purchasing Party acquired and held until immediately prior to the Domestication (such HSAC2 Ordinary Shares either purchased from HSAC2 or acquired and held until immediately prior to the Domestication, the "Forward Purchase Shares"). The RTW Funds completed their purchases of HSAC2 Ordinary Shares under their Forward Purchase Agreement on or before July 22, 2022. Medtronic completed approximately $9.9 million of purchases of HSAC2 Ordinary Shares under its Forward Purchase Agreement on or before January 20, 2023. Medtronic subsequently completed $0.1 million in purchases of HSAC2 Ordinary Shares and/or Company Common Stock on or before January 30, 2023.

Simultaneously with the execution of the Merger Agreement and Forward Purchase Agreements, HSAC2, Legacy Orchestra and the RTW Funds entered into a Backstop Agreement (the "Backstop Agreement"), pursuant to which the RTW Funds, jointly and severally, agreed to purchase such number of HSAC2 Ordinary Shares at a price of $10.00 per share to the extent that the amount of cash remaining in HSAC2's working capital and trust account as of immediately prior to the closing of the Merger was less than $60 million (which calculation excludes amounts received pursuant to Medtronic's Forward Purchase Agreement or are otherwise held in HSAC2's trust account established pursuant to the HSAC2 IPO (the "HSAC2 Trust Account") in respect of Medtronic's Forward Purchase Shares, but is inclusive of amounts received pursuant to the RTW Funds' Forward Purchase Agreement and otherwise held in the HSAC2 Trust Account in

respect of the RTW Funds' Forward Purchase Shares). Pursuant to the Backstop Agreement, the RTW Funds purchased 1,808,512 HSAC2 Ordinary Shares on January 25, 2023, immediately prior to the Domestication.

Immediately prior to the closing of the Business Combination, each issued and outstanding share of Legacy Orchestra preferred stock (the "Legacy Orchestra Preferred Stock") was canceled and converted into shares of Legacy Orchestra common stock (the "Legacy Orchestra Common Stock") based on predetermined ratios (see Note 9).

Upon the consummation of the Business Combination, each issued and outstanding share of Legacy Orchestra Common Stock was canceled and converted into the right to receive shares of Company Common Stock based upon the Exchange Ratio. The shares and corresponding capital amounts and loss per share related to Legacy Orchestra Common Stock prior to the Business Combination have been retroactively restated to reflect the Exchange Ratio.

Outstanding stock options, whether vested or unvested, to purchase shares of Legacy Orchestra Common Stock ("Legacy Orchestra Options") granted under the Orchestra BioMed, Inc. 2018 Stock Incentive Plan ("2018 Plan") (see Note 11) converted into stock options to purchase shares of Company Common Stock upon the same terms and conditions that were in effect with respect to such stock options immediately prior to the Business Combination, after giving effect to the Exchange Ratio (the "Exchanged Options").

The following table details the number of shares of Company Common Stock issued immediately following the consummation of the Business Combination:

	Number of Shares
Common stock of HSAC2, outstanding prior to the Business Combination	6,762,117
Less: Redemption of HSAC2 shares	(1,597,888)
Company Common Stock held by former HSAC2 shareholders	5,164,229
HSAC2 sponsor shares	4,450,000
Shares issued related to Backstop Agreement	1,808,512
Total shares outstanding prior to issuance of merger consideration to Legacy Orchestra stockholders	11,422,741
Shares issued to Legacy Orchestra stockholders – Company Common Stock[(1)]	20,191,338
Total shares of Company Common Stock immediately after Business Combination[(2)]	31,614,079

(1) The number of shares of Company Common Stock issued to Legacy Orchestra equity holders was determined based on (i) 2,522,214 shares of Legacy Orchestra Common Stock outstanding immediately prior to the closing of the Business Combination converted based on the Exchange Ratio and (ii) 35,694,179 shares of Legacy Orchestra Preferred Stock outstanding immediately prior to the Closing, which pursuant to their terms converted into Legacy Orchestra Common Stock immediately prior to the Closing and then converted into Company Common Stock based on the Exchange Ratio. All fractional shares were rounded down.

(2) Excludes 8,000,000 shares of Company Common Stock issued or to be issued based on satisfaction of the Initial Milestone Event and the Final Milestone Event. On April 12, 2023, the Initial Milestone Event was achieved, and each Earnout Participant was issued their Pro Rata Portion (as such term is defined in the Merger Agreement) of 4,000,000 shares of Company Common Stock, resulting in a total of 3,999,987 shares of Company Common Stock being issued (less than 4,000,000 due to rounding).

The following table reconciles the elements of the Business Combination to the Company's condensed consolidated statements of stockholders' equity (deficit) (in thousands):

	Amount
Cash – HSAC2's trust (net of redemption)	$ 51,915
Cash – Backstop Agreement	18,085
Gross proceeds	70,000
Less: HSAC2 and Legacy Orchestra transaction costs paid	(15,698)
Effect of Business Combination, net of redemptions and transaction costs	$ 54,302

The $54.3 million above differs from the $56.8 million effect of the Business Combination on the condensed consolidated statements of cash flows, due to $2.5 million of transaction costs paid by Legacy Orchestra in 2022.

4. Terumo Agreement

In June 2019, Legacy Orchestra entered into the Terumo Agreement, pursuant to which Terumo secured global commercialization rights for Virtue SAB in coronary and peripheral vascular indications. Under the Terumo Agreement, Legacy Orchestra received an upfront payment of $30 million and an equity commitment of up to $5 million of which $2.5 million was invested in June 2019 as part of the Legacy Orchestra Series B-1 financing and $2.5 million was invested in June 2022 as part of the Legacy Orchestra Series D-2 financing. The Company was initially eligible to receive up to $65 million in additional payments based on the achievement of certain development and regulatory milestones and is also eligible to earn royalties on future sales by Terumo based on royalty rates ranging from 10 – 15%. Of these milestone payments, $35 million relate to achieving certain milestones by specified target achievement dates. As of the issuance date of these financial statements, the target achievement date for three $5 million milestone payments has already passed. In addition, due to delays in the Company's Virtue SAB program resulting from the COVID-19 pandemic, supply chain issues and unexpected changes to regulatory requirements, including increased testing and other activities related to chemistry, manufacturing, and control, increased nonclinical and good laboratory practice preclinical data requirements, including biocompatibility, as well as a requirement to repeat good laboratory practice preclinical studies already performed based on changes to source of component materials and a change in manufacturing site, the Company is unlikely to be able to complete the remaining time-based milestones by the specified target achievement dates to earn the remaining $20 million in time-based milestone payments pursuant to the Terumo Agreement.

As previously disclosed, the Company and Terumo have been negotiating for mutually agreeable adjustments to the Terumo Agreement with the purpose of restructuring milestone payments as well as making other potential material modifications to that agreement including additional financial commitments by Terumo to Orchestra and the Virtue SAB program. If negotiations are not completed to the Company's satisfaction or to the satisfaction of Terumo, clinical study, product development, and commercialization plans for Virtue SAB may continue to be adversely impacted.

Pursuant to the terms of the Terumo Agreement, Legacy Orchestra licensed intellectual property rights to Terumo and the Company is primarily responsible for completing the development of the product in the United States to support premarket approval by the FDA for the ISR indication. These research and development services to be provided by the Company include (i) manufacturing, testing and packaging the drug required for the clinical trials, (ii) supplying Terumo with information related to the design and manufacture of the delivery device and the technology transfer needed for Terumo to ultimately commence manufacture of the delivery device, and (iii) carrying out regulatory activities related to clinical trials in the United States for the ISR indication.

The Company has concluded that the license granted to Terumo is not distinct from the research and development services that will be provided to Terumo through the completion of the development of ISR indication, as Terumo cannot obtain the benefit of the license without the related research and development services. Accordingly, the Company will recognize revenues for this combined performance obligation over the estimated period of research and development services using a proportional performance model. The Company measures proportional performance based on the costs incurred relative to the total estimated costs of the research and development services.

In 2019, Legacy Orchestra received a total of $32.5 million from Terumo related to the stock purchase and the revenue generating elements of the Terumo Agreement. The Company recorded the estimated fair value of the shares of $2.5 million in stockholders' equity, as the value paid by Terumo is consistent with the value paid by other third-party stockholders in Legacy Orchestra's offering of its Series B-1 Preferred Stock. The Company allocated the remaining $30 million to the transaction price of the Terumo Agreement. The Company considers the future potential development and regulatory milestones to be variable consideration, which are fully constrained from the transaction price as of September 30, 2024 and December 31, 2023, as the achievement of such milestone payments are uncertain and highly susceptible to factors outside of the Company's control. The Company plans to re-evaluate the transaction price at each reporting period and as uncertain events are resolved or other changes in circumstances occur. In addition, the arrangement also includes sales-based royalties on product sales by Terumo subsequent to commercialization ranging from 10 - 15%, none of which have been recognized to date.

The Company recorded the $30 million upfront payment received from Terumo in 2019 within deferred revenue. The following table presents the changes in the Company's deferred revenue balance from the Terumo Agreement during the nine months ended September 30, 2024 and 2023 (in thousands):

Deferred Revenue – December 31, 2023	$	17,433
Revenue recognized		(1,928)
Deferred Revenue – September 30, 2024	$	15,505
Deferred Revenue – December 31, 2022	$	19,539
Revenue recognized		(2,018)
Deferred Revenue – September 30, 2023	$	17,521

The Company's balance of deferred revenue contains the transaction price from the Terumo Agreement allocated to the combined license and research and development performance obligation, which was partially unsatisfied as of September 30, 2024. The Company expects to recognize approximately $4.1 million of its deferred revenue during the next twelve months and recognize the remaining approximately $11.4 million through the remainder of the performance period, which is currently estimated to be completed in 2029 and may be impacted by the actual clinical and regulatory timelines of the program.

As of each quarterly reporting date, the Company evaluates its estimates of the total costs expected to be incurred through the completion of the combined performance obligation and updates its estimates as necessary. For the three months ended September 30, 2024 and 2023, the expenses incurred related to the Terumo Agreement were approximately $3.6 million and $3.4 million, respectively. For the nine months ended September 30, 2024 and 2023, the expenses incurred related to the Terumo Agreement were approximately $10.5 million and $11.7 million, respectively. The estimated total costs associated with the Terumo Agreement through completion increased by approximately 2.6% as of September 30, 2024, as compared to the estimates as of December 31, 2023, and increased by approximately 7.0% as of September 30, 2023, as compared to the estimates as of December 31, 2022. While the Company believes it has estimated total costs associated with the Terumo Agreement through completion, these estimates encompass a broad range of expenses over a multi-year period and, as such, are subject to periodic changes as new information becomes available. The impact of the changes in estimates resulted in an increase of partnership revenues of $33,000 and a decrease of $558,000 for the three months ended September 30, 2024 and 2023, respectively, as compared to the amounts that would have been recorded based on the previous estimates. The impact of the changes in estimates resulted in a reduction of partnership revenues of $371,000 and $882,000 for the nine months ended September 30, 2024 and 2023, respectively, as compared to the amounts that would have been recorded based on the previous estimates. The impact of these changes in estimates on the net loss per share attributable to common stockholders, basic and diluted, for the three months ended September 30, 2024 was de minimis and for the nine months ended September 30, 2024 was an increase of $0.01. The impact of these changes in estimates on the net loss per share attributable to common stockholders, basic and diluted, for the three and nine months ended September 30, 2023 was an increase of $0.02 and $0.03, respectively.

The Company will also manufacture, or have manufactured, SirolimusEFR and has exclusive rights to sell it on a per unit basis to Terumo for use in the Virtue SAB product. The Company has determined that this promise does not contain a material right as the pricing is based on standalone selling prices. Through September 30, 2024, there have been no additional amounts recognized as revenue under the Terumo Agreement other than the recognition of a portion of the upfront payment described above.

5. Medtronic Agreement

In June 2022, Legacy Orchestra, BackBeat and Medtronic entered into the Medtronic Agreement for the development and commercialization of AVIM therapy for the treatment of pacemaker-indicated patients with uncontrolled HTN despite the use of antihypertensive medications (the "Primary Field"). Under the terms of the Medtronic Agreement, the Company will sponsor a multinational pivotal study, which has commenced, to support regulatory approval of AVIM therapy in the Primary Field and be financially responsible for development, clinical and regulatory costs associated with this pivotal study. AVIM therapy has been integrated into the Medtronic top-of-the-line, commercially available dual-chamber

pacemaker system specifically for use in the pivotal trial and will provide development, clinical and regulatory resources in support of the pivotal trial, for which the Company will reimburse Medtronic at cost.

Under the terms of the Medtronic Agreement, Medtronic will have exclusive rights to commercialize AVIM therapy-enabled pacing systems globally following receipt of regulatory approval. Medtronic would be entirely responsible for global commercialization following receipt of regulatory approvals, including manufacturing, sales, marketing and distribution costs.

The Company is expected to receive between $500 and $1,600 per AVIM therapy-enabled device sold based on a formula of the higher of (1) a fixed dollar amount per AVIM therapy-enabled device (amount varies materially on a country-by-country basis) or (2) a percentage of the AVIM therapy-generated sales. Procedures using the AVIM therapy-enabled pacemakers are expected to be billed under existing reimbursement codes.

Medtronic has a right of first negotiation through FDA approval of AVIM therapy in the Primary Field, to expand its global rights to AVIM therapy for the treatment of HTN patients not indicated for a pacemaker.

The Company assessed whether the Medtronic Agreement fell within the scope of ASC 808 and concluded that the Medtronic Agreement is a collaboration within the scope of ASC 808. In addition, the Company determined that Medtronic is a customer for a good or service that is a distinct unit of account, and therefore, the transactions in the Medtronic Agreement should be accounted for under ASC 606.

The Company has concluded that the license granted to Medtronic is not distinct from the development and implementation services that will be provided to Medtronic through the completion of the development of HTN indication, as Medtronic cannot obtain the benefit of the license without the related development and implementation services. ASC 606-10-55-65 includes an exception for the recognition of revenue relating to licenses of intellectual property with sales-based or usage-based royalties. Under this exception, royalty revenue is not recorded until the subsequent sale or usage occurs, or the performance obligation has been satisfied, whichever is later.

The Company concluded that the exemption applies and therefore, the royalty revenue associated with these performance obligations will be recognized as the underlying sales occur. Additionally, pursuant to the Medtronic Agreement, expenses incurred by Medtronic in connection with clinical device development and regulatory activities performed will be reimbursed by the Company. The Company will record such expenses as research and development expenses as incurred. During the three and nine months ended September 30, 2024, the Company incurred approximately $2.8 million and $5.9 million, respectively, of research and development costs related to these reimbursements pursuant to the Medtronic Agreement, of which $4.3 million is included within accounts payable and accrued expenses in the Company's September 30, 2024 condensed consolidated balance sheet. During the three and nine months ended September 30, 2023, the Company incurred approximately $854,000 and $3.1 million, respectively, of research and development costs related to these reimbursements pursuant to the Medtronic Agreement.

Concurrently with the close of the Medtronic Agreement, Legacy Orchestra also received a $40 million investment from Medtronic in connection with Legacy Orchestra's Series D-2 Preferred Stock financing. The equity was purchased at a fair value consistent with the price paid by other investors at that time, and accordingly, the proceeds received were recorded as an equity investment.

Through September 30, 2024, there have been no amounts recognized as revenue under the Medtronic Agreement.

6. Financial Instruments and Fair Value Measurements

The following tables summarize the Company's financial assets and liabilities measured at fair value on a recurring basis by level within the fair value hierarchy:

	September 30, 2024			
(in thousands)	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Money market fund (included in cash and cash equivalents)	$ 13,231	$ —	$ —	$ 13,231
Marketable securities (Corporate debt securities)	—	41,321	—	41,321
Total assets	$ 13,231	$ 41,321	$ —	$ 54,552

(in thousands)	December 31, 2023 Level 1	Level 2	Level 3	Total
Assets				
Money market fund (included in cash and cash equivalents)	$ 27,592	$ —	$ —	$ 27,592
Investment in Motus GI (see Note 7)	68	—	—	68
Marketable securities (Corporate and Government debt securities)	—	56,968	—	56,968
Total assets	$ 27,660	$ 56,968	$ —	$ 84,628

The Level 2 assets consist of government and corporate debt securities which are valued using market observable inputs, including the current interest rate and other characteristics for similar types of investments, whose fair value may not represent actual transactions of identical securities. There were no transfers between Levels 1, 2 or 3 for the periods presented.

Prior to the closing of the Business Combination, the Company's warrant liability was measured at fair value on a recurring basis using unobservable inputs and were classified as Level 3 inputs, and any change in fair value was recognized as change in fair value of warrant liability in the Company's condensed consolidated statements of operations and comprehensive loss. As of the Closing Date, all Legacy Orchestra liability classified warrants were reclassified to equity. Refer to Note 10 for the valuation technique and assumptions used in estimating the fair value of the warrants and discussion on the change in classification.

The following table presents a roll-forward of the aggregate fair values of the Company's liabilities for which fair value is determined by Level 3 inputs (in thousands):

	Warrant Liability
Balance—December 31, 2022	$ 2,089
Warrants exercised prior to the Business Combination	(10)
Change in fair value of warrants	294
Warrants reclassified to equity	(2,373)
Balance—September 30, 2023	**$ —**

7. Marketable Securities and Strategic Investments

Marketable Securities

The following is a summary of the Company's marketable securities as of September 30, 2024 and December 31, 2023:

(in thousands)	September 30, 2024 Amortized Cost Basis	Unrealized Gains	Unrealized Losses	Fair Value
Corporate debt securities	$ 41,223	$ 100	$ (2)	$ 41,321
Total	**$ 41,223**	**$ 100**	**$ (2)**	**$ 41,321**

(in thousands)	December 31, 2023 Amortized Cost Basis	Unrealized Gains	Unrealized Losses	Fair Value
Corporate debt securities	$ 8,655	$ —	$ (8)	$ 8,647
Government debt securities	48,323	7	(9)	48,321
Total	**$ 56,978**	**$ 7**	**$ (17)**	**$ 56,968**

The Company believes it is more likely than not that its marketable securities in an unrealized loss position will be held until maturity or the recovery of the cost basis of the investment. To date, the Company has not recorded any allowance for credit losses on its investment securities. The Company determined that the unrealized losses were not attributed to credit risk but were primarily driven by the broader change in interest rates. As of September 30, 2024, $5.6

million of the Company's marketable securities had maturities of 12 to 36 months while the remaining marketable securities had maturities of less than 12 months.

For the three and nine months ended September 30, 2024, the Company recognized realized gains of $10,000 and $11,000, respectively, on its marketable securities. For the nine months ended September 30, 2023, the Company recognized realized losses on its marketable securities of $102,000 but did not recognize any realized gains or losses for the three months ended September 30, 2023.

Strategic Investments

The Company's long-term strategic investments as of September 30, 2024 represent investments made in Vivasure in 2020, 2021 and 2022 that were originally recorded at cost. There were no observable price changes or impairments identified during the nine months ended September 30, 2024 and 2023 related to these investments.

In May 2022, Vivasure announced a Series D private placement, in which it received a material investment from Haemonetics Corporation, a new strategic investor. In conjunction with a €30 million investment in Vivasure, Haemonetics Corporation also secured an option to acquire Vivasure based on the achievement of certain milestones. As a result, Legacy Orchestra's existing convertible redeemable notes converted into Series D Preferred Stock of Vivasure in May 2022. The investment in the Vivasure Series D Preferred Stock represents an observable price change in an orderly transaction for an identical instrument of the same issuer, and accordingly, the Company recognized a gain on its strategic investment in Vivasure of $1.9 million in the second quarter of 2022. This amount represents a portion of the previously impaired investment balance described below.

During the fourth quarter of 2019, the Company identified indicators of impairment of Vivasure strategic investments held at that time as a result of adverse changes in Vivasure's business operations, including liquidity concerns. As a result, the Company recorded an impairment charge in the fourth quarter of 2019 of $5.8 million, which represents the cumulative impairment charges recorded on Vivasure strategic investments to date.

The Company measured the fair value of its historic strategic investment in equity securities of Motus GI using the listed share price on the Nasdaq Capital Market on each valuation date until Motus GI announced its liquidation and dissolution during the second quarter of 2024. In the second quarter of 2024, the Company recorded the carrying value of the Motus GI investment to zero representing aggregate losses of $68,000 for the nine months ended September 30, 2024. There were no further adjustments to the Motus GI investment during the three months ended September 30, 2024. During the three and nine months ended September 30, 2023, aggregate losses of $293,000 and $276,000, respectively, were recorded to adjust the Motus GI investment to $68,000 at December 31, 2023. The Motus GI investment is classified as strategic investments within current assets on the accompanying condensed consolidated balance sheets.

8. Balance Sheet Components

Property and Equipment, Net

Property and equipment, net consists of the following:

(in thousands)	September 30, 2024	December 31, 2023
Equipment	$ 1,878	$ 1,777
Office furniture	437	343
Leasehold improvements	158	203
Property and equipment, gross	2,473	2,323
Less accumulated depreciation and amortization	(1,219)	(1,044)
Total Property and equipment, net	**$ 1,254**	**$ 1,279**

Depreciation and amortization expense was $76,000 and $71,000 for the three months ended September 30, 2024 and 2023, respectively. Depreciation and amortization expense was $224,000 and $215,000 for the nine months ended September 30, 2024 and 2023, respectively.

Accrued Expenses

Accrued expenses consist of the following:

(in thousands)	September 30, 2024	December 31, 2023
Accrued compensation	$ 2,630	$ 2,661
Clinical trial accruals	3,228	1,409
Other accrued expenses	1,176	1,079
Total accrued expenses	**$ 7,034**	**$ 5,149**

9. Common and Preferred Stock

Common Stock

The Company is authorized to issue up to 340,000,000 shares of Company Common Stock.

As discussed in Note 3, the Company has retroactively adjusted the shares issued and outstanding prior to January 26, 2023 to give effect to the Exchange Ratio to determine the number of shares of Company Common Stock into which they were converted.

Preferred Stock

The Company is authorized to issue 10,000,000 shares of preferred stock with a par value of $0.0001 per share. The board of directors of the Company (the "Board") has the authority to issue preferred stock and to determine the rights, privileges, preferences, restrictions, and voting rights of those shares. As of September 30, 2024, no shares of preferred stock were outstanding.

At-the-Market Offering and Shelf Registration Statement

On May 15, 2024, the Company entered into an Open Market Sale Agreement[SM] (the "Prior Agreement") with Jefferies LLC ("Jefferies"), pursuant to which the Company could offer and sell, from time to time through Jefferies, up to $100 million of shares of Company Common Stock (the "Prior ATM Shares") by any method permitted by law and deemed to be an "at the market offering" as defined in Rule 415(a)(4) promulgated under the Securities Act.

Also on May 15, 2024, the Company filed a shelf registration statement on Form S-3 with the SEC (the "Shelf Registration Statement"), which contains a base prospectus, covering up to a total aggregate offering price of $300 million of Company Common Stock, preferred stock, debt securities, warrants, right and/or units, and a prospectus supplement that covered the offering, issuance and sale of the Prior ATM Shares, which are included in the $300 million of securities that may be offered, issued and sold by the Company pursuant to the Shelf Registration Statement.

On July 11, 2024, the Company sold 2,000,000 shares of Company Common Stock under the Prior Agreement resulting in aggregate gross proceeds to the Company of approximately $15.5 million and net proceeds to the Company of approximately $15.0 million.

On August 12, 2024, the Company entered into a sales agreement (the "Sales Agreement") with TD Securities (USA) LLC, as agent ("TD Cowen"), pursuant to which the Company may offer and sell, from time to time through TD Cowen, up to $100 million of shares of Company Common Stock (the "Offering") by any method permitted by law and deemed to be an "at the market offering" as defined in Rule 415(a)(4) promulgated under the Securities Act. The Offering is being made pursuant to the Shelf Registration Statement, filed with the SEC on May 15, 2024 and declared effective on May 24, 2024, a base prospectus, dated May 24, 2024, included as part of the Shelf Registration Statement, and a prospectus supplement, dated August 12, 2024 filed with the SEC pursuant to Rule 424(b)(5) on August 12, 2024. As of September 30, 2024, no sales had been made under the Sales Agreement.

Termination of Prior Agreement

In connection with the entry into the Sales Agreement, on August 12, 2024, the Company terminated the Prior Agreement between the Company and Jefferies (the "Termination"), in accordance with its terms and with the mutual agreement of Jefferies. The purpose of the Termination is to eliminate restrictions under certain SEC rules relating to the publication or dissemination of new research reports on the Company's business by Jefferies in light of its role as sales agent under the Prior Agreement. The Company had $84.5 million remaining available under the Prior Agreement. The Company cannot make any further sales of Company Common Stock pursuant to the Prior Agreement.

10. Warrants

The Company evaluates its outstanding warrants to determine if the instruments qualify for equity or liability classification.

Private Warrants

Prior to the Merger, HSAC2 had outstanding 1,500,000 Private Warrants, which were issued in connection with the HSAC2 IPO to the Sponsor. Each Private Warrant entitles the holder thereof to purchase one share of Company Common Stock at a price of $11.50 per share, subject to adjustment as provided therein. The Private Warrants became exercisable 30 days after the completion of the Business Combination and will expire five years after the completion of the Business Combination. Each Private Warrant is non-redeemable and may be exercised on a cashless basis. Since these warrants are indexed to the Company's publicly traded Company Common Stock, they are classified within equity.

As described in Note 3, the Sponsor and HSAC2's other initial shareholders prior to the HSAC2 IPO agreed to subject (i) the 4,000,000 Insider Shares and (ii) the 450,000 Private Shares to a lock-up for up to 12 months following the Closing and the Sponsor forfeited 50% of its 1,500,000 Private Warrants, comprising 750,000 Private Warrants, for no consideration, immediately prior to the Closing. Pursuant to the terms of the Merger Agreement, immediately following the Sponsor Forfeiture and prior to the Closing, HSAC2 issued 750,000 Officer and Director Warrants to eleven specified employees and directors of Legacy Orchestra. The Officer and Director Warrants have substantially similar terms to the forfeited Private Warrants, except that 50% of the Officer and Director Warrants will become exercisable 24 months after the Closing and the remaining 50% will become exercisable 36 months after the Closing, in each case, subject to the holder's continued employment or service with the Company or one of its subsidiaries through such date. As of the issuance date of these financial statements, 90,000 Officer and Director Warrants have been forfeited as a result of the departures of an executive officer and a director of the Company.

Avenue Warrants

On October 6, 2023, the Company issued equity-classified warrants (the "Avenue Warrants") to purchase 27,707 shares of Company Common Stock at an exercise price of $7.67 per share in lieu of a cash payment of approximately $212,500 to Avenue Venture Opportunities Fund, L.P. ("Avenue I") and Avenue Venture Opportunities Fund II, L.P. ("Avenue II," and, collectively with Avenue I, "Avenue"). The warrants were issued to settle certain fees related to the termination and repayment of the loan and security agreement with Avenue (the "2022 Loan and Security Agreement"). As of October 6, 2023, the Company valued the Avenue Warrants using the Black-Scholes option-pricing model and determined the fair value at $66,000. The key inputs to the valuation model included the annualized volatility of 42.0% and a risk-free rate of 4.98%.

Assumed Legacy Orchestra Warrants

Prior to the close of the Business Combination, the majority of Legacy Orchestra's warrants (the "Legacy Orchestra Warrants") were required to be accounted for as liabilities as certain features within the warrant agreements contained features that were not considered "fixed for fixed" pursuant to ASC 815, and therefore, the fair value of the warrant liability was marked-to-market at each balance sheet date, with the change in fair value recorded in the Company's condensed consolidated statements of operations and comprehensive loss within other income (expense). Upon the close of the Business Combination, all liability classified Legacy Orchestra Warrants became equity classified on that date, as the

warrant agreements became "fixed for fixed." As a result, the warrant liability was fair valued and adjusted from $2.1 million as of December 31, 2022 to $2.4 million as of January 26, 2023, and then subsequently reclassified into stockholders' equity. In addition, Legacy Orchestra also had outstanding other equity classified warrants recorded within additional paid-in capital at the time of issuance at fair value that were not subject to subsequent remeasurement.

The Company calculates the fair value of the outstanding warrant liability at each reporting date by estimating the equity value of the Company, and then utilizing option pricing models to allocate the total equity value to the shares and warrants outstanding. The inputs used in the valuation models for the Company's warrant liability are as follows:

	Period from January 1, 2023 to January 26, 2023
Expected volatility	44 – 49 %
Risk-free interest rate	3.60 – 4.80 %
Remaining term in years	0.35 – 5.00
Exercise price of common warrants	$1.08 – $30.11
Company Common Stock price	$10.63
Expected dividend yield	0 %

The Company's warrant liability related to Legacy Orchestra warrant activity rollforward is as follows, with the warrants having been converted to reflect the effect of the Merger:

(in thousands, except share data)	Common Warrants	Amount
Balance December 31, 2022	1,327,074	$ 2,089
Warrants exercised prior to the business combination	(1,163)	(10)
Change in fair value of warrants as of January 26, 2023	—	294
Warrants reclassified to equity	(1,325,911)	(2,373)
Balance March 31, 2023	—	—
Balance June 30, 2023	—	—
Balance September 30, 2023	—	$ —

Private Warrants, Avenue Warrants and Assumed Legacy Orchestra Warrants

The following table summarizes outstanding warrants to purchase shares of Company Common Stock as of September 30, 2024 and December 31, 2023:

	Number of Shares			
	September 30, 2024	December 31, 2023	Exercise Price	Term
Equity-classified Warrants				
Legacy Orchestra Warrants	507,841	507,841	$1.08 – $30.11	0.10 – 8.75
Avenue Warrants (Note 14)	27,707	27,707	$7.67	2.50
Private Warrants Held by Sponsor	750,000	750,000	$11.50	4.32 – 4.57
Private Warrants Held by Employees (Note 11)	660,000	660,000	$11.50	4.32
Total Outstanding	1,945,548	1,945,548		

11. Stock-Based Compensation

As of September 30, 2024, the only equity compensation plan from which the Company may currently issue new awards is the Company's 2023 Equity Incentive Plan (the "2023 Plan"), as more fully described below.

Orchestra BioMed, Inc. 2018 Stock Incentive Plan

Prior to the Merger, Legacy Orchestra maintained the 2018 Plan, under which Legacy Orchestra granted incentive stock options, non-qualified stock options and restricted stock awards to its employees and certain non-employees, including consultants, advisors and directors. The maximum aggregate shares of Legacy Orchestra Common Stock that

was subject to awards and issuable under the 2018 Plan was 5.2 million shares prior to the Merger. Employees, consultants, and directors were eligible for awards granted under the 2018 Plan, which generally have a contractual life of up to 10 years and may be exercisable in cash or as otherwise determined by the Board. Vesting generally occurs over a period of not greater than three years.

As described in Note 3, in connection with the Merger, each Legacy Orchestra Option that was outstanding and unexercised immediately prior to the time that the Merger became effective (the "Effective Time") (whether vested or unvested) was assumed by the Company and converted into an option to purchase an adjusted number of shares of Company Common Stock at an adjusted exercise price per share, based on the Exchange Ratio, and will continue to be governed by substantially the same terms and conditions, including vesting, as were applicable to the former option. Each Exchanged Option is exercisable for a number of whole shares of Company Common Stock equal to the product of the number of shares of Legacy Orchestra Common Stock underlying such Legacy Orchestra Options multiplied by the Exchange Ratio, and the per share exercise price of such Exchanged Option is equal to the quotient determined by dividing the exercise price per share of the Legacy Orchestra Option by the Exchange Ratio. Following the closing of the Merger, no new awards may be made under the 2018 Plan.

The Company accounted for the Exchanged Options as a modification of the existing options. Incremental compensation costs, measured as the excess, if any, of the fair value of the modified options over the fair value of the original options immediately before its terms are modified, is measured based on the fair value of the underlying shares and other pertinent factors at the modification date. The impact of the option modifications were de minimis.

Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan

At the Effective Time, the Company adopted the 2023 Plan which permits the granting of incentive stock options, non-qualified options, stock appreciation rights, restricted stock, restricted stock units, performance awards and other stock-based award to employees, directors, and non-employee consultants and/or advisors. As of September 30, 2024, approximately 1.2 million shares of Company Common Stock are authorized for issuance pursuant to awards under the 2023 Plan. The pool of available shares will be automatically increased on the first day of each calendar year, beginning January 1, 2024 and ending January 1, 2032, by an amount equal to the lesser of (i) 4.8% of the outstanding shares of the Company Common Stock determined on a fully-diluted basis as of the immediately preceding December 31 and (ii) 3,036,722 shares of Company Common Stock, and (iii) such number of shares of Company Common Stock determined by the Board or the Compensation Committee prior to January 1st of a given year.

In addition, any awards outstanding under the 2018 Plan upon the Closing, after adjustment for the Business Combination, remain outstanding. If any of those awards subsequently expire, terminate, or are surrendered or forfeited for any reason without issuance of shares after the closing of the Business Combination, the shares of Company Common Stock underlying those awards will automatically become available for issuance under the 2023 Plan.

Total stock-based compensation related to option issuances was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	2024	2023	2024	2023
Research and development	$ 514	$ 391	$ 1,331	$ 1,206
Selling, general and administrative	637	610	1,828	1,979
Total stock-based compensation	$ 1,151	$ 1,001	$ 3,159	$ 3,185

As of September 30, 2024, there was approximately $7.3 million of unrecognized stock-based compensation expense associated with the stock options noted above that is expected to be recognized over a weighted average period of approximately 2.5 years.

Total stock-based compensation related to restricted stock awards and restricted stock units was as follows:

(in thousands)	Three Months Ended September 30, 2024	Three Months Ended September 30, 2023	Nine Months Ended September 30, 2024	Nine Months Ended September 30, 2023
Research and development	$ 202	$ 643	$ 941	$ 643
Selling, general and administrative	747	1,595	2,820	2,142
Total stock-based compensation	$ 949	$ 2,238	$ 3,761	$ 2,785

As of September 30, 2024, there was approximately $10.7 million of unrecognized restricted stock-based compensation expense associated with the restricted stock noted above that is expected to be recognized over a weighted average period of approximately 2.3 years.

As previously discussed in Note 3 and Note 10, pursuant to the terms of the Merger Agreement, immediately following the Sponsor Forfeiture and prior to the Closing, the Company issued 750,000 warrants to purchase Company Common Stock to eleven specified employees and directors of Legacy Orchestra. The Officer and Director Warrants have substantially similar terms to the forfeited Private Warrants, except that 50% of the Officer and Director Warrants will become exercisable 24 months after the Closing and the remaining 50% will become exercisable 36 months after the Closing. The estimated grant-date fair value of these warrant awards issued concurrent with the close of the Business Combination was calculated using the Black-Scholes option pricing model. Assumptions used were an expected term (in years) of 5.00, expected volatility of 50%, risk-free interest rate of 3.54%, expected dividend yield of 0%, and the fair value of the Company Common Stock of $10.63. During the year ended December 31, 2023, 90,000 Officer and Director Warrants were forfeited resulting in 660,000 Officer and Director Warrants remaining outstanding at December 31, 2023. There were no forfeitures of Officer and Director Warrants during the three and nine months ended September 30, 2024.

Total stock-based compensation related to warrants was as follows:

(in thousands)	Three Months Ended September 30, 2024	Three Months Ended September 30, 2023	Nine Months Ended September 30, 2024	Nine Months Ended September 30, 2023
Research and development	$ 120	$ 120	$ 361	$ 328
Selling, general and administrative	144	150	432	408
Total stock-based compensation	$ 264	$ 270	$ 793	$ 736

As of September 30, 2024, there was approximately $1.4 million of unrecognized stock-based compensation expense associated with the warrants noted above that is expected to be recognized over a weighted average period of approximately 1.3 years.

Stock Option Activity

The following table summarizes the stock option activity of the Company under the 2018 Plan and the 2023 Plan:

	Shares Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2024	4,438,868	$ 7.72	7.70	$ 8,186
Granted	1,089,535	5.59	—	—
Exercised	(45,159)	4.19	—	—
Forfeited/canceled	(106,045)	10.00	—	—
Outstanding September 30, 2024	5,377,199	$ 7.27	7.53	$ 1,280
Exercisable at September 30, 2024	3,306,947	$ 7.44	6.59	$ 1,098

The weighted average grant-date fair value of stock options granted during the nine months ended September 30, 2024 and 2023 was $3.77 and $4.01 per share, respectively.

The following table summarizes the restricted stock awards and restricted stock units activity of the Company under the Plan:

	Restricted Stock Awards/Units Outstanding	Weighted Average Grant Date Fair Value
Outstanding January 1, 2024	1,701,208	$ 7.39
Granted	809,744	5.14
Vested	(144,577)	7.60
Forfeited/canceled	—	—
Outstanding September 30, 2024	2,366,375	$ 6.64

No performance-based stock awards were granted in the nine months ended September 30, 2024.

Determination of Stock Option Awards Fair Value

The estimated grant-date fair value of all the Company's option awards was calculated using the Black-Scholes option pricing model, based on the following weighted average assumptions:

	Nine Months Ended September 30,	
	2024	2023
Expected term (in years)	6.12	6.09
Expected volatility	72 %	46 %
Risk-free interest rate	4.35 %	3.86 %
Expected dividend yield	0 %	0 %
Fair value of Company Common Stock	$ 5.59	$ 8.19

The fair value of each stock option grant was determined by the Company using the methods and assumptions discussed below. Each of these inputs is subjective and generally requires significant judgment and estimation by management.

Expected Term — The expected term represents the period that stock-based awards are expected to be outstanding. The Company's historical share option exercise information is limited due to a lack of sufficient data points and did not provide a reasonable basis upon which to estimate an expected term. The expected term for option grants is therefore determined using the "simplified" method, as prescribed in the SEC's Staff Accounting Bulletin (SAB) No. 107. The simplified method deems the expected term to be the midpoint between the vesting date and the contractual life of the stock-based awards.

Expected Volatility — The Company consummated the Business Combination on January 26, 2023 and lacks sufficient company-specific historical and implied volatility information. Therefore, it derives expected stock volatility using a weighted average blend of historical volatility of comparable peer public companies and its own historical volatility, over a period equivalent to the expected term of the stock-based awards.

Risk-Free Interest Rate — The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the date of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the stock-based awards' expected term.

Expected Dividend Yield — The expected dividend yield is zero as neither the Company nor Legacy Orchestra has paid, and the Company does not anticipate paying, any dividends on its Company Common Stock in the foreseeable future.

Fair Value of Common Stock — Prior to the Business Combination, as the Legacy Orchestra Common Stock has not historically been publicly traded, its board of directors periodically estimated the fair value of its common stock considering, among other things, contemporaneous valuations of its common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants 2013 Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. Subsequent to the Business Combination, the Company utilizes the price of its publicly-traded Company Common Stock to determine the grant date fair value of awards.

12. Leases

Office Lease

In August 2024, the Company entered into an additional addendum to the lease agreement for office space in New Hope, PA originally entered into by Legacy Orchestra in December 2009 (as amended, the "New Hope Lease"). The New Hope Lease covers 8,052 square feet and will expire in September 2027. Monthly fees under the New Hope Lease will be between $17,000 and $19,000 for the period from the August 2024 addendum through expiration.

In November 2019, Legacy Orchestra entered into a new lease agreement for approximately 5,200 square feet of office space in New York, NY. In November 2022, Legacy Orchestra entered into an amendment for this lease which increased the office space square footage to approximately 7,800 and amended the expiration to April 2028. Monthly fees will be between $28,000 and $40,000 for the period from commencement through expiration.

In January 2020, Legacy Orchestra entered into an agreement for the use of portions of the office space of Motus GI, a former related party, in Fort Lauderdale, Florida. In May 2022, Legacy Orchestra entered into an amendment for this lease which amended the expiration to November 2024. Monthly fees were between $7,000 and $23,000 for the period from commencement of the amendment through expiration. The amount paid is estimated to be proportionate to the percentage of space used by the Company applied to the monthly rent paid by Motus GI to its landlord.

In September 2024, the Company entered into a new lease for 6,496 square feet of office space in Fort Lauderdale, Florida which includes the previously leased office space from Motus GI. The agreement will expire in December 2027. The monthly fees will commence in November 2024, the commencement date of the agreement, and will be between $16,000 and $17,000 for the period from commencement through expiration.

Operating cash flow supplemental information for the nine months ended September 30, 2024:

Cash paid for amounts included in the present value of operating lease liabilities was $681,000 during the nine months ended September 30, 2024 compared to $669,000 during the nine months ended September 30, 2023.

As of September 30, 2024:	
Weighted average remaining lease term – operating leases, in years	3.39
Weighted average discount rate – operating leases	9.91 %

Operating Leases

Rent/lease expense for office and lab space was approximately $230,000 and $209,000 for the three months ended September 30, 2024 and 2023, respectively. Rent/lease expense for office and lab space was approximately $672,000 and $626,000 for the nine months ended September 30, 2024 and 2023, respectively. The table below shows the future minimum rental payments, exclusive of taxes, insurance, and other costs, under the leases as of September 30, 2024:

Year ending December 31:	**Operating Leases (in thousands)**
2024 (remaining three months)	$ 144
2025	551
2026	682
2027	643
2028	159
Thereafter	—
Total future minimum lease payments	$ 2,179
Imputed interest	(341)
Total liability	$ 1,838

13. Related Party Transactions

In addition to transactions and balances related to cash and stock-based compensation to officers and directors, the Company had the following transactions and balances with current related parties during the year ended December 31, 2023 and the nine months ended September 30, 2024:

Motus GI Investments

On September 12, 2023, Motus GI, a former related party, and the Company entered into an agreement to terminate the rights of previously held royalty certificates in exchange for 701,522 additional shares of Motus GI common stock resulting in a gain of $349,000 (see Note 7).

Following the announcement of its liquidation and dissolution in the second quarter of 2024, on August 9, 2024, Motus GI filed a Form 15 with the SEC to deregister its common stock under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and to suspend its reporting obligations under Section 15(d) of the Exchange Act. As a result of its liquidation and dissolution, the Company has concluded that Motus GI is no longer a related party.

14. Debt Financing

In June 2022, Legacy Orchestra entered into the 2022 Loan and Security Agreement. The terms of the 2022 Loan and Security Agreement included a term loan of up to $20 million available in two tranches with the first tranche of $10 million that was drawn at closing in June of 2022, and a second tranche of $10 million was available at closing of the Legacy Orchestra Series D-2 Preferred Stock financing which was not drawn. Additionally, the Company may have had access to a third tranche of $30 million subject to certain financing milestones. The term loan was scheduled to mature on June 1, 2026. In addition, the lender had the right, at its discretion, but not the obligation, to convert any portion of the outstanding principal amount of the loans up to $5 million into shares of Company Common Stock at a price per share equal to $12.00 (the "Conversion Option"), subject to adjustment; provided, however, the Conversion Option could not be exercised by lender during the six (6) month period after completion of the Business Combination.

Pursuant to the terms of the 2022 Loan and Security Agreement, Legacy Orchestra issued the Avenue Warrants that will be exercisable for 100,000 shares of Company Common Stock, and the estimated fair value of the warrants of $178,000 was recorded as debt discount on the date of issuance and was being amortized to interest expense over the term of the 2022 Loan and Security Agreement. In addition, other financing costs totaling $405,000 were also recorded as debt discount and were being amortized to interest expense over the term of the facility.

The term loan accrued interest at a floating per annum rate equal to the Wall Street Journal prime rate plus 6.45%. The repayment terms of the loan included monthly payments over a 4-year period, consisting of an initial 2-year interest-only period, followed by 24 monthly principal payments of $417,000 plus interest. In addition, there was a final payment equal to 4.25% of the initial commitment amount of $20 million, which was accrued over the term of the loan using the effective-interest method.

Concurrent with the closing of the 2022 Loan and Security Agreement, Legacy Orchestra terminated and repaid an existing 2019 Loan and Security Agreement with Silicon Valley Bank (the "2019 Loan and Security Agreement"), which resulted in a loss on extinguishment of $682,000. Pursuant to the terms of the 2019 Loan and Security Agreement, Legacy Orchestra issued Silicon Valley Bank a warrant that, to the extent Legacy Orchestra made draws on the 2019 Loan and Security Agreement, was exercisable for a number of shares of Legacy Orchestra Common Stock equal to 2% of the amount drawn divided by the exercise price of $1.33 per share of Legacy Orchestra Common Stock. As a result of the draw in December of 2020, Legacy Orchestra issued 150,000 Legacy Orchestra Common Stock warrants to Silicon Valley Bank, and the estimated fair value of the warrants of $544,000 was recorded as debt discount on the date of issuance and was being amortized to interest expense over the term of the credit facility. These warrants have been exercised and are no longer outstanding. The 2019 Loan and Security Agreement accrued interest at a floating per annum rate equal to the greater of (i) the Wall Street Journal prime rate plus 1.00% or (ii) 6.25%. In addition, there was a final payment equal to 8.25% of the original aggregate principal amount which accrued over the term of the loan using the effective-interest

method. Total interest expense recorded on these facilities during the three and nine months ended September 30, 2023 was approximately $469,000 and $1.4 million, respectively, while there was no interest expense for the three and nine months ended September 30, 2024.

On October 6, 2023, the Company terminated and repaid the 2022 Loan and Security Agreement in an aggregate amount of $10.9 million (the "Payoff Amount"), which resulted in a loss on extinguishment of approximately $1.2 million. The Payoff Amount includes $10 million of principal and approximately $849,000 of net interest, prepayment fees, and legal fees. The Company issued warrants to purchase 27,707 shares of Company Common Stock at an exercise price of $7.67 in lieu of a cash payment of approximately $212,500 of the Payoff Amount. The Company valued the Avenue Warrants using the Black-Scholes option-pricing model and determined the fair value at $66,000.

15. Net Loss Per Share

Basic net loss per share of Company Common Stock is computed by dividing net loss by the weighted-average number of shares of Company Common Stock. Shares of Company Common Stock outstanding but subject to forfeiture and cancellation by the Company (e.g., the Forfeitable Shares – see Note 3) are excluded from the weighted-average number of shares until the period in which such shares are no longer subject to forfeiture.

As discussed in Note 3, in connection with the Business Combination, existing Legacy Orchestra stockholders had the opportunity to elect to participate in the Earnout pursuant to which each such Earnout Participant may receive a portion of additional contingent consideration of up to 8,000,000 shares of Earnout Consideration. On April 12, 2023, the Initial Milestone Event was achieved, and each Earnout Participant was issued their Pro Rata Portion (as such term is defined in the Merger Agreement) of 4,000,000 shares of Company Common Stock, resulting in a total of 3,999,987 shares of Company Common Stock being issued (less than 4,000,000 due to rounding). Additionally, 500,000 of the Forfeitable Shares are no longer subject to forfeiture as a result of the Initial Milestone Event.

Diluted net loss per share of Company Common Stock includes the effect, if any, from the potential exercise or conversion of securities, such as stock options, Legacy Orchestra Warrants and Private Warrants, and Forfeitable Shares and Earnout Consideration, which would result in the issuance of incremental shares of Company Common Stock, unless their effect would be anti-dilutive.

The following outstanding potentially dilutive securities have been excluded from the calculation of diluted net loss per share for the three and nine months ended September 30, 2024 and September 30, 2023, as their effect is anti-dilutive:

	Three and Nine Months Ended September 30,	
	2024	2023
Stock options	5,377,199	4,579,065
Company common stock warrants	1,945,548	1,934,258
Unvested restricted stock awards	2,366,375	1,740,221
Conversion option	—	416,667
Forfeitable shares	500,000	500,000
Earnout consideration	4,000,000	4,000,000
Total	14,189,122	13,170,211

16. Subsequent Events

On November 6, 2024 (the "Closing Date"), the Company and certain of its subsidiaries (together with the Company, the "Borrower") entered into a Loan and Security Agreement (the "2024 LSA"), by and among the Borrower, the several banks and other financial institutions or entities party thereto, as lenders (collectively, the "Lenders"), and Hercules Capital, Inc., as administrative agent and collateral agent for itself and the Lenders. The 2024 LSA provides a secured term loan facility of up to $50.0 million available in up to four tranches (collectively, the "Term Loans"), with the first tranche of $15.0 million that was drawn on the Closing Date, a second and third tranche of up to an aggregate of $15.0 million available upon achievement of certain performance and financing milestones. Additionally, the Company may have access to a fourth tranche of $20.0 million subject to future approval.

The Term Loans accrue interest at a floating per annum rate equal to the greater of (i) (x) the Prime Rate (as reported in *The Wall Street Journal*) plus (y) 2.0%, and (ii) 9.50%. The repayment terms of the Term Loans include monthly payments over a 4-year period, consisting of an initial two year interest-only period, followed by 24 monthly principal payments plus interest, although the interest-only period can be extended under certain circumstances set forth in the 2024 LSA. In addition, the Company will pay an end of term charge of 6.35% upon the prepayment or repayment of the Term Loans and a facility charge of 0.75% upon any draws of the Term Loans.

In connection with the entry into the 2024 LSA, on the Closing Date, the Company issued each of the Lenders a warrant to purchase Company Common Stock (each a "Warrant" and, collectively, the "Warrants"). Pursuant to the terms of the Warrants, each Lender may purchase that number of shares of Company Common Stock equal to (i)(x) 0.02, multiplied by (y) the aggregate principal amount of all Term Loan Advances (as defined in the 2024 LSA) made to the Company by the applicable Lender, divided by (ii) $5.74, which is the Exercise Price of the Warrants. Each Warrant is exercisable for seven years from the Closing Date.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Unless otherwise indicated or the context otherwise requires, references to "Orchestra," "Orchestra's," "the Company," "we," "its" and "our" refer to Orchestra BioMed Holdings, Inc. and its consolidated subsidiaries. All references to years, unless otherwise noted, refer to the Company's fiscal years, which end on December 31.

The following discussion should be read together with "Special Note Regarding Forward-Looking Statements" and the Company's unaudited condensed consolidated financial statements, together with the related notes thereto, included elsewhere in this Quarterly Report (the "Consolidated Financial Statements"), and the Company's audited consolidated financial statements, together with the related notes thereto, included in the 2023 10K.

Closing of Business Combination

Prior to January 26, 2023, the Company was a special purpose acquisition company formed for the purpose of entering into a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities. On January 26, 2023, we consummated the business combination contemplated by the Agreement and Plan of Merger, dated as of July 4, 2022 (as amended by Amendment No. 1 to Agreement and Plan of Merger, dated July 21, 2022, and Amendment No. 2 to Agreement and Plan of Merger, dated November 21, 2022, the "Merger Agreement") by and among Health Sciences Acquisitions Corporation 2, a special purpose acquisition company incorporated as a Cayman Islands exempted company in 2020 and Orchestra's predecessor ("HSAC2"), HSAC Olympus Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of HSAC2 ("Merger Sub"), and Orchestra BioMed, Inc. ("Legacy Orchestra"). Pursuant to the Merger Agreement, (i) HSAC2 deregistered in the Cayman Islands in accordance with the Companies Act (2022 Revision) (As Revised) of the Cayman Islands and domesticated as a Delaware corporation in accordance with Section 388 of the Delaware General Corporation Law (the "Domestication") and (ii) Merger Sub merged with and into Legacy Orchestra, with Legacy Orchestra as the surviving company in the merger and, after giving effect to such merger, continuing as a wholly owned subsidiary of Orchestra (the "Merger" and, together with the Domestication and the other transactions contemplated by the Merger Agreement, the "Business Combination"). As part of the Domestication, we changed our name from "Health Sciences Acquisitions Corporation 2" to "Orchestra BioMed Holdings, Inc." On January 27, 2023, our common stock ("Company Common Stock") began trading on the Nasdaq Global Market under the symbol "OBIO." For additional information, see Note 3 to the Consolidated Financial Statements.

Reverse Recapitalization

The Business Combination is accounted for as a reverse recapitalization (the "Reverse Recapitalization") in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). Under this method of accounting, HSAC2 is treated as the "acquired" company and Legacy Orchestra is treated as the acquirer for financial reporting purposes. As a result, the consolidated assets, liabilities and results of operations prior to the Reverse Recapitalization are those of Legacy Orchestra. Additionally, the shares and corresponding capital amounts and losses per share, prior to the Business Combination, have been retroactively restated based on the exchange ratio established in the Merger Agreement (the "Exchange Ratio"). For additional information on the Business Combination and the Exchange Ratio, see Note 3 to the Consolidated Financial Statements.

Overview

We are a biomedical innovation company accelerating high-impact technologies to patients through risk-reward sharing partnerships with leading medical device companies. Our partnership-enabled business model focuses on forging strategic collaborations with leading medical device companies to drive successful global commercialization of products we develop. We are led by a highly accomplished, multidisciplinary management team and a board of directors with extensive experience in all phases of therapeutic device development. Our business was formed in 2018 by assembling a pipeline of multiple late-stage clinical product candidates originally developed by our founding team.

Our flagship product candidates are atrioventricular interval modulation ("AVIM") therapy (also known as BackBeat Cardiac Neuromodulation Therapy ("BackBeat CNT")), for the treatment of hypertension ("HTN"), a significant risk

factor for death worldwide, and Virtue Sirolimus AngioInfusion Balloon ("Virtue SAB") for the treatment of artery disease, the leading cause of mortality worldwide. We have an exclusive license and collaboration agreement with Medtronic, Inc. for the development and commercialization of AVIM therapy for the treatment of pacemaker-indicated patients with uncontrolled HTN despite the use of antihypertensive medications, and we have a strategic collaboration with Terumo Medical Corporation ("Terumo") for the development and commercialization of Virtue SAB for the treatment of coronary and peripheral artery disease.

Since Legacy Orchestra's inception, we have devoted the substantial majority of our resources to performing research and development and clinical activities in support of our product development and collaboration efforts. We have funded our operations primarily through the issuance of convertible preferred stock and proceeds from the Business Combination, as well as through proceeds from our distribution agreement with Terumo (the "Terumo Agreement"), borrowings under debt arrangements and, to a lesser extent, from product revenue from our subsidiary, FreeHold Surgical, LLC. ("FreeHold"). Through September 30, 2024, we have raised a cumulative $252.3 million in gross proceeds through the issuance of convertible preferred stock, proceeds from the Business Combination and other equity sales, and have received $30.0 million from the Terumo Agreement. We have incurred net losses each year since inception. Our net losses were $44.9 million and $36.3 million for the nine months ended September 30, 2024 and 2023, respectively. We expect to continue to incur significant losses for the foreseeable future. As of September 30, 2024, we had an accumulated deficit of $293.7 million.

Legacy Orchestra, our wholly owned subsidiary, was incorporated in Delaware in 2017 and completed a recapitalization and mergers with Caliber Therapeutics, Inc., a Delaware corporation that has, among other things, the rights to the Virtue SAB product candidate and BackBeat Medical, Inc., a Delaware Corporation that has, among other things, the rights to the Backbeat CNT product candidate, in 2018. Legacy Orchestra completed the conversions of Caliber Therapeutics, Inc. to Caliber Therapeutics, LLC, a Delaware limited liability company, and BackBeat Medical, Inc. to BackBeat Medical, LLC, a Delaware limited liability company, in 2019.

Recent Developments

At the Market Offerings

On May 15, 2024, we entered into an Open Market Sale Agreement℠ (the "Prior Agreement") with Jefferies LLC ("Jefferies"), pursuant to which we were able to offer and sell, from time to time through Jefferies, up to $100 million of shares of Company Common Stock by any method permitted by law and deemed to be an "at the market offering" as defined in Rule 415(a)(4) promulgated under the Securities Act. In connection with the entry into the Sales Agreement (as defined below), on August 12, 2024, we terminated the Prior Agreement with Jefferies (the "Termination"), in accordance with its terms and with the mutual agreement of Jefferies. The purpose of the Termination was to eliminate restrictions under certain SEC rules relating to the publication or dissemination of new research reports on our business by Jefferies in light of its role as sales agent under the Prior Agreement. Prior to the Termination, $15.5 million of shares of Company Common Stock had been sold under the Prior Agreement, with $84.5 million remaining available under the Prior Agreement. We cannot make any further sales of Company Common Stock pursuant to the Prior Agreement.

On August 12, 2024, we entered into a sales agreement (the "Sales Agreement") with TD Securities (USA) LLC, as agent ("TD Cowen"), pursuant to which we may offer and sell, from time to time through TD Cowen, up to $100 million of shares of Company Common Stock (the "Offering") by any method permitted by law and deemed to be an "at the market offering" as defined in Rule 415(a)(4) promulgated under the Securities Act. The Offering is being made pursuant to a shelf registration statement on Form S-3, filed with the SEC on May 15, 2024 and declared effective on May 24, 2024 (the "Shelf Registration Statement"), a base prospectus, dated May 24, 2024, included as part of the Shelf Registration Statement, and a prospectus supplement, dated August 12, 2024, filed with the SEC pursuant to Rule 424(b)(5) on August 12, 2024. As of September 30, 2024, no sales had been made under the Sales Agreement.

2024 Loan and Security Agreement

On November 6, 2024 (the "Closing Date"), we and certain of our subsidiaries (together with us, the "Borrower") entered into a Loan and Security Agreement (the "2024 LSA"), by and among the Borrower, the several banks and other financial institutions or entities party thereto, as lenders (collectively, the "Lenders"), and Hercules Capital, Inc. ("Hercules"), as administrative agent and collateral agent for itself and the Lenders. The 2024 LSA provides a secured term loan facility of up to $50.0 million available in up to four tranches (collectively, the "Term Loans"), with the first tranche of $15.0 million that was drawn on the Closing Date, a second and third tranche of up to an aggregate of $15.0 million available upon achievement of certain performance and financing milestones. Additionally, we may have access to a fourth tranche of $20.0 million subject to future approval.

The Term Loans accrue interest at a floating per annum rate equal to the greater of (i) (x) the Prime Rate (as reported in *The Wall Street Journal*) plus (y) 2.0%, and (ii) 9.50%. The repayment terms of the Term Loans include monthly payments over a 4-year period, consisting of an initial two year interest-only period, followed by 24 monthly principal payments plus interest, although the interest-only period can be extended under certain circumstances set forth in the 2024 LSA. In addition, we will pay an end of term charge of 6.35% upon the prepayment or repayment of the Term Loans and a facility charge of 0.75% upon any draws of the Term Loans.

In connection with the entry into the 2024 LSA, on the Closing Date, we issued each of the Lenders a warrant to purchase Company Common Stock (each a "Warrant" and, collectively, the "Warrants"). Pursuant to the terms of the Warrants, each Lender may purchase that number of shares of Company Common Stock equal to (i)(x) 0.02, multiplied by (y) the aggregate principal amount of all Term Loan Advances (as defined in the 2024 LSA) made to us by the applicable Lender, divided by (ii) $5.74, which is the Exercise Price of the Warrants. Each Warrant is exercisable for seven years from the Closing Date.

BACKBEAT Pivotal Study Amendment

We are currently implementing an amendment to the BACKBEAT global pivotal study protocol with existing and newly activated study sites that was approved by the U.S. FDA during the third quarter of 2024. The protocol amendment is intended to improve patient engagement processes and significantly expand the window for screening and enrolling patients. Specifically, the updated protocol allows patients to consent and have initial blood pressure assessment prior to pacemaker implant and be screened and enrolled 30 days prior to and up to 365 days post-implant procedure. Previously, patients could not consent prior to implant and could only be screened and enrolled up to 90 days post-implant, substantially limiting the pool of eligible patients. The updated protocol also streamlines site coordinator and patient visit activities. We are evaluating the impact of the protocol amendment on the rate of enrollment and anticipate providing an update on the timeline for completion of enrollment at the time of filing of our Annual Report on Form 10-K for the year ending December 31, 2024, which we expect to file at the end of the first quarter of 2025.

Registration Statement

Due to the significant number of redemptions of HSAC2's ordinary shares in connection with the Business Combination, there was a significantly lower number of HSAC2 ordinary shares that converted into shares of Company Common Stock in connection with the Business Combination. Pursuant to the Amended and Restated Registration Rights Agreement we entered into in connection with the closing of the Business Combination and certain warrant agreements, we filed a registration statement (the "Registration Statement"), which was declared effective on May 9, 2024, that registers, among other things, the resale of an aggregate of 18,586,201 shares of Company Common Stock, which constitutes approximately 49% of the outstanding Company Common Stock as of August 7, 2024. Additionally, some of the shares of the Company Common Stock being registered for resale were originally purchased by selling stockholders pursuant to investments in Legacy Orchestra or HSAC2 at prices considerably below the current market price of the Company Common Stock. These selling stockholders may realize a positive rate of return on the sale of their shares of Company Common Stock covered by the Registration Statement and therefore will have an incentive to sell their shares. Public shareholders may not experience a similar rate of return on shares of Company Common Stock they purchased. This discrepancy in purchase prices may have an impact on the market perception of the Company Common Stock's value and could increase the volatility of the market price of the Company Common Stock or result in a significant decline

in the public trading price of the Company Common Stock. The registration of these shares of Company Common Stock for resale creates the possibility of a significant increase in the supply of the Company Common Stock in the market. The increased supply, coupled with the potential disparity in purchase prices, may lead to heightened selling pressure, which could negatively affect the public trading price of the Company Common Stock.

Components of Our Results of Operations

Partnership Revenue

To date, our partnership revenues have related to the Terumo Agreement described below. In future periods, partnership revenues may also include revenues related to the Exclusive License and Collaboration Agreement, dated as of September 30, 2022, by and among, Legacy Orchestra, BackBeat Medical, LLC and Medtronic, Inc. (an affiliate of Medtronic plc) (the "Medtronic Agreement"), discussed in Note 5 to the Consolidated Financial Statements.

Legacy Orchestra entered into the Terumo Agreement in June 2019, and has determined that the arrangement represents a contract with a customer and is therefore in scope of ASC 606, *Revenues from Contracts with Customers* ("ASC 606"). Under the Terumo Agreement, Legacy Orchestra received an upfront payment of $30.0 million in 2019 and an equity commitment of up to $5 million of which $2.5 million was invested in June 2019 as part of the Legacy Orchestra Series B-1 financing and $2.5 million was invested in June 2022 as part of the Legacy Orchestra Series D-2 financing.

Under the Terumo Agreement, we were initially eligible for certain milestone payments in the amount of $65 million from Terumo upon completion of certain minimum enrollments in clinical studies, making certain filings and submissions, and obtaining certain regulatory approvals and certifications, and are also eligible to earn royalties on future sales by Terumo based on royalty rates ranging from 10 - 15%. Of these milestone payments, $35 million relate to achieving certain milestones by specified target achievement dates. As of the date of this Quarterly Report, we have already passed the target achievement dates for three $5 million milestone payments, in each case, without achieving the related milestones. In addition, due to delays in our Virtue SAB program resulting from the COVID-19 pandemic, supply chain issues and unexpected regulatory delays and requirements, including increased testing and other activities related to chemistry, manufacturing, and control, increased nonclinical and good laboratory practice preclinical data requirements, including biocompatibility, as well as a requirement to repeat good laboratory practice preclinical studies already performed based on changes to source of component materials and a change in manufacturing site, that caused us to amend our original project plan, we are unlikely to be able to complete the remaining time-based milestones by the specified target achievement dates to earn the remaining $20 million in time-based milestone payments pursuant to the Terumo Agreement. Further, Terumo has the right to terminate the agreement, or certain of its obligations thereunder, if certain milestones are not achieved.

As previously disclosed, we and Terumo have been negotiating for mutually agreeable adjustments to the Terumo Agreement with the purpose of restructuring milestone payments as well as making other potential material modifications to that agreement including additional financial commitments by Terumo to Orchestra and the Virtue SAB program. If negotiations are not completed to our satisfaction or to the satisfaction of Terumo, clinical study, product development, and commercialization plans for Virtue SAB may continue to be adversely impacted.

We recorded the $30.0 million upfront payment received in 2019 from Terumo within deferred revenue and are recognizing the upfront payment over time based on a proportional performance model based on the costs incurred to date relative to the total costs expected to be incurred through the completion of the development of the Coronary ISR indication, for which we are primarily responsible. We have recognized $14.5 million in cumulative partnership revenues from 2019 through September 30, 2024. There were no other proceeds received pursuant to the Terumo Agreement from 2019 through September 30, 2024.

In June 2022, Legacy Orchestra entered into the Medtronic Agreement for the development and commercialization of AVIM therapy for the treatment of pacemaker-indicated patients with uncontrolled HTN despite the use of antihypertensive medications. We have determined that the arrangement is a collaboration within the scope of ASC 808, *Collaborative Arrangements* ("ASC 808"). In addition, we concluded that Medtronic, Inc., an affiliate of Medtronic plc ("Medtronic"), is a customer for a good or service that is a distinct unit of account, and therefore, the transactions in the

Medtronic Agreement should be accounted for under ASC 606. Through September 30, 2024, there have been no amounts recognized as revenue under the Medtronic Agreement.

Product Revenue

Product revenues related to sales of FreeHold's intracorporeal organ retractors and such revenues are recognized at a point-in-time upon the shipment of the product to the customer given payment terms are typically 30 days. FreeHold products are currently only sold in the United States.

Cost of Product Revenue and Gross Margin

Cost of product revenue consists primarily of costs of finished goods components for use in FreeHold's products and assembled, warehoused and inventoried by a third-party vendor. We expect the cost of finished goods product revenue to increase in absolute terms as our revenue grows.

Our gross margin has been, and will continue to be, affected by a variety of factors, including finished goods manufactured component parts, as well as the cost to assemble and warehouse the FreeHold product finished goods inventory.

Research and Development Expenses

Research and development expenses consist of applicable personnel, consulting, materials and clinical study expenses. Research and development expenses include:

- Certain personnel-related expenses, including salaries, benefits, bonus, travel and stock-based compensation;
- Cost of clinical studies to support new products and product enhancements, including expenses for clinical research organizations and site payments;
- Product device materials and drug supply, and manufacturing used for internal research and development, and clinical activities;
- Allocated overhead including facilities and information technology expenses; and
- Cost of outside consultants who assist with device and drug development, regulatory affairs, clinical affairs and quality assurance.

Research and development costs are expensed as incurred. Research and development activities are central to our business model. Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical studies. In the future, we expect research and development expenses to increase in absolute dollars as we continue to develop new products, enhance existing products and technologies, initiate clinical studies, manufacture drug supply for internal research and development and clinical trial supply and perform activities related to obtaining additional regulatory approvals. We do not track expenses by product candidate, unless tracking such expenses is required pursuant to the revenue recognition model for a collaborative arrangement.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist of personnel-related expenses, including salaries, benefits, bonus, travel and stock-based compensation. Other selling, general and administrative expenses include professional services fees, including legal, audit, investor/public relations, and insurance costs, outside consultants costs, employee recruiting and training costs, and non-income taxes. Moreover, we incur and expect to continue to incur additional expenses associated with operating as a public company, including legal, accounting, insurance, exchange listing and SEC

compliance and investor relations. We expect quarterly selling, general and administrative expenses, excluding stock-based compensation expense, to continue to increase as a public company.

Interest Income, Net

Interest income reflects the income generated from marketable securities during the year. Interest expense is attributable to loan interest.

In June 2022, Legacy Orchestra entered into a loan and security agreement (the "2022 Loan and Security Agreement") with Avenue Venture Opportunities Fund, L.P. ("Avenue I") and Avenue Venture Opportunities Fund II, L.P. ("Avenue II," and, collectively with Avenue I, "Avenue"). As part of the 2022 Loan and Security Agreement, Legacy Orchestra paid off the balance of the 2019 Loan and Security Agreement (as defined below) with Silicon Valley Bank. The terms of the 2022 Loan and Security Agreement included a term loan of up to $20 million available in two tranches with the first tranche of $10 million that was drawn at closing in June of 2022, and a second tranche of $10 million available at closing of the Series D-2 Financing that was not drawn. Additionally, we may have had access to a third tranche of $30 million subject to certain financing milestones. The term loan had a maturity date of June 1, 2026 and accrued interest at a floating per annum rate equal to the Wall Street Journal prime rate plus 6.45%. On October 6, 2023, the 2022 Loan and Security Agreement was repaid in full and terminated. Refer to Note 14 to our Consolidated Financial Statements.

In December 2019, Legacy Orchestra entered into a Loan and Security Agreement with Silicon Valley Bank for a term loan as described in Note 14 to our Condensed Consolidated Financial Statements (the "2019 Loan and Security Agreement"). The 2019 Loan and Security Agreement provided Legacy Orchestra with capital for development and general corporate purposes. On December 31, 2020, Legacy Orchestra borrowed $10.0 million under the 2019 Loan and Security Agreement which was repaid in connection with entering into the 2022 Loan and Security Agreement.

Loss on Fair Value Adjustment of Warrant Liability

Certain of Legacy Orchestra's outstanding warrants contained features that required the warrants to be accounted for as liabilities. The warrants were subject to re-measurement at each balance sheet date with gains and losses reported through Legacy Orchestra's condensed consolidated statements of operations and comprehensive loss as loss on fair value adjustment of warrant liability. Upon closing of the Business Combination, all liability classified warrants of Legacy Orchestra became equity classified on that date as they are now considered "fixed for fixed."

Loss on Debt Extinguishment

The loss on debt extinguishment represents charges incurred as a result of the payoff of each of the 2019 Loan and Security Agreement and the 2022 Loan and Security Agreement.

Loss on Fair Value of Strategic Investments

The loss on fair value of strategic investments represents a change in the preferred shares and convertible notes of Vivasure Medical Limited ("Vivasure"), a privately-held company and related party, and fair value of our investment in Motus GI Holdings, Inc. ("Motus GI"), a previously publicly-held company and a former related party. The investments in Vivasure do not have readily determinable fair values and are recorded at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for identical or similar investments of the same issuer. The shares held of Motus GI represent equity securities with a readily determinable fair value and are required to be measured at fair value at each reporting period using readily determinable pricing available on a securities exchange, in accordance with the provisions of ASU 2016-01.

Results of Operations

Comparison of the Nine Months Ended September 30, 2024 and 2023

The following table presents our statement of operations data for the nine months ended September 30, 2024 and 2023, and the dollar and percentage change between the two periods (in thousands):

	Nine Months Ended September 30,			
	2024	2023	Change $	Change %
Revenue:				
Partnership revenue	$ 1,928	$ 2,018	$ (90)	(4)%
Product revenue	457	480	(23)	(5)%
Total revenue	2,385	2,498	(113)	(5)%
Expenses:				
Cost of product revenues	146	139	7	5 %
Research and development	31,833	25,311	6,522	26 %
Selling, general and administrative	18,030	16,073	1,957	12 %
Total expenses	50,009	41,523	8,486	20 %
Loss from operations	(47,624)	(39,025)	(8,599)	(22)%
Other income (expense):				
Interest income, net	2,834	2,741	93	3 %
Loss on fair value adjustment of warrant liability	—	(294)	294	100 %
(Loss) gain on fair value of strategic investments	(68)	276	(344)	(125)%
Other expense	(11)	—	(11)	NM *
Total other income	2,755	2,723	32	1 %
Net loss	$ (44,869)	$ (36,302)	$ (8,567)	(24)%

*Note: NM denotes that the computed amount is not meaningful.

Partnership Revenue

Partnership revenue decreased by $90,000, or approximately 4%, to $1.9 million in the nine months ended September 30, 2024 from $2.0 million for the nine months ended September 30, 2023. Partnership revenue relates to the recognition of the combined performance obligation for the license granted to Terumo and the ongoing research and development services over the estimated performance period for the Virtue SAB coronary ISR indication, using a proportional performance model, based on the costs incurred relative to the total estimated costs of the research and development services. As of each quarterly reporting date, we evaluate our estimates of the total costs expected to be incurred through the completion of the combined performance obligation and update our estimates as necessary.

For the nine months ended September 30, 2024 and 2023, the expenses incurred related to the Terumo Agreement were approximately $10.5 million and $11.7 million, respectively. The estimated total costs associated with the Terumo Agreement through completion increased by approximately 2.6% as of September 30, 2024 as compared to the estimates as of December 31, 2023, and increased by approximately 7.0% as of September 30, 2023, as compared to the estimates as of December 31, 2022.

While we believe we have estimated total costs associated with the Terumo Agreement through completion, these estimates encompass a broad range of expenses over a multi-year period and, as such, are subject to periodic changes as new information becomes available.

Product Revenue

Product revenue decreased by $23,000, or approximately 5%, to $457,000 in the nine months ended September 30, 2024 from $480,000 for the nine months ended September 30, 2023.

Product revenue consisted of the sale of FreeHold Duo and Trio intracorporeal organ retractors and revenue is recognized when product is shipped to customers. The decrease in product revenue was primarily due to a decrease in the

purchase volume of FreeHold Duo and Trio intracorporeal organ retractors. There were no changes to the per unit sale price in either period presented.

Cost of Product Revenue

Cost of product revenue increased by $7,000, or approximately 5%, to $146,000 in the nine months ended September 30, 2024 from $139,000 for the nine months ended September 30, 2023. The increase was primarily due to higher production costs per unit of FreeHold Duo and Trio intracorporeal organ retractors.

Research and Development Expenses

The following table summarizes our research and development expenses for the nine months ended September 30, 2024 and 2023 (in thousands):

	Nine Months Ended September 30,	
	2024	2023
Personnel and consulting costs	$ 14,416	$ 12,928
Non-clinical development costs	13,424	9,377
Clinical development costs	3,993	3,006
Total research and development expenses	$ 31,833	$ 25,311

Research and development expenses increased by $6.5 million, or approximately 26%, to $31.8 million for the nine months ended September 30, 2024 from $25.3 million for the nine months ended September 30, 2023. This is primarily due to an increase in support of ongoing work to advance the BACKBEAT pivotal study and to advance Virtue SAB into a planned pivotal study and included an increase in personnel related expenses of $1.0 million due to increased headcount and associated expenses, along with increased stock-based compensation of $456,000, an increase of $4.0 million in non-clinical development costs, and an increase of $986,000 in research and development program costs, supplies, and testing.

The total research and development expenses summarized above include $10.4 million for the nine months ended September 30, 2024 and $11.7 million for the nine months ended September 30, 2023 related to the Terumo Agreement. The decrease of $1.3 million is due to decreased expense activity related to the Terumo Agreement during the 2024 period.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased by $2.0 million, or approximately 12%, to $18.0 million for the nine months ended September 30, 2024, from $16.1 million of expense for the nine months ended September 30, 2023. The increase primarily resulted from an increase in personnel-related expenses of $673,000 due to increased headcount and associated expenses, along with increased stock-based compensation of $552,000 and an increase of $1.1 million of accounting, finance, legal, investor relations and public relations expenses incurred in connection with the overall growth of the business and being a public company.

Interest Income, Net

Interest income, net, increased by $93,000, or approximately 3%, to $2.8 million of income for the nine months ended September 30, 2024, from $2.7 million of income for the nine months ended September 30, 2023. The net interest income in the 2024 period consisted primarily of interest earned from marketable securities while the net interest income in the 2023 period consisted primarily of interest earned from marketable securities offset by monthly interest expense incurred resulting from the 2022 Loan and Security Agreement.

Loss on Fair Value Adjustment of Warrant Liability

The loss on fair value adjustment of warrant liability was $294,000 for the nine months ended September 30, 2023 and was the result of the final valuation of our outstanding warrants when they had become equity classified and no longer

subject to market adjustment upon the close of the Business Combination. There were no additional charges for the adjustment of fair value for warrant liability for the nine months ended September 30, 2024.

(Loss) Gain on Fair Value of Strategic Investments

The loss on fair value of strategic investments was $68,000 for the nine months ended September 30, 2024, as compared a gain of $276,000 for the nine months ended September 30, 2023. The amounts recognized for the nine months ended September 30, 2024 and 2023 related to the change in fair value in our common stock holdings of Motus GI. During the nine months ended September 30, 2024, Motus GI announced a resolution to liquidate and dissolve, at which time we concluded the fair value to be zero and expensed the remaining carrying value of our investment in Motus GI.

During the nine months ended September 30, 2023, we and Motus GI entered into an agreement, pursuant to which royalty certificates previously issued to us and other holders were amended to terminate the rights of royalty certificate holders to receive royalties in exchange for shares of Motus GI common stock. As a result of the agreement, we received 701,522 shares of Motus GI common stock in exchange for our royalty certificates, which had a de minimis carrying value.

Comparison of the Three Months Ended September 30, 2024 and 2023

The following table presents our statement of operations data for the three months ended September 30, 2024 and 2023, and the dollar and percentage change between the two periods (in thousands):

	Three Months Ended September 30,			
	2024	2023	Change $	Change %
Revenue:				
Partnership revenue	$ 803	$ 271	$ 532	$ 196 %
Product revenue	184	148	36	24 %
Total revenue	987	419	568	136 %
Expenses:				
Cost of product revenues	68	41	27	66 %
Research and development	11,595	8,558	3,037	35 %
Selling, general and administrative	5,666	6,344	(678)	(11)%
Total expenses	17,329	14,943	2,386	16 %
Loss from operations	(16,342)	(14,524)	(1,818)	(13)%
Other income (expense):				
Interest income, net	916	915	1	0 %
Gain on fair value of strategic investments	—	293	(293)	(100)%
Total other income	916	1,208	(292)	(24)%
Net loss	$ (15,426)	$ (13,316)	$ (2,110)	$ (16)%

Partnership Revenue

Partnership revenue increased by $532,000, or approximately 196%, to $803,000 in the three months ended September 30, 2024 from $271,000 for the three months ended September 30, 2023. Partnership revenue relates to the recognition of the combined performance obligation for the license granted to Terumo and the ongoing research and development services over the estimated performance period for the Virtue SAB coronary ISR indication, using a proportional performance model, based on the costs incurred relative to the total estimated costs of the research and development services. As of each quarterly reporting date, we evaluate our estimates of the total costs expected to be incurred through the completion of the combined performance obligation and update our estimates as necessary.

For the three months ended September 30, 2024 and 2023, the expenses incurred related to the Terumo Agreement were approximately $3.6 million and $3.4 million, respectively. The estimated total costs associated with the Terumo Agreement through completion as of September 30, 2024 as compared to the estimates as of June 30, 2024 remained substantially the same however the estimated total costs increased by approximately 4.4% as of September 30, 2023, as compared to the estimates as of June 30, 2023.

While we believe we have estimated total costs associated with the Terumo Agreement through completion, these estimates encompass a broad range of expenses over a multi-year period and, as such, are subject to periodic changes as new information becomes available.

Product Revenue

Product revenue increased by $36,000, or approximately 24%, to $184,000 in the three months ended September 30, 2024 from $148,000 for the three months ended September 30, 2023.

Product revenue consisted of the sale of FreeHold Duo and Trio intracorporeal organ retractors and revenue is recognized when product is shipped to customers. The increase in product revenue was primarily due to an increase in the purchase volume of FreeHold Duo and Trio intracorporeal organ retractors. There were no changes to the per unit sale price in either period presented.

Cost of Product Revenue

Cost of product revenue increased by $27,000, or approximately 66%, to $68,000 in the three months ended September 30, 2024 from $41,000 for the three months ended September 30, 2023. The increase was primarily due to increased sales and increased production costs per unit of FreeHold Duo and Trio intracorporeal organ retractors.

Research and Development Expenses

The following table summarizes our research and development expenses for the three months ended September 30, 2024 and 2023 (in thousands):

	Three Months Ended September 30,	
	2024	2023
Personnel and consulting costs	$ 4,800	$ 4,839
Non-clinical development costs	5,349	2,776
Clinical development costs	1,446	943
Total research and development expenses	$ 11,595	$ 8,558

Research and development expenses increased by $3.0 million, or approximately 35%, to $11.6 million for the three months ended September 30, 2024, from $8.6 million for the three months ended September 30, 2023. This is primarily due to an increase in support of ongoing work to advance BackBeat CNT and Virtue SAB into planned pivotal studies during 2024 and included an increase of $2.6 million in non-clinical development costs and an increase of $503,000 in research and development program costs, supplies, and testing.

The total research and development expenses summarized above include $3.6 million for the three months ended September 30, 2024 and $3.4 million for the three months ended September 30, 2023 related to the Terumo Agreement. The increase of $200,000 is due to increased expense activity related to the Terumo Agreement during the 2024 period.

Selling, General and Administrative Expenses

Selling, general and administrative expenses decreased by $678,000, or approximately 11%, to $5.7 million for the three months ended September 30, 2024, from $6.3 million of expense for the three months ended September 30, 2023. The decrease was primarily due to a decrease in stock-based compensation of $827,000 and a decrease in outside consulting expense of $198,000, partially offset by an increase in personnel related expenses of $375,000 due to increased headcount.

Interest Income, Net

Interest income, net, increased by $1,000 to $916,000 of income for the three months ended September 30, 2024, from

$915,000 of income for the three months ended September 30, 2023. The net interest income in the 2024 period consisted primarily of interest earned from marketable securities while the net interest income in the 2023 period consisted primarily of interest earned from marketable securities offset by monthly interest expense incurred resulting from the 2022 Loan and Security Agreement.

Gain on Fair Value of Strategic Investments

There was no adjustment to strategic investments for the three months ended September 30, 2024, as compared to a gain of $293,000 for the three months ended September 30, 2023, which was related to the change in fair value in our common stock holdings of Motus GI.

During the three months ended September 30, 2023, we and Motus GI entered into an agreement, pursuant to which royalty certificates previously issued to us and other holders were amended to terminate the rights of royalty certificate holders to receive royalties in exchange for shares of Motus GI common stock. As a result of the agreement, we received 701,522 shares of Motus GI common stock in exchange for our royalty certificates, which had a de minimis carrying value.

Liquidity and Capital Resources

From inception through September 30, 2024, we have incurred significant operating losses and negative cash flows from our operations. Our net losses were $44.9 million and $36.3 million for the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, we had an accumulated deficit of $293.7 million. We have funded our operations primarily through the issuance of convertible preferred stock, proceeds from the Business Combination and other equity sales, as well as through proceeds from the Terumo Agreement, borrowings under debt arrangements and, to a lesser extent, from FreeHold product revenue. Through September 30, 2024, we have raised a cumulative $252.3 million in gross proceeds through the issuance of convertible preferred stock, proceeds from the Business Combination and other equity sales, and have received $30.0 million under the Terumo Agreement. We had $25.6 million in cash and cash equivalents at September 30, 2024, which consisted primarily of bank deposits and money market funds. We also had $41.3 million of short-term marketable securities at September 30, 2024, which consisted primarily of our investments in corporate debt securities.

On August 12, 2024, we entered into the Sales Agreement with TD Cowen, pursuant to which we may offer and sell, from time to time through TD Cowen, up to $100 million of shares of Company Common Stock by any method permitted by law and deemed to be an “at the market offering” as defined in Rule 415(a)(4) promulgated under the Securities Act. As of September 30, 2024, all of the $100 million shares are available under this Sales Agreement. In connection with the entry into the Sales Agreement, on August 12, 2024, we terminated our Prior Agreement with Jefferies, in accordance with its terms and with the mutual agreement of Jefferies of which $15.5 million of shares of Company Common Stock were sold. We cannot make any further sales of the Company Common Stock pursuant to the Prior Agreement.

On November 6, 2024, the Company and certain of its subsidiaries entered into the 2024 LSA. The 2024 LSA provides a secured term loan facility of up to $50.0 million available in up to four tranches (collectively, the “Term Loans”), with the first tranche of $15.0 million that was drawn on the Closing Date, a second and third tranche of up to an aggregate of $15.0 million available upon achievement of certain performance and financing milestones. Additionally, the Company may have access to a fourth tranche of $20.0 million subject to future approval.

The Term Loans accrue interest at a floating per annum rate equal to the greater of (i) (x) the Prime Rate (as reported in *The Wall Street Journal*) plus (y) 2.0%, and (ii) 9.50%. The repayment terms of the Term Loans include monthly payments over a 4-year period, consisting of an initial two-year interest-only period, followed by 24 monthly principal payments plus interest, although the interest-only period can be extended under certain circumstances set forth in the 2024 LSA. In addition, the Company will pay an end of term charge of 6.35% upon the prepayment or repayment of the Term Loans and a facility charge of 0.75% upon any draws of the Term Loans.

In addition, the exercise price of our warrants, in certain circumstances, may be higher than the prevailing market price of the Company Common Stock and the cash proceeds to us associated with the exercise of our warrants are contingent upon the price of the Company Common Stock. The value of the Company Common Stock may fluctuate and

may not exceed the exercise price of the warrants at any given time. As of the date of this Quarterly Report, a significant portion of our warrants are "out of the money," meaning the exercise price is higher than the market price of the Company Common Stock. Holders of such "out of the money" warrants are not likely to exercise such warrants. As a result, we may not receive any proceeds from the exercise of such warrants. There can be no assurance that such warrants will be in the money prior to their respective expiration dates, and therefore, we may not receive any cash proceeds from the exercise of such warrants to fund our operations.

As a result, we have neither included nor intend to include any potential cash proceeds from the exercise of our warrants in our short-term or long-term liquidity projections. We will continue to evaluate the probability of warrant exercise over the life of our warrants and the merit of including potential cash proceeds from the exercise in our liquidity projections. We do not expect to rely on the exercise of our warrants to fund our operations.

Funding Requirements

We continue to prioritize planned spending on our AVIM therapy program and the execution of our BACKBEAT pivotal study, for which we announced the commencement of enrollment on January 8, 2024. With regard to our AVIM therapy program and our planned BACKBEAT pivotal study, we currently expect operating expenses to increase to support clinical study costs as well as additional research and development expenses in support of future potential regulatory approval and commercialization of AVIM therapy-enabled Medtronic pacemakers. As previously disclosed, we reduced our 2024 planned spending related to our Virtue SAB program and the execution of our Virtue ISR-US pivotal study, for which we announced conditional investigational device exemption approval from the FDA on August 8, 2023, in order to focus on (1) optimizing the design of our Virtue ISR-US study in light of the March 2024 FDA approval of BSC's AGENT paclitaxel DCB for the treatment of coronary ISR; and (2) restructuring our partnership agreement with Terumo in a manner that provides us with a satisfactory amount of additional capital, whether from milestone payments or other financial arrangements, which additional capital we may not receive..

Based on current internally prepared budget estimates that reflect our operating plans, including the assumptions that we proceed with an optimized Virtue ISR-US study in the first half of 2025 and we successfully restructure the agreement with Terumo, we anticipate that our cash, cash equivalents, marketable securities, and potential future proceeds described below are sufficient to fund our operations into the second half of 2026. The amount and timing of our future funding requirements may change from this current estimate and are dependent on many factors, including the cost and pace of execution of clinical studies and research and development activities, the strength of results from clinical studies and other research, development and manufacturing efforts, as well as the potential receipt of revenues or other payments or investments under a restructured Terumo Agreement, the Medtronic Agreement and/or future collaborations, and the realization of cash from the potential sale of our holdings in Vivasure. There are no assurances that any of these factors will be favorable to us, and we may need to seek additional sources of liquidity to meet our funding requirements earlier than current estimates, including the issuance of new equity, additional drawdowns under the 2024 LSA to the extent we meet the financing and performance requirements to be eligible for such drawdowns, drawdowns on new loan facilities that we may enter into, and/or other financing structures. In this regard, as of the date of this Quarterly Report, we may sell from time to time, up to approximately $100.0 million of shares of Company Common Stock under the Sales Agreement.

As noted above, the sale of Company Common Stock pursuant to the Registration Statement may result in a decline in the value of the Company Common Stock, which may make it more difficult and more dilutive to the existing holders of Company Common Stock to raise funds from the sale of our equity securities.

Cash Flows

The following table summarizes our cash flow data for the periods indicated (in thousands):

	Nine Months Ended September 30,	
	2024	2023
Net cash used in operating activities	$ (37,020)	$ (35,153)
Net cash provided by (used in) investing activities	16,842	(22,464)
Net cash provided by financing activities	15,224	56,911
Net decrease in cash and cash equivalents	$ (4,954)	$ (706)

Comparison of the Nine Months Ended September 30, 2024 and 2023

Net Cash Flows from Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2024 was $37.0 million and primarily consisted of our net loss of $44.9 million, partially offset by non-cash charges of $7.3 million and changes in net operating assets and liabilities of $598,000. Our non-cash charges primarily consisted of stock-based compensation of $7.7 million, partially offset by $1.3 million related to accretion and interest of marketable securities. The net change in operating assets and liabilities was primarily due to an increase in accounts payable and accrued expenses of $3.7 million and a decrease in deferred revenue of $1.9 million.

Net cash used in operating activities for the nine months ended September 30, 2023 was $35.2 million and primarily consisted of our net loss of $36.3 million, and changes in net operating assets and liabilities of $3.2 million, which was partially offset by non-cash charges of $4.3 million. Our non-cash charges primarily consisted of a loss on fair value adjustment of warrant liability of $294,000 and stock-based compensation of $6.7 million, offset by $3.2 million related to accretion and interest of marketable securities. The net change in operating assets and liabilities was primarily due to a decrease in accounts payable and accrued expenses of $348,000, an increase in prepaid expenses and other assets of $458,000, and a decrease in deferred revenue of $2.0 million.

Net Cash Flows from Investing Activities

Net cash provided by investing activities for the nine months ended September 30, 2024 was $16.8 million, which primarily consisted of the sale of $69.4 million of marketable securities, partially offset by the purchase of $52.4 million of marketable securities.

Net cash used in investing activities for the nine months ended September 30, 2023 was $22.5 million, which primarily consisted of the purchase of $138.1 million of marketable securities offset by the sale of $115.7 million of marketable securities.

Net Cash Flows from Financing Activities

Net cash provided by financing activities of $15.2 million for the nine months ended September 30, 2024 was primarily attributable to the proceeds of $15.0 million, net of issuance costs, from the at-the-market offering under the Prior Agreement with Jefferies.

Net cash provided by financing activities of $56.9 million for the nine months ended September 30, 2023 was primarily attributable to net proceeds from the Business Combination. For additional information, see Note 3 to the Consolidated Financial Statements.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations and commitments as of September 30, 2024 (in thousands):

	Payments Due by Period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Operating lease obligations	$ 2,179	$ 556	$ 1,345	$ 278	$ —
Total	$ 2,179	$ 556	$ 1,345	$ 278	$ —

We enter into agreements in the normal course of business with clinical research organizations for work related to clinical trials and with vendors for preclinical studies and other services and products for operating purposes, which are cancelable at any time by us, generally upon 30 days prior written notice. These payments are not included in the above table of contractual obligations and commitments. In addition, the above table does not include our obligations to make interest and principal payments under the 2024 LSA, which was entered into after September 30, 2024.

Critical Accounting Policies and Estimates

Our financial statements are prepared in accordance with U.S. GAAP. The preparation of the financial statements in conformity with U.S. GAAP requires our management to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the period. We evaluate our significant estimates on an ongoing basis, including estimates related to the total costs expected to be incurred though the completion of the combined performance obligation of the Terumo Agreement, research and development prepayments, accruals and related expenses and stock-based compensation. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates.

We believe that the accounting policies described below involve a significant degree of judgment and complexity. Accordingly, we believe these are the most critical to aid in fully understanding and evaluating our financial condition and results of operations. For further information, see Note 2 to the Consolidated Financial Statements.

Revenue Recognition

We recognize revenue under the core principle according to ASC 606 to depict the transfer of control to our customers in an amount reflecting the consideration we expect to be entitled to. In order to achieve that core principle, we apply the following five step approach: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract and (5) recognize revenue when a performance obligation is satisfied.

Our revenues are currently comprised of partnership revenues under the Terumo Agreement related to the development and commercialization of Virtue SAB, and product revenue from the sale of FreeHold's intracorporeal organ retractors.

Partnership Revenues

To date, our partnership revenues have related to the Terumo Agreement described below. In future periods, partnership revenues may also include revenues related to the Medtronic Agreement, discussed in Note 5 to the Consolidated Financial Statements.

Legacy Orchestra entered into the Terumo Agreement as further described in Note 4 to the Consolidated Financial Statements. We assessed whether the Terumo Agreement fell within the scope of ASC 808 based on whether the

arrangement involved joint operating activities and whether both parties have active participation in the arrangement and are exposed to significant risks and rewards. We determined that the Terumo Agreement did not fall within the scope of ASC 808. We then analyzed the arrangement pursuant to the provisions of ASC 606 and determined that the arrangement represents a contract with a customer and is therefore within the scope of ASC 606.

The promised goods or services in the Terumo Agreement include (i) license rights to our intellectual property and (ii) research and development services. We also have optional additional items in the Terumo Agreement, which are considered marketing offers and are accounted for as separate contracts with the customer if such option is elected by the customer, unless the option provides a material right which would not be provided without entering into the contract. Performance obligations are promised goods or services in a contract to transfer a distinct good or service to the customer. Promised goods or services are considered distinct when (i) the customer can benefit from the good or service on its own or together with other readily available resources or (ii) the promised good or service is separately identifiable from other promises in the contract. In assessing whether promised goods or services are distinct in the Terumo Agreement, we considered factors such as the stage of development of the underlying intellectual property, the capabilities of the customer to develop the intellectual property on their own or whether the required expertise is readily available.

We estimate the transaction price for the Terumo Agreement performance obligations based on the amount expected to be received for transferring the promised goods or services pursuant to the Terumo Agreement. The consideration includes both fixed consideration and variable consideration. At the inception of the Terumo Agreement, as well as at each reporting period, we evaluate the amount of potential payment and the likelihood that the payments will be received. We utilize either the most likely amount method or expected amount method to estimate the amount expected to be received based on which method better predicts the amount expected to be received. If it is probable that a significant revenue reversal would not occur, the variable consideration is included in the transaction price.

The Terumo Agreement contains development and regulatory milestone payments. At contract inception and at each reporting period, we evaluate whether the milestones are considered probable of being reached and estimate the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. At the end of each subsequent reporting period, we re-evaluate the probability of achievement of such development milestones and any related constraint, and if necessary, adjust our estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect partnership revenues and earnings in the period of adjustment.

The Terumo Agreement also includes sales-based royalties and the license is deemed to be the predominant item to which the royalties relate. Accordingly, we will recognize royalty revenue when the related sales occur. To date, we have not recognized any royalty revenue under the arrangement.

We have determined that intellectual property licensed to Terumo and the research and development services to be provided to support the premarket approval by the FDA for the ISR indication represent a combined performance obligation that is satisfied over time, which is currently estimated to be completed in 2029, and that the appropriate method of measuring progress for purposes of recognizing revenues relates to a proportional performance model that measures the proportional performance based on the costs incurred to date relative to the total costs expected to be incurred through the completion of the performance obligation. We evaluate the measure of progress at each reporting period and, if necessary, adjust the measure of performance and related revenue recognition.

In the nine months ended September 30, 2024, we updated our estimates of the total costs expected to be incurred through the completion of the combined performance obligation. The impact of the changes in estimates resulted in a reduction in partnership revenues of $371,000, which resulted in a $0.01 effect on net loss per share, basic and diluted. In the nine months ended September 30, 2023, the impact of the changes in estimates resulted in a reduction of partnership revenues of $882,000, which resulted in a $0.03 effect on net loss per share, basic and diluted.

We receive payments from Terumo based on billing schedules established in the contract. Such billings for milestone related events have 10-day terms from the date the milestone is achieved, royalty payments are 20-day terms after the close of each quarter, any optional services are 20 days after receipt of an invoice and sales of SirolimusEFR are within 30 days after receipt of the shipping invoices. Upfront payments are recorded as deferred revenue upon receipt or when due until

we perform our obligations under these arrangements. Amounts are recorded as accounts receivable when the right to consideration is unconditional.

In June 2022, Legacy Orchestra, BackBeat Medical, LLC and Medtronic entered into the Medtronic Agreement for the development and commercialization of AVIM therapy for the treatment of pacemaker-indicated patients with uncontrolled HTN despite the use of antihypertensive medications. We determined that the arrangement is a collaboration within the scope of ASC 808. In addition, we concluded Medtronic is a customer for a good or service that is a distinct unit of account, and therefore the transactions in the Medtronic Agreement should be accounted for under ASC 606. Through September 30, 2024, there have been no amounts recognized as revenue under the Medtronic Agreement.

Product Revenues

Product revenues related to sales of FreeHold's intracorporeal organ retractors are recognized at a point-in-time upon the shipment of the product to the customer, and there are no significant estimates or judgments related to estimating the transaction price. The product revenues consist of a single performance obligation, and the payment terms are typically 30 days. Product revenues are recognized solely in the United States.

Research and Development Prepayments, Accruals and Related Expenses

We incur costs of research and development activities conducted by our third-party service providers, which include the conduct of preclinical and clinical studies. We are required to estimate our prepaid and accrued research and development costs at each reporting date. These estimates are made as of the reporting date of the work completed over the life of the individual study in accordance with agreements established with our service providers. We determine the estimates of research and development activities incurred at the end of each reporting period through discussion with internal personnel and outside service providers, as to the progress or stage of completion of trials or services, as of the end of the reporting period, pursuant to contracts with the third parties and the agreed upon fees to be paid for such services. Nonrefundable advance payments for goods or services to be received in the future for use in research and development activities are deferred and capitalized. The capitalized amounts are expensed as the related goods are accepted by us or the services are performed. Accruals are recorded for the amounts of services provided that have not yet been invoiced.

Warrants

We evaluate our warrants to determine if the contracts qualify as liabilities in accordance with ASC 480-10, *Distinguishing Liabilities from Equity,* and ASC 815, *Derivatives and Hedging*. If the warrant is determined to meet the criteria to be liability classified, the warrant liability is marked-to-market each balance sheet date and recorded as a liability, with the change in fair value recorded in our condensed consolidated statements of operations and comprehensive loss as gain (loss) on fair value adjustment of warrant liability within other income or expense.

In bundled transactions, the proceeds received from any debt instruments and liability classified warrants are allocated to the warrant at fair value first, and the residual value is then allocated to the debt instrument. Upon conversion or exercise of a warrant that is subject to liability treatment, the instrument is marked to fair value at the conversion or exercise date and the fair value is reclassified to equity. Equity classified warrants are recorded within additional paid-in capital at the time of issuance at fair value as of the issuance date and are not subject to subsequent remeasurement.

Stock-Based Compensation

We account for share-based payments at fair value. The fair value of stock options is measured using the Black-Scholes option-pricing model and the fair value of restricted stock is measured based on the fair value of the Company Common Stock underlying the award as of the grant date, described further below. For share-based awards that vest subject to the satisfaction of a service requirement, the fair value measurement date for stock-based compensation awards is the date of grant and the expense is recognized on a straight-line basis, over the vesting period. We account for forfeitures as they occur.

Prior to the Business Combination, due to the absence of an active market for Legacy Orchestra's common stock, Legacy Orchestra utilized methodologies, approaches, and assumptions consistent with the American Institute of Certified Public Accountants' Audit and Accounting Practice Guide: Valuation of Privately-Held Company Equity Securities Issued as Compensation to estimate the fair value of its common stock. The fair value of Legacy Orchestra's common stock was determined based upon a variety of factors, including valuations of Legacy Orchestra's common stock performed with the assistance of independent third-party valuation specialists; Legacy Orchestra's stage of development and business strategy, including the status of research and development efforts of its product candidates, and the material risks related to its business and industry; Legacy Orchestra's business conditions and projections; Legacy Orchestra's results of operations and financial position, including its levels of available capital resources; the valuation of publicly traded companies in the life sciences and biotechnology sectors, as well as recently completed mergers and acquisitions of peer companies; the lack of marketability of Legacy Orchestra's common stock as a private company; the prices of Legacy Orchestra's convertible preferred stock sold to investors in arm's length transactions and the rights, preferences and privileges of its convertible preferred stock relative to those of its common stock; the likelihood of achieving a liquidity event for the holders of Legacy Orchestra's common stock, such as an initial public offering or a sale of Legacy Orchestra given prevailing market conditions; trends and developments in its industry; the hiring of key personnel and the experience of management; and external market conditions affecting the life sciences and biotechnology industry sectors. Significant changes to the key assumptions underlying the factors used could result in different fair values of Legacy Orchestra's common stock at each valuation date. In determining the exercise prices for options granted and fair value of restricted stock, we have considered the fair value of the common stock as of the grant date.

Prior to the Business Combination, valuation analyses were conducted utilizing a probability weighted expected return method, in which the probability of a public company scenario was considered via either an initial public offering or special purpose acquisition company transaction. Subsequent to the Business Combination, fair value was determined by market prices of the Company Common Stock.

We classify stock-based compensation expense in our condensed consolidated statements of operations and comprehensive loss in the same manner in which the award recipients' payroll costs are classified or in which the award recipients' service payments are classified.

The fair value of each stock option grant is estimated on the date of grant using the Black-Scholes option pricing model, which is based on the assumptions discussed below. Each of these inputs is subjective and generally requires significant judgment and estimation by management.

- *Expected Term* — The expected term represents the period that stock-based awards are expected to be outstanding. Our historical share option exercise information is limited due to a lack of sufficient data points and does not provide a reasonable basis upon which to estimate an expected term. The expected term for option grants is therefore determined using the "simplified" method, as prescribed in the SEC's Staff Accounting Bulletin (SAB) No. 107. The simplified method deems the expected term to be the midpoint between the vesting date and the contractual life of the stock-based awards.

- *Expected Volatility* — We consummated the Business Combination on January 26, 2023 and lack sufficient company-specific historical and implied volatility information. Therefore, we derived expected stock volatility using a weighted average blend of historical volatility of comparable peer public companies and our own historical volatility, over a period equivalent to the expected term of the stock-based awards.

- *Risk-Free Interest Rate* — The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the date of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the stock-based awards' expected term.

- *Expected Dividend Yield* — The expected dividend yield is zero as neither we nor Legacy Orchestra has paid, and we do not anticipate paying, any dividends on the Company Common Stock in the foreseeable future.

- *Common Stock Valuation* — Prior to the Business Combination, given the absence of a public trading market for Legacy Orchestra's common stock, Legacy Orchestra's board of directors considered numerous subjective and

objective factors to determine the best estimate of fair value of Legacy Orchestra's common stock underlying the stock options granted to its employees and non-employees. In determining the grant date fair value of Legacy Orchestra's common stock, Legacy Orchestra's board considered, among other things, contemporaneous valuations of its common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants 2013 Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. Following the Business Combination, our board of directors determines the fair value of the Company Common Stock based on the closing price of the Company Common Stock on or around the date of grant.

During the three months ended September 30, 2024 and 2023, stock-based compensation was $2.4 million and $3.5 million, respectively. During the nine months ended September 30, 2024 and 2023, stock-based compensation was $7.7 million and $6.7 million, respectively. As of September 30, 2024, we had approximately $19.4 million of total unrecognized stock-based compensation, which we expect to recognize over a weighted-average period of approximately 2.3 years.

Recently Issued Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact our financial position and results of operations is disclosed in Note 2, Summary of Significant Accounting Policies, to the Consolidated Financial Statements.

Emerging Growth Company and Smaller Reporting Company Status

We are an "emerging growth company," as defined in Section 2(a) of the Securities Act of 1933 (the "Securities Act"), as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). As such, we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our Consolidated Financial Statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

We will remain an emerging growth company until the earliest of (1) the last day of the fiscal year following the fifth anniversary of the closing of the initial public offering of HSAC2, (2) the last day of the fiscal year in which we have total annual gross revenue of at least $1.235 billion, (3) the last day of the fiscal year in which we are deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of the Company Common Stock held by non-affiliates exceeded $700.0 million as of the last business day of the second fiscal quarter of such year, or (4) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

We are also a "smaller reporting company" as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as (i) the market value of our voting and non-voting Company Common Stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or (ii)(a) our annual revenue is less than $100.0 million during the most recently completed fiscal year and (b) the market value of our voting and non-voting Company Common Stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures.

We maintain "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), that are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2024, the end of the period covered by this Quarterly Report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2024.

Changes in Internal Control Over Financial Reporting.

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the fiscal quarter ended September 30, 2024 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitation on the Effectiveness of Internal Control.

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures, or our internal controls, will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our Company have been detected.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we may become involved in various claims and legal proceedings that arise in the ordinary course of our business. We are not currently a party to any material legal proceedings and are not aware of any pending or

threatened legal proceeding against us that we believe would have a material adverse effect on our business, operating results or financial condition.

Item 1A. Risk Factors.

Our operations and financial results are subject to various risks and uncertainties, including those described under the heading “Item 1A. Risk Factors” in the 2023 10-K, which could adversely affect our business, financial condition, results of operations, liquidity and the trading price of Company Common Stock. There have been no material changes to the risk factors previously disclosed in the 2023 10-K, except as set forth below.

We may not be able to borrow additional funds under the 2024 LSA, and the terms of the 2024 LSA place restrictions on our operating and financial flexibility.

In November 2024, we entered into the 2024 LSA pursuant to which a term loan facility in an aggregate principal amount up to $50.0 million is available to us in four tranches, with the first tranche of $15.0 million drawn on the Closing Date, and a second and third tranche of up to an aggregate of $15.0 million available upon achievement of certain performance and financing milestones. Additionally, we may have access to a fourth tranche of up to $20.0 million subject to the sole discretion of the Lenders. There is no assurance that we will be able to achieve the performance and financing milestones necessary to draw additional amounts under the 2024 LSA or that the Lenders will provide funds under the fourth tranche.

The 2024 LSA is secured by a lien on substantially all of our assets, including our intellectual property. The 2024 LSA includes affirmative and negative covenants that limit our operating flexibility and events of default applicable to us. The affirmative covenants include, among others, covenants requiring us to permit representatives of Hercules and the Lenders to, among other things, inspect the collateral for the 2024 LSA, keep such collateral clear from any legal process or liens, deliver certain financial reports and maintain insurance coverage. The negative covenants include, among others, restrictions on making changes to the nature of our business, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, and engaging in transactions with affiliates. The 2024 LSA also includes a liquidity covenant that commences on April 1, 2025, or, if certain financing milestones are satisfied, December 1, 2025. There is no guarantee that we will be able to comply with this financial covenant or pay the principal and interest on the 2024 LSA when due.

Events of default under the 2024 LSA include, among other things and subject to customary exceptions: (i) insolvency, liquidation, bankruptcy or similar events; (ii) failure to pay any debts due under the 2024 LSA or other related loan documents on a timely basis; (iii) failure to observe certain covenants under the 2024 LSA; (v) occurrence of a "material adverse effect” as set forth in the 2024 LSA; (vi) material misrepresentation by us; (vii) occurrence of any default under any other agreement involving material indebtedness; and (viii) certain material money judgments. If we default under the 2024 LSA, Hercules may accelerate all of our repayment obligations and take control of our pledged assets, potentially requiring us to renegotiate the 2024 LSA on terms less favorable to us or to immediately cease operations. Further, if we are liquidated, the Lenders’ right to repayment would be senior to the rights of the holders of Company Common stock to receive any proceeds from the liquidation. Any declaration by Hercules of an event of default could significantly harm our business and prospects and could cause the price of the Company Common Stock to decline. If we raise any additional debt financing in the future, the terms of such additional debt could further restrict our operating and financial flexibility.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Darren Sherman Bonus

The information included in this portion of Part II, Item 5 of this Quarterly Report is provided in lieu of filing such information on a Current Report on Form 8-K under Item 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers).

On November 7, 2024, the Compensation Committee of the Board approved a one-time cash bonus of $150,000 (the "Bonus") to Darren Sherman, our President and Chief Operating Officer and a director, to be paid on November 15, 2024 in light of Mr. Sherman's performance and continued contributions to the Company. Pursuant to the terms of the Bonus, Mr. Sherman is required to repay the Bonus as follows in the event of (i) his voluntary resignation without Good Reason, or (ii) the termination of his employment for Cause (as Good Reason and Cause are defined in Mr. Sherman's January 26, 2023 Orchestra BioMed Holdings, Inc. Amended and Restated Employment Agreement), in either case before May 15, 2026:

- if his employment terminates prior to May 15, 2025, he shall repay all $150,000 of the Bonus;
- if his employment terminates on or after May 15, 2025 but prior to November 15, 2025, he shall repay $100,000 of the Bonus;
- if his employment terminates on or after November 15, 2025 but prior to May 15, 2026, he shall repay $50,000 of the Bonus; and
- if his employment terminates on or after May 15, 2026, he shall not be required to repay any of the Bonus.

The foregoing description of the Bonus does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Bonus Letter Agreement, dated November 8, 2024, by and between the Company and Darren Sherman, which is filed as Exhibit 10.2 hereto and is incorporated herein by reference.

2024 Security and Loan Agreement

The information included in this portion of Part II, Item 5 of this Quarterly Report on Form 10-Q is provided in lieu of filing such information on a Current Report on Form 8-K under Item 1.01 (Entry into a Material Definitive Agreement). Item 2.03 (Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant) and Item 3.02 (Unregistered Sales of Equity Securities).

On November 6, 2024 (the "Closing Date"), the Company and certain of its subsidiaries (together with the Company, the "Borrower") entered into a Loan and Security Agreement (the "2024 LSA"), by and among the Borrower, the several banks and other financial institutions or entities party thereto, as lenders (collectively, the "Lenders"), and Hercules Capital, Inc., as administrative agent and collateral agent for itself and the Lenders.

Amount. The 2024 LSA provides a secured term loan facility of up to $50.0 million (collectively, the "Term Loans"), consisting of:

(a) An initial tranche of Term Loans in an aggregate amount of $15.0 million, which was funded on the Closing Date.

(b) Subject to the terms and conditions of the 2024 LSA, an additional tranche of Term Loans in an aggregate amount of up to $7.5 million, which will be available beginning on the Financing Milestone I Date (as defined in the 2024 LSA) and continuing through the earlier to occur of (A) the date that is 120 days from the Financing Milestone I Date and (B) April 30, 2026 (Tranche 2-A Advances").

(c) Subject to the terms and conditions of this Agreement, any time beginning on the Performance Milestone Date (as defined in the 2024 LSA) and continuing through the earlier to occur of (A) the date that is 120 days from the Performance Milestone Date and (B) September 30, 2026, the Borrower may request and the Lenders shall severally (and not jointly) make up to three additional advances in minimum increments of $5,000,000 (or if less, the remaining amount of advances available to be drawn) in an aggregate principal amount up to the difference of $15,000,000 minus the aggregate original principal amount of all Tranche 2-A Advances made by the Lenders.

(d) Subject to the terms and conditions of this Agreement, Borrower may request and Lenders shall severally (and not jointly) make, on or prior to the Amortization Date (as defined in the 2024 LSA) but only following and conditioned on the approval by the Lender's investment committee in its sole and unfettered discretion, in each case, one or more additional Term Loan advances in minimum increments of $5,000,000 (or if less, the remaining amount of Term Loan advances available to be drawn pursuant to this provision in an aggregate principal amount up to $20,000,000.

Interest Rate. Borrowings under the 2024 LSA bear interest at a per annum rate equal to the greater of (i) (x) the Prime Rate (as reported in *The Wall Street Journal*) plus (y) 2.0%, and (ii) 9.50%.

Terms of Repayment and Facility Charges. The Term Loans are repayable in monthly interest-only payments until: (i) December 1, 2026 or (ii) June 1, 2027, if the Financing Milestone I Date has occurred on or prior to November 6, 2026; or (iii) December 1, 2027, if the Performance Milestone Date has occurred on or prior to May 6, 2027. After the expiration of the interest-only payment period, the Term Loans are repayable in equal monthly payments of principal and accrued interest until maturity. The Term Loans will mature on November 6, 2028.

At the Company's option, the Company may prepay all or a portion of the outstanding Term Loans, subject to a prepayment premium equal to (a) 3.0% of the Term Loans being prepaid if the prepayment occurs during the twelve months following the Closing Date, (b) 2.0% of the Term Loans being prepaid if the prepayment occurs after 12 months following the Closing Date but on or prior to 24 months following the Closing Date, and (c) 1.0% of the Term Loans being prepaid if the prepayment occurs after 24 months following the Closing Date and prior to the maturity date. In addition, the Company will pay an end of term charge of 6.35% upon the prepayment or repayment of the Term Loans and a facility charge of 0.75% upon any draws of the Term Loans.

Covenants, Representations and Warranties, Events of Default. The 2024 LSA includes customary affirmative and negative covenants and representations and warranties, including a covenant against the occurrence of a "change in control," financial reporting obligations, and certain limitations on indebtedness, liens, investments, distributions (including dividends), collateral, transfers, mergers or acquisitions, taxes, corporate changes, and bank accounts. The 2024 LSA also includes customary events of default, including payment defaults, breaches of covenants following any applicable cure period, the occurrence of certain events that could reasonably be expected to have a "material adverse effect" as set forth in the 2024 LSA, cross acceleration to third-party indebtedness and certain events relating to bankruptcy or insolvency. Upon the occurrence of an event of default, Hercules may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the 2024 LSA.

Beginning on the Testing Effective Date (as defined in the 2024 LSA), the Company must maintain Qualified Cash (as defined in the 2024 LSA) in an amount greater than or equal to (x) the outstanding principal amount of the Term Loan advances, multiplied by (y) (1) prior to December 1, 2025, 35% or (2) on and after December 1, 2025, (A) if the Performance Milestone Date has not occurred on or prior to December 1, 2025, 50% until the date on which the Performance Milestone Date has occurred and (B) on and after the Performance Milestone Date, 35% (the "Minimum Cash Covenant"). The Minimum Cash Covenant will be waived if the Company's Market Capitalization (as defined in the 2024 LSA) exceeds $500.0 million.

Security. The Term Loans are secured by a lien on substantially all of the assets of the Company.

Right to Invest. While the Term Loans remain outstanding, the Lenders shall have the right to participate in any equity financing of the Company of at least $10,000,000 in an aggregate amount of up to $5,000,000 on the same terms, conditions and pricing afforded to others participating in any such equity financing.

Warrants. In connection with the entry into the 2024 LSA, on the Closing Date, the Company issued each of the Lenders a warrant to purchase the Company's common stock (each a "Warrant" and, collectively, the "Warrants"). Pursuant to the terms of the Warrants, each Lender may purchase that number of shares of Company Common Stock equal to (i)(x) 0.02, multiplied by (y) the aggregate principal amount of all Term Loan Advances (as defined in the 2024 LSA) made to the Company by the applicable Lender, divided by (ii) $5.74, which is the Exercise Price of the Warrants. Each Warrant is exercisable for seven years from the Closing Date. The Warrants and the shares of Company Common Stock issuable exercise of the Warrants shall be tradeable in accordance with the provisions of Rule 144 of the Securities Act of 1933, as amended (the "Securities Act"). The Warrants include a customary net exercise provision and customary anti-dilution adjustments with respect to stock splits, stock dividends and the like, among other customary provisions for instruments of this type.

The Warrants were issued in reliance on the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) of the Securities Act. The Company has relied this exemption from registration based in part on representations made by the Lenders in the Warrant Agreements.

The foregoing descriptions of the 2024 LSA and the Warrants do not purport to be complete and are subject to and qualified in their entirety by reference to the full text of the 2024 LSA and the form of Warrant Agreement, which are filed as Exhibits 10.1 and 4.1 hereto, respectively, and are incorporated herein by reference.

Rule 10b5-1 Trading Arrangements

During the three months ended September 30, 2024, no director or officer (as defined in Rule 16a-1(f) of the Exchange Act) informed us of the adoption or termination of a "Rule 10b5-1 trading arrangement" or a "non-Rule 10b5-1 trading arrangement", as each term is defined in Item 408(c) of Regulation S-K.

Item 6. Exhibits.

Exhibit	Description
3.1	Certificate of Incorporation of Orchestra BioMed Holdings, Inc. (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed with the SEC on January 31, 2023).
3.2	Amended and Restated Bylaws of Orchestra BioMed Holdings, Inc. (incorporated by reference to Exhibit 3.2 to the Quarterly Report on Form 10-Q filed with the SEC on August 12, 2024).
4.1+#	Form of Warrant Agreement, dated November 6, 2024, issued in connection with the Loan and Security Agreement, dated November 6, 2024, by and among the Company and certain of its subsidiaries, the lenders named therein and Hercules Capital, Inc., as administrative agent and collateral agent for itself and the lenders.
10.1+#	Loan and Security Agreement, dated November 6, 2024, by and among the Company and certain of its subsidiaries, the lenders named therein and Hercules Capital, Inc., as administrative agent and collateral agent for itself and the lenders.
10.2+^	Bonus Letter Agreement, dated November 8, 2024, by and between the Company and Darren Sherman.
10.3+#	Commercial Lease, by and between Caliber Therapeutics, Inc. and Union Square, L.P. for facilities at 150 and 140 Union Square Drive, New Hope, Pennsylvania, dated December 14, 2009 and amended June 22, 2010, February 1, 2011, September 18, 2012, January 15, 2015, January 20, 2017, August 8, 2017, January 29, 2019, August 30, 2019 and August 8, 2024.
31.1+	Certification of Chief Executive Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2+	Certification of Chief Financial Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1+*	Certification of Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2+*	Certification of Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

\+ Filed herewith.

\# Certain identified information in this exhibit has been omitted in accordance with Item 601 of Regulation S-K. The Registrant hereby undertakes to furnish supplemental copies of the unredacted exhibit upon request by the SEC.

^ Indicates a management contract or compensatory plan.

* This exhibit shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that Section. Such exhibit shall not be deemed incorporated into any filing under the Securities Act or the Exchange Act.

SIGNATURES

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

ORCHESTRA BIOMED HOLDINGS, INC.

Dated: November 12, 2024

/s/ Andrew Taylor
Andrew Taylor
Chief Financial Officer
(Principal Financial Officer)

Exhibit 4.1

Execution Version

Certain information contained in this exhibit has been redacted pursuant to Item 601(a)(6) of Regulation S-K, as indicated with the notation "[###]", because disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. Orchestra BioMed Holdings, Inc. agrees to furnish supplementally a copy of any omitted schedule or exhibit to the Securities and Exchange Commission upon request.

THIS WARRANT AND THE SHARES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR ANY STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR, SUBJECT TO SECTION 11(a) HEREOF, AN OPINION OF COUNSEL (WHICH MAY BE COMPANY COUNSEL) REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

WARRANT AGREEMENT

To Purchase Shares of the Common Stock of

ORCHESTRA BIOMED HOLDINGS, INC.

Dated as of November __, 2024 (the "Effective Date")

WHEREAS, Orchestra BioMed Holdings, Inc., a Delaware corporation (the "Company"), has entered into a Loan and Security Agreement of even date herewith (as amended and in effect from time to time, the "Loan Agreement") with [_], a [_] [corporation] and the other Lender and/or Borrower parties named therein;

WHEREAS, the Company desires to grant to [_] (together with any successor or permitted assignee or transferee of this Warrant (as defined below) or of any shares issued upon exercise hereof, the "Warrantholder"), in consideration for, among other things, the financial accommodations provided for in the Loan Agreement, the right to purchase shares of its Common Stock (as defined below) pursuant to this Warrant Agreement (this "Warrant");

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the Company and Warrantholder agree as follows:

SECTION 1. GRANT OF THE RIGHT TO PURCHASE COMMON STOCK.

(a) Grant of Right. For value received, the Company hereby grants to the Warrantholder, and the Warrantholder is entitled, upon the terms and subject to the conditions hereinafter set forth, to subscribe for and purchase from the Company up to the number of fully paid and non-assessable shares of Common Stock determined pursuant to Section 1(c) below, at a purchase price per share equal to the Exercise Price (as defined below). The number of shares of Common Stock and the Exercise Price of such shares are subject to adjustment as provided in Section 8.

(b) Certain Definitions. As used herein, the following terms shall have the following meanings:

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

"Acquisition" means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company; (ii) any merger, business combination or consolidation of the Company into or with another Person (other than a merger, business combination or consolidation effected exclusively to change the Company's domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, business combination, consolidation or reorganization, own less than a majority of the Company's (or the surviving or successor entity's) outstanding voting power immediately after such merger, business combination, consolidation or reorganization; or (iii) any sale or other transfer by the stockholders of the Company of shares representing a majority of the Company's then-total outstanding combined voting power. For the avoidance of doubt, "Acquisition" shall not include (x) any sale and issuance by the Company of shares of its capital stock or of securities or instruments

exercisable for or convertible into, or otherwise representing the right to acquire, shares of its capital stock to one or more investors for cash in a transaction or series of related transactions the primary purpose of which is a bona fide equity financing of the Company, (y) a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its subsidiaries, or (z) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of a majority of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification.

"Act" means the Securities Act of 1933, as amended.

"Charter Documents" means the Company's Certificate of Incorporation and Bylaws, each as amended and/or restated and in effect from time to time.

"Common Stock" means the Company's common stock, $0.0001 par value per share, together with any securities of the Company into or for which the outstanding shares of such common stock may be converted, exchanged or substituted.

"Exercise Price" means $5.75 [*3-day VWAP as of day prior to closing*].

"Lender" has the meaning given in the Loan Agreement.

"Liquid Sale" means an Acquisition in which the consideration received by the Company (and intended or anticipated to be distributed to its shareholders (in their capacity as such) and/or its shareholders (in their capacity as such), as applicable, consists solely of cash and/or Marketable Securities.

"Marketable Securities" in connection with an Acquisition means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the 1934 Act, and is then current in its filing of all required reports and other information under the Act and the 1934 Act; (ii) the class and series of shares or other security of the issuer that would be received by the Warrantholder in connection with the Acquisition were the Warrantholder to exercise this Warrant on or prior to the closing thereof is then traded on a national securities exchange or over-the-counter market, and (iii) following the closing of such Acquisition, the Warrantholder would not be restricted from publicly re-selling all of the issuer's shares and/or other securities that would be received by the Warrantholder in such Acquisition were the Warrantholder to exercise this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six (6) months from the closing of such Acquisition (except for any restrictions as a result of Warrantholder's status as an Affiliate (as defined in Rule 144 promulgated under the Act) of the Company.

"Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

"Purchase Price" means, with respect to any exercise of this Warrant, an amount equal to the Exercise Price as of the date of such exercise multiplied by the number of shares of Common Stock requested to be exercised under this Warrant pursuant to such exercise.

"Regulation D" means Regulation D promulgated under the Act, as amended and in effect from time to time.

"SEC" means the Securities and Exchange Commission.

"Trading Market" means any Nasdaq or other national securities exchange or market.

(c) Number of Shares. This Warrant shall be exercisable for such number of shares of Common Stock as shall equal (i)(x) 0.02, multiplied by (y) the aggregate principal amount of all Term Loan Advances (as defined in the Loan Agreement) made to the Company by the Warrantholder as Lender, divided by (ii) the Exercise Price as in effect from time to time.

SECTION 2. TERM OF THE WARRANT.

Except as otherwise provided for herein, the term of this Warrant (the "Warrant Term") shall commence on the Effective Date and shall continue until the earliest to occur (the "Termination Date") of (i) the seventh (7^{th}) anniversary of the Effective Date (the "Expiration Date"), (ii) the consummation of a Cash Acquisition, or (iii) the exercise in full of this Warrant.

SECTION 3. EXERCISE OF THE WARRANT.

(a) Exercise. Subject to the terms and conditions hereof, the purchase rights set forth in this Warrant may be exercised, in whole or in part, at any time and from time to time during the Warrant Term, by tendering to the Company at its principal office or delivering electronically a notice of exercise in substantially the form attached hereto as Exhibit A (the "Notice of Exercise"), duly completed and executed. Promptly upon receipt of the Notice of Exercise and the payment of the Purchase Price in accordance with Section 3(b) below, and in no event later than three (3) business days thereafter, the Company shall issue to the Warrantholder a certificate or notice of book entry (each of which may be in electronic form) representing the number of shares of Common Stock purchased and shall execute the acknowledgment of exercise in the form attached hereto as Exhibit B (the "Acknowledgment of Exercise") indicating the number of shares that remain subject to future purchases under this Warrant, if any. Notwithstanding any contrary provision herein, if this Warrant was originally executed and/or delivered electronically, in no event shall the Warrantholder be required to surrender or deliver an ink-signed paper copy of this Warrant in connection with its exercise hereof or of any rights hereunder, nor shall the Warrantholder be required to surrender or deliver a paper or other physical copy of this Warrant in connection with any exercise hereof.

(b) Manner of Payment. The Purchase Price may be paid, at the Warrantholder's election, either (i) by cash, check or wire transfer of immediately available funds to an account designated inwriting by the Company, or (ii) by surrender to the Company of a number of shares issuable hereunder having an aggregate value equal to the Purchase Price ("Net Issuance"). If the Warrantholder makes a Net Issuance election, the Company shall issue to the Warrantholder such number of fully paid and non-assessable shares of Common Stock as determined by the following formula:

$$X = Y(A-B)/A$$

where:

X = the number of shares to be issued to the Warrantholder;

Y = the number of shares with respect to which this Warrant is being exercised (inclusive of the shares surrendered to the Company in payment of the Purchase Price);

A = the fair market value (as determined pursuant to Section 3(c) below) of one (1) share of Common Stock; and

B = the Exercise Price then in effect.

(c) Fair Market Value. For purposes of this Warrant:

(i) if shares of Common Stock are then traded on a Trading Market, the fair market value of one (1) share of Common Stock shall be the average of the closing prices over a five (5) trading day period ending three days before the date on which fair market value of the securities is being determined (which in connection with the exercise of this Warrant, shall be the business day immediately preceding the date on which the Warrantholder delivers the Notice of Exercise to the Company);

(ii) if shares of Common Stock are not then traded on a Trading Market, the fair market value of one (1) share of Common Stock shall be determined by the Company's Board of Directors in its reasonable, good faith judgment;

(iii) for purposes of a Liquid Sale, the fair market value of one (1) share of Common Stock shall be the total value of the maximum aggregate consideration payable per outstanding share of Common Stock as determined under the definitive agreements executed by the parties in such Liquid Sale.

(d) Automatic Net Issuance Exercise on Expiration. In the event that, on the Expiration Date, the fair market value of one (1) share of Common Stock as determined in accordance with Section 3(c) above is greater than the Exercise Price then in effect, this Warrant shall automatically be deemed on and as of such date to be exercised on a Net Issuance basis as to all shares for which it shall not previously have been exercised, and the Company shall, within ten (10) business days following the Warrantholder's written request, deliver a certificate or notice of book entry, each of which may be in electronic form, representing the shares issued to the Warrantholder on such exercise.

(e) Legend. Each certificate or notice of book entry evidencing shares of Common Stock issued on exercise hereof shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE

SECURITIES ACT OF 1933, AS AMENDED (OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT AGREEMENT ISSUED BY THE COMPANY TO [_]. DATED NOVEMBER __, 2024, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Such legend shall be removed and the Company shall, or shall instruct its transfer agent to, issue a certificate or book entry shares without such legend or any other legend to the holder of such shares (i) if such shares are sold or transferred pursuant to an effective registration statement under the Act covering the resale of such shares by the holder thereof, (ii) if such shares are sold or transferred pursuant to Rule 144 under the Act, (iii) if, upon advice of counsel to the Company, such shares are eligible for resale without any restrictions under Rule 144 under the Act, or (iv) if the Warrantholder has either (a) acquired shares of Common Stock through Net Issuance and has held such shares and/or this Warrant for an aggregate period of more than twelve (12) months from the Effective Date, or (b) acquired shares of Common Stock other than through Net Issuance and has held such shares for a period of more than twelve (12) months from the date of acquisition thereof, the Company shall authorize and instruct its transfer agent to remove from the applicable shares of Common Stock any restricted securities legend or stop transfer instructions pertaining to transfer restrictions under the Act, subject to the Warrantholder delivering to the Company's transfer agent a Legend Removal Certificate in substantially the form attached hereto as Exhibit D.

SECTION 4. RESERVATION OF SHARES.

The Company covenants that it shall at all times during the Warrant Term cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of Common Stock and other securities as will be sufficient to permit the exercise in full of this Warrant.

SECTION 5. NO FRACTIONAL SHARE.

No fractional share or scrip shall be issued upon exercise of this Warrant, and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share. If a fractional share interest arises upon any exercise of this Warrant, the Company shall eliminate such fractional share interest by paying the Warrantholder in cash an amount equal to (a) such fractional interest, multiplied by (b)(i) the fair market value (as determined in accordance with Section 3(c) above) of a full share, less (ii) the then-effective Exercise Price.

SECTION 6. NO RIGHTS AS STOCKHOLDER.

Without limiting any provision of this Warrant, the Warrantholder agrees that as a holder of this Warrant it will not have any rights (including, but not limited to, voting rights) as a stockholder of the Company with respect to the shares of Common Stock issuable hereunder unless and until the exercise of this Warrant and then only with respect to the shares issued on such exercise.

SECTION 7. WARRANTHOLDER REGISTRY.

The Company shall maintain a registry showing the name and address of the registered holder of this Warrant. The Warrantholder's initial address, for purposes of such registry, is set forth in Section 12(f). The Warrantholder may change such address by giving written notice of such changed address to the Company.

SECTION 8. ADJUSTMENT RIGHTS.

The Exercise Price and the number of shares of Common Stock purchasable hereunder are subject to adjustment, as follows:

(a) Acquisition.

(i) Liquid Sale. In the event of a Liquid Sale in which the fair market value of a share of Common Stock as determined pursuant to Section 3(c) above would be greater than the Exercise Price in effect as of immediately prior to the closing of such Liquid Sale, and the Warrantholder has not previously exercised this Warrant in full, then, in lieu of the Warrantholder's exercise of the unexercised portion of this Warrant, this Warrant shall, as of immediately prior to such closing (but subject to the occurrence thereof) automatically cease to represent the right to purchase shares of Common Stock and shall, from and after such closing, represent solely the right to receive the aggregate consideration that would have been payable in such Liquid Sale on and in respect of all shares of Common Stock for which this Warrant was exercisable as of immediately prior to the closing of such Liquid Sale, net of the Purchase Price therefor, as if such

shares had been issued and outstanding to the Warrantholder as of immediately prior to such closing, as and when such consideration is paid to the holders of the outstanding shares of Common Stock. In the event of a Liquid Sale in which the fair market value of a share of Common Stock as determined pursuant to Section 3(c) above would be equal to or less than the Exercise Price in effect as of immediately prior to the closing of such Liquid Sale, this Warrant will automatically and without further action of any person terminate as of immediately prior to such closing.

(ii) Non-Liquid Sale Acquisition. Upon the closing of any Acquisition other than a Liquid Sale, the acquiring, surviving or successor entity shall assume this Warrant and the Company's obligations hereunder, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the shares of Common Stock issuable upon exercise of the unexercised portion of this Warrant as if such shares were outstanding on and as of the closing of such Acquisition, at an aggregate Exercise Price equal to the aggregate Exercise Price in effect as of immediately prior to such closing (with the Exercise Price adjusted accordingly), all subject to further adjustment from time to time thereafter in accordance with the provisions of this Warrant.

(b) Reclassification of Shares. Except as set forth in Section 8(a), if the Company at any time shall, by combination, reclassification, exchange or subdivision of securities or otherwise, change any of the securities as to which purchase rights under this Warrant exist into the same or a different number of securities of any other class or classes, this Warrant shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under this Warrant immediately prior to such combination, reclassification, exchange, subdivision or other change.

(c) Subdivision or Combination of Shares. If the Company at any time shall combine or subdivide its outstanding Common Stock, (i) in the case of a subdivision, the Exercise Price shall be proportionately decreased, and the number of shares of Common Stock issuable upon exercise of this Warrant shall be proportionately increased, or (ii) in the case of a combination, the Exercise Price shall be proportionately increased, and the number of shares of Common Stock issuable upon the exercise of this Warrant shall be proportionately decreased.

(d) Dividends and Distributions. If the Company at any time during the Warrant Term shall:

(i) declare, make or pay a dividend or distribution on or with respect to the outstanding shares of Common Stock payable in additional shares of Common Stock, then the Exercise Price shall be adjusted, from and after the date of determination of stockholders entitled to receive such dividend or distribution, to that price determined by multiplying the Exercise Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution;

(ii) declare, make or pay any other dividend or distribution on or with respect to the outstanding shares of Common Stock (other than a cash dividend or distribution), then in each such case, provision shall be made by the Company such that the Warrantholder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were the holder of all shares of Common Stock issuable hereunder as of the record date fixed for the determination of the stockholders of the Company entitled to receive such dividend or distribution; or

(iii) declare, make or pay any dividend or distribution on or with respect to the outstanding shares of Common Stock in cash (other than a distribution of cash proceeds received by the Company in connection with an Acquisition described in clause (i) of the definition of Acquisition above), then on and as of the date of each such dividend payment and/or distribution, the Exercise Price shall be reduced by an amount equal to the amount paid or distributed upon or in respect of each outstanding share of Common Stock; provided that in no event will the Exercise Price be reduced below the then-par value, if any, of a share of Common Stock.

(e) Notice of Certain Events. If: (i) the Company shall declare any dividend or distribution upon its Common Stock, whether in stock, cash, property or other securities; (ii) the Company shall offer for subscription or sale pro rata to all holders of the outstanding shares of Common Stock any additional securities of the Company (other than pursuant to contractual pre-emptive or first refusal rights), (iii) there shall be any Acquisition; or (iv) there shall be any voluntary dissolution, liquidation or winding up of the Company then, in connection with each such event, the Company shall give the Warrantholder notice thereof at the same time and in the same manner as it notifies holders of the outstanding shares of Common Stock.

SECTION 9. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

(a) Reservation of Common Stock. The shares of Common Stock issuable upon exercise of this Warrant have been

duly and validly reserved from the Company's authorized and unissued shares of Common Stock for issuance on such exercise, and, when issued on exercise of this Warrant in accordance with its terms, will be duly and validly issued, fully paid and non-assessable, and free of any taxes, liens, charges and encumbrances except for restrictions on transfer provided for herein, under the Charter Documents or under applicable federal and state securities laws. The issuance of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Warrantholder for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such exercise and the related issuance of shares of Common Stock; provided, that the Company shall not be required to pay any tax which may be payable in respect of any transfer and the issuance and delivery of any certificate in a name other than that of the Warrantholder.

(b) Due Authority. The execution and delivery by the Company of this Warrant and the performance of all obligations of the Company hereunder have been duly authorized by all necessary corporate action on the part of the Company's Board of Directors and shareholders. This Warrant: (1) does not violate the Charter Documents; (2) does not contravene any law or governmental rule, regulation or order applicable to the Company; and (3) except as would not reasonably be expected to have a Material Adverse Effect (as such term is defined in the Loan Agreement), does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound. This Warrant constitutes the legal, valid and binding agreement of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws affecting the enforcement of creditors' rights in general, and except that the enforceability of this Warrant is subject to general principles of equity.

(c) Consents and Approvals. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of any state, federal or other governmental authority or agency is required on the part of the Company with respect to the execution, delivery and performance by the Company of its obligations under this Warrant, except for any applicable filing of notices pursuant to Regulation D under the Act, any notice required to be given to the Trading Market and any filing required by applicable state securities law, which filings will be effective by the time required thereby.

SECTION 10. REPRESENTATIONS AND COVENANTS OF THE WARRANTHOLDER.

This Warrant has been entered into by the Company in reliance upon the following representations and covenants of the Warrantholder:

(a) Investment Purpose. This Warrant and the shares of Common Stock issuable upon exercise hereof are being acquired for investment and not with a view to the sale or distribution of any part thereof, and the Warrantholder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration under the Act or an exemption from the registration requirements of the Act. Warrantholder is not a registered broker-dealer under Section 15 of the 1934 Act or an entity engaged in a business that would require it to be so registered as a broker-dealer.

(b) Private Issue. The Warrantholder understands (i) that the Common Stock issuable upon exercise of this Warrant is not registered under the Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 10.

(c) Financial Risk. The Warrantholder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. Without in any way limiting the Company's obligations under this Warrant, the Warrantholder understands that if the Common Stock is not registered with the SEC pursuant to Section 12 of the 1934 Act or the Company is not required to file reports pursuant to Section 13(a) or Section 15(d) of the 1934 Act, or if a registration statement is not effective under the Act covering the resale of the shares of Common Stock issuable upon exercise of the Warrant when it desires to sell (i) the rights to purchase Common Stock pursuant to this Warrant or (ii) the Common Stock issuable upon exercise of the right to purchase, as applicable, it may be required to hold such securities for an indefinite period. The Warrantholder also understands that any sale of (A) its rights hereunder to purchase Common Stock or (B) Common Stock issued or issuable hereunder which might be made by it in reliance upon Rule 144 under the Act may be made only in accordance with the terms and conditions of that Rule.

(e) Restricted Securities. The Warrantholder understands that this Warrant and the shares of Common Stock issuable upon exercise hereof have not been registered under the Act or registered or qualified under the securities laws

of any state, and are issued in reliance upon specific exemptions therefrom, which exemptions depend upon, among other things, the bona fide nature of the Warrantholder's investment intent as expressed herein. The Warrantholder understands that the Company is under no obligation to so register or qualify this Warrant or the shares of Common Stock issuable on exercise hereof. The Warrantholder understands that this Warrant and the shares of Common Stock issued upon any exercise hereof are "restricted securities" within the meaning of Rule 144 promulgated under the Act and must be held indefinitely unless subsequently registered under the Act and registered or qualified under applicable state securities laws, or unless exemptions from such registration and qualification are otherwise available.

(f) Accredited Investor. The Warrantholder is, and on each date on which it exercises any portion of this Warrant, it will be, an "accredited investor" as defined in Regulation D.

(g) No Short Sales. Neither the Warrantholder nor , its agents, representatives or affiliates engaged in or effected, in any manner whatsoever, directly or indirectly, any (i) "short sale" (as such term is defined in rule 200 of regulation SHO of the 1934 Act) of the Common Stock or (ii) hedging transaction, which establishes a net short position with respect to the Common Stock (collectively "Short Sales"). Warrantholder agrees that at all times from and after the Effective Date and on or before the expiration or earlier termination of this Warrant, it shall not engage in any Short Sales.

SECTION 11. TRANSFERS.

(a) This Warrant and the shares of Common Stock issued upon exercise hereof may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company or its transfer agent, as reasonably requested by the Company or such transfer agent). The Company shall not, and shall cause its transfer agent not to, require the Warrantholder to provide an opinion of counsel if the transfer is to an "affiliate" (as defined in Regulation D) of the Warrantholder, provided that such affiliate is an "accredited investor" as defined in Regulation D. Additionally, the Company shall also not, and shall cause its transfer agent not to, require an opinion of counsel from the Warrantholder if there is no material question as to the availability of Rule 144 promulgated under the Act.

(b) Subject to the provisions of Section 11(a), the Warrantholder may transfer all or part of this Warrant or the shares of Common Stock issued upon exercise hereof to any transferee; provided, that in connection with any such transfer of this Warrant, Holder will give the Company notice of the portion of the Warrant being transferred, with the name, address and taxpayer identification number of the transferee, and the Warrantholder will surrender this Warrant to the Company for reissuance to the transferee(s) (and to the Warrantholder if applicable); and provided further, that any transferee of this Warrant shall make substantially the representations set forth in Sections 10(a) – (e) above and shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant.

SECTION 12. MISCELLANEOUS.

(a) Entire Agreement. This Warrant Agreement represents the entire and final agreement of the parties with respect to its subject matter, and supersedes and merges any and all prior agreements, statements and other communications between them with respect to such subject matter.

(b) Remedies. In the event of any default hereunder, the non-defaulting party may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including but not limited to an action for damages as a result of any such default, and/or an action for specific performance for any default where Warrantholder will not have an adequate remedy at law and where damages will not be readily ascertainable.

(c) Amendment and Waiver. Notwithstanding any contrary provision herein or in the Loan Agreement, this Warrant may be amended and any provision hereof waived (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the Company and the Warrantholder.

(d) Attorneys' Fees. In any litigation, arbitration or court proceeding between the Company and the Warrantholder relating hereto, the prevailing party shall be entitled to reasonable attorneys' fees and expenses and all reasonable costs of proceedings incurred in enforcing this Warrant. For the purposes of this Section 12(d), attorneys' fees shall include without limitation reasonable fees incurred in connection with the following: (i) contempt proceedings; (ii) discovery; (iii) any motion, proceeding or other activity of any kind in connection with an insolvency proceeding; (iv) garnishment, levy, and debtor and third party examinations; and (v) post-judgment motions and proceedings of any kind, including without limitation any activity taken to collect or enforce any judgment.

(e) Severability. In the event any one or more of the provisions of this Warrant shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Warrant shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

(f) Notices. All notices and other communications hereunder from the Company to the Warrantholder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the fifth (5th) business day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first business day following delivery to a reliable overnight courier service, courier fee prepaid, and shall be addressed to the party to be notified as follows:

If to the Warrantholder:

[_]
[ADDRESS]
Facsimile: [_]
Telephone: [_]
Email: [_]

If to the Company:

ORCHESTRA BIOMED HOLDINGS, INC.
Attention: Chief Financial Officer
150 Union Square Drive
New Hope, PA 18938
Email:

With a copy to (which shall not constitute notice hereunder):

Paul Hastings LLP
Attn: Samuel Waxman, Esq., Yariv Katz, Esq. and Keith Pisani, Esq.
200 Park Avenue
New York, NY 10016
Email: [###]

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

(g) Governing Law. This Warrant and the parties' respective rights and obligations hereunder shall be governed by and construed in accordance with (i) the General Corporation Law of the State of Delaware, as to all matters within its scope, and (ii) otherwise, in accordance with, the laws of the State of New York, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

(h) Consent to Jurisdiction and Venue. All judicial proceedings arising in or under or related to this Warrant may be brought in any state or federal court of competent jurisdiction located in New York County, New York. Each of the Company and the Warrantholder generally and unconditionally: (a) consents to personal jurisdiction in New York County, New York; (b) waives any objection as to jurisdiction or venue in New York County, New York; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Warrant. The Company and the Warrantholder each hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Company in accordance with Section 12(f) of this Warrant and that service so made shall be deemed completed upon the earlier to occur of the party's actual receipt thereof or five (5) days after deposit in the U.S. mails, proper postage prepaid. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

(i) Mutual Waiver of Jury Trial. Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes arising out of this Warrant be resolved by a judge applying such applicable laws. EACH OF THE COMPANY AND THE WARRANTHOLDER SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY THE COMPANY AGAINST THE WARRANTHOLDER OR ITS

ASSIGNEE OR BY THE WARRANTHOLDER OR ITS ASSIGNEE AGAINST THE COMPANY RELATING TO THIS WARRANT. This waiver extends to all such Claims arising out of this Warrant, including Claims that involve Persons other than the Company and the Warrantholder, and any Claims for damages, breach of contract, specific performance, or any equitable or legal relief of any kind, arising out of this Warrant.

(j) Arbitration. If the Mutual Waiver of Jury Trial set forth in Section 12(i) is ineffective or unenforceable, the parties agree that all Claims shall be submitted to binding arbitration in accordance with the commercial arbitration rules of JAMS (the "Rules"), such arbitration to occur before one arbitrator, which arbitrator shall be a retired New York state judge or a retired Federal court judge. Such proceeding shall be conducted in New York County, New York, with New York rules of evidence and discovery applicable to such arbitration. The decision of the arbitrator shall be binding on the parties, and shall be final and non-appealable to the maximum extent permitted by law. Any judgment rendered by the arbitrator may be entered in a court of competent jurisdiction and enforced by the prevailing party as a final judgment of such court.

(k) Pre-arbitration Relief. In the event Claims are to be resolved by arbitration, either party may seek from a court of competent jurisdiction, any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by binding arbitration.

(l) Counterparts; Facsimile/Electronic Signatures . This Warrant and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so delivered shall be deemed an original, but all of which counterparts shall constitute but one and the same instrument.. This Warrant may be executed by one or more of the parties hereto in any number of separate counterparts, all of which together shall constitute one and the same instrument. The Company, the Warrantholder and any other party hereto may execute this Warrant by electronic means and each party hereto recognizes and accepts the use of electronic signatures and the keeping of records in electronic form by any other party hereto in connection with the execution and storage hereof. To the extent that this Warrant or any agreement subject to the terms hereof or any amendment hereto is executed, recorded or delivered electronically, it shall be binding to the same extent as though it had been executed on paper with an original ink signature, as provided under applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act. The fact that this Warrant is executed, signed, stored or delivered electronically shall not prevent the transfer by any holder of this Warrant pursuant to Section 11 or the enforcement of the terms hereof.

(m) Lost, Stolen, Mutilated or Destroyed Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, upon receiving an agreement from the Warrantholder as to indemnity or otherwise as it may reasonably require (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as this Warrant so lost, stolen, mutilated or destroyed.

(n) Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

[Remainder of page left blank intentionally; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Warrant Agreement to be executed by their respective officers thereunto duly authorized as of the Effective Date.

COMPANY: ORCHESTRA BIOMED HOLDINGS, INC.

By: _____
Name: Andrew Taylor
Title: Chief Financial Officer

WARRANTHOLDER: [_]

By: _____
Name:
Title:

Exhibit 10.1

Execution Version

Certain information contained in this exhibit has been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K, as indicated with the notation "[***]", because such information is both not material and is the type that the registrant treats as private or confidential.

In addition, certain information contained in this exhibit has been redacted pursuant to Item 601(a)(6) of Regulation S-K, as indicated with the notation "[###]", because disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. Orchestra BioMed Holdings, Inc. agrees to furnish supplementally a copy of any omitted schedule or exhibit to the Securities and Exchange Commission upon request.

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT is made and dated as of November 6, 2024 and is entered into by and among ORCHESTRA BIOMED HOLDINGS, INC., a Delaware corporation ("Company"), Company's Subsidiary ORCHESTRA BIOMED, INC., a Delaware corporation ("BioMed"), BioMed's Subsidiary CALIBER THERAPEUTICS, LLC, a Delaware limited liability company ("Caliber"), BioMed's Subsidiary BACKBEAT MEDICAL, LLC, a Delaware limited liability company ("BackBeat"), BioMed's Subsidiary FREEHOLD SURGICAL, LLC, a Delaware limited liability company ("Freehold"), and each other Person that has delivered a Joinder Agreement pursuant to Section 7.13 from time to time party hereto (together with Company, BioMed, Caliber, BackBeat and Freehold, individually or collectively, as the context may require, "Borrower"), the several banks and other financial institutions or entities from time to time party hereto (each, a "Lender", and collectively "Lenders") and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and Lenders (in such capacity, including any successors or assigns, "Agent").

RECITALS

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

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

AGREEMENT

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

SECTION 1
DEFINITIONS AND RULES OF CONSTRUCTION

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

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

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

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

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

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

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

"Affiliate" means (a) any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question, (b) any Person directly or indirectly owning, controlling or holding with power to vote ten percent (10%) or more of the outstanding voting securities of another Person, (c) any Person ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held by another Person with power to vote such securities, or (d) any Person related by blood or marriage to any Person described in subsection (a), (b) or (c) of this definition. As used in the definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" means this Loan and Security Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Amortization Date" means December 1, 2026; provided however, if (a) the First Interest Only Extension Condition is satisfied, then June 1, 2027 and (b) the Second Interest Only Extension Condition is satisfied, then then December 1, 2027.

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

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

"Bankruptcy Code" means the federal bankruptcy law of the United States as from time to time in effect, currently as Title 11 of the United States Code. Section references to current sections of the

Bankruptcy Code shall refer to comparable sections of any revised version thereof if section numbering is changed.

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

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

"Borrower Products" means all products, software, service offerings, technical data or technology currently being designed, manufactured or sold or that are under clinical investigation or development by Borrower or any of its Subsidiaries or which Borrower or any of its Subsidiaries intends to sell, license, or distribute in the future including any products or service offerings under development, collectively, together with all products, software, service offerings, technical data or technology that have been sold, licensed or distributed by Borrower since its formation.

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

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

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

"Change in Control" means (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of Securities Exchange Act of 1934, as amended), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d) 5 under Securities Exchange Act of 1934, as amended), directly or indirectly, of forty-nine percent (49.0%) or more of the ordinary voting power for the election of directors, partners, managers and members, as applicable, of Company (determined on a fully diluted basis); (b) during any period of twelve (12) consecutive months, a majority of the members of the Board of Directors of Company cease to be composed of individuals (i) who were members of that Board of Directors on the first (1st) day of such period, (ii) whose election or nomination to that Board of Directors was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that Board of Directors or (iii) whose election or nomination to that Board of Directors was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that Board of Directors; or (c) at any time, Company shall cease to own and control, of record and beneficially, directly or indirectly, one hundred percent (100.0%) of each class of outstanding stock, partnership, membership, or other ownership interest or other equity securities of each other Borrower free and clear of all Liens (other than Permitted Liens).

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

"Clinical Milestone " means the satisfaction of each of the following events: (a) no Default or Event of Default shall have occurred and be continuing and (b) Borrower shall have delivered evidence satisfactory to Agent (as determined by Agent in its reasonable discretion) that Borrower has achieved the protocol-specified safety and efficacy primary endpoints for the registration directed clinical trial of BackBeat CNT (NCT06059638) which support the filing of a supplemental Premarket Approval as the next immediate step in development. For the avoidance of doubt, Borrower shall have achieved: (i) a statistically significant between group difference in the change of mean twenty-four (24) hour ambulatory systolic blood pressure (aSBP) from baseline to three (3) months post randomization and (ii) freedom from unanticipated serious adverse device events (USADE) in the treatment group at three (3) months.

"Clinical Milestone Date" means the date on which Borrower achieves the Clinical Milestone.

"Closing Date" means the date of this Agreement.

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

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

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

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any Indebtedness, lease (excluding operating leases of real property), dividend, letter of credit or other obligation of another Person, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed, without duplication of the primary obligation, to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

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

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

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

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

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

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

"Due Diligence Fee" means Thirty Thousand Dollars ($30,000), which fee has been paid to Agent and received by Agent prior to the Closing Date, and shall be deemed fully earned on such date regardless of the early termination of this Agreement.

"Enforcement Action" means, with respect to any Lender and with respect to any Collateral Claim of such Lender or any item of Collateral in which such Lender has or claims a security interest lien or right of offset, any action, whether judicial or nonjudicial, to repossess, collect, accelerate, offset, recoup, give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Collateral Claim or Collateral. The filing, or the joining in the filing, by any Lender of an involuntary bankruptcy or Insolvency Proceeding against Borrower also is an Enforcement Action.

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

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

"Excluded Accounts" means any of the following Deposit Accounts which are designated as such in writing to Agent as of the Closing Date or, with respect to any Deposit Account opened after the Closing Date, in the next Compliance Certificate delivered after such Deposit Account is opened: (i) Deposit Accounts exclusively used for payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower's employees holding an aggregate amount across all such accounts of not more than amounts needed for the then-next two (2) payroll cycles, (b) any Deposit Account which is a zero-balance disbursement account, (c) any Deposit Account which is solely used for disbursements and payments of withheld income taxes, payroll taxes and/or federal, state or local employee taxes, (d) any Deposit Account

which is solely used as a trust account, escrow account, or other fiduciary account, (e) any Deposit Account maintained in Israel by any Subsidiary organized or operating in Israel, subject to the limitations set forth in Section 7.12(b), (f) any Deposit Accounts maintained with Silicon Valley Bank that are set forth in the Perfection Certificate on the Closing Date (the "Existing SVB Accounts"), so long as the balance of all such Excluded Accounts under this clause (f) does not exceed $[***] in the aggregate at any time and (g) any Deposit Account solely used to hold cash and Cash Equivalents subject to Permitted Liens under clause (n) of the definition thereof.

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

"FDA Laws" means all applicable statutes, rules, regulations, and orders and Requirements of Law administered, implemented, enforced or issued by FDA.

"Federal Health Care Program Laws" means collectively, federal Medicare or federal or state Medicaid statutes, the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalties law (42 U.S.C. § 1320a-7a), all federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the civil False Claims Act of 1863 (31 U.S.C. § 3729 et seq.), criminal false claims statutes (e.g., 18 U.S.C. §§ 287 and 1001), the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.), HIPAA, or related regulations or other Requirements of Law applicable to Borrower that directly or indirectly govern the health care industry, programs of governmental authorities related to healthcare, health care professionals or other health care participants, or relationships among health care providers, suppliers, distributors, manufacturers and patients.

"Financing Milestone I" means satisfaction of each of the following events, subject to reasonable verification by Agent (including supporting documentation reasonably requested by Agent):

(a) no Default or Event of Default shall have occurred and be continuing;

(b) [***]; and

(c) Company has raised at least [***].

"Financing Milestone I Date" means the date on which Borrower achieves Financing Milestone I.

"Financing Milestone II" means satisfaction of each of the following events, subject to reasonable verification by Agent (including supporting documentation reasonably requested by Agent): (a) no Default or Event of Default shall have occurred and be continuing; and (b) Company has raised at least [***].

"Financing Milestone II Date" means the date on which Borrower achieves Financing Milestone II.

"First Interest Only Extension Condition" means that the Financing Milestone I Date has occurred on or prior to [***].

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

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

"Governmental Approval" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

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

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

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

"Indebtedness" means indebtedness of any kind, including (a) all indebtedness for borrowed money or the deferred purchase price of property or services (excluding trade credit entered into in the ordinary course of business due within one hundred twenty (120) days), including reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, (d) all equity securities of any Person subject to repurchase or redemption other than at the sole option of such Person, (e) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature arising out of purchase and sale contracts (other than earn-out payments owing pursuant to that certain Patent Purchase Agreement dated as of May 19, 2011 between G&L Consulting, LLC and BackBeat to the extent such obligations do not exceed $[***] in the aggregate or are not required to be reflected as liabilities on a balance sheet in accordance with GAAP), (f) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements (other than those arising in the ordinary course of business), (g) non-contingent obligations to reimburse any bank or Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, and (h) all Contingent Obligations.

"Initial Facility Charge" means One Hundred Twelve Thousand Five Hundred Dollars ($112,500), which is payable to Lenders in accordance with Section 4.1(h).

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

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

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

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

"IRS" means the United States Internal Revenue Service.

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

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

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

"Loan" means the Advances made under this Agreement.

"Loan Documents" means this Agreement, the promissory notes (if any), the ACH Authorization, the Account Control Agreements, any Joinder Agreement, any Guaranty, any Warrant, the Pledge Agreement, the Intellectual Property Security Agreement and any other documents executed in connection with the Secured Obligations or the transactions contemplated hereby, as the same may from time to time be amended, modified, supplemented or restated.

"Loan Party" means Borrower or any Guarantor.

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

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

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

"Material Agreement" means each of (a) the Medtronic License Agreement, (b) the Terumo Agreement, (c) any other license, agreement or other contractual arrangement with either Medtronic, Inc. or Terumo Corporation, or any of their respective Affiliates and (d) any other license, agreement or other contractual arrangement involving the receipt or payment of amounts in the aggregate exceeding [***] per fiscal year.

"Material Regulatory Liabilities" means (i) any liabilities arising from the violation of applicable Public Health Laws, Federal Health Care Program Laws, and other applicable comparable Requirements of Law, or from any requirements imposed relative to any Registrations (including costs of actions required under applicable Requirements of Law, including FDA Laws and Federal Health Care Program Laws, or necessary to remedy any violation of any terms or conditions applicable to any Registrations), including, but not limited to, withdrawal of approval, recall, revocation, suspension, import detention and seizure of any Borrower Product, and (ii) any loss of recurring annual revenues as a result of any loss, suspension or limitation of any Registrations, which, in the case of the foregoing clauses (i) and (ii), could reasonably be expected to result in a Material Adverse Effect.

"Maximum Term Loan Amount" means $50,000,000.

"Medtronic License Agreement" means that certain Exclusive License and Collaboration Agreement, by and among BioMed, BackBeat and Medtronic, Inc. dated June 30, 2022.

[***]

"Non-Disclosure Agreement" means that certain Confidentiality and Non-Disclosure Agreement by and between BioMed and Hercules Capital, Inc. dated as of March 30, 2022.

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

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

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

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

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

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

"Performance Milestone" means Borrower's achievement of each of (a) Financing Milestone I or Financing Milestone II and (b) the Clinical Milestone.

"Performance Milestone Date" means the date on which Borrower achieves the Performance Milestone.

"Permitted Indebtedness" means:

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

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

(c) Indebtedness of up to [***] outstanding at any time secured by a Lien described in clause (g) of the defined term "Permitted Liens", provided that such Indebtedness does not exceed the cost of the Equipment, software or other Intellectual Property financed with such Indebtedness;

(d) Indebtedness to trade creditors incurred in the ordinary course of business (due within one hundred (120) days), including such Indebtedness incurred in the ordinary course of business with corporate credit cards in an aggregate outstanding amount with respect to such corporate credit cards not to exceed [***] at any time;

(e) Indebtedness that also constitutes a Permitted Investment or is secured by a Permitted Lien;

(f) Subordinated Indebtedness;

(g) reimbursement obligations in connection with letters of credit that are at any time outstanding and issued on behalf of Borrower or a Subsidiary in an amount not to exceed [***];

(h) other unsecured Indebtedness in an amount not to exceed [***] at any time outstanding;

(i) intercompany Indebtedness of any Loan Party owing to another Loan Party; and

(j) extensions, refinancings and renewals of any items of Permitted Indebtedness, provided that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon Borrower or the applicable Subsidiary, as the case may be, and subject to any limitations on the aggregate amount of such Indebtedness.

"Permitted Investment" means:

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

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Services, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Services, (iii) certificates of deposit issued by any bank with assets of at least Five Hundred Million Dollars ($500,000,000) maturing no more than one year from the date of investment therein, and (iv) money market accounts;

(c) repurchases of stock of Borrower from former employees, directors, or consultants of Borrower under the terms of applicable repurchase agreements at the original issuance price of such securities in an aggregate amount not to exceed [***] in any fiscal year, provided that no Event of Default has occurred, is continuing or could exist after giving effect to the repurchases;

(d) Investments accepted in connection with Permitted Transfers;

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

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, provided that this clause (f) shall not apply to Investments of any Loan Party in any Subsidiary of a Loan Party;

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

(h) Investments consisting of travel advances in the ordinary course of business;

(i) Investment in any other Loan Party (including newly-formed Domestic Subsidiaries, provided that each such Domestic Subsidiary enters into a Joinder Agreement promptly after its formation and executes such other documents as shall be reasonably requested by Agent);

(j) Investments in Foreign Subsidiaries that are not Loan Parties either (i) in an aggregate amount not to exceed [***] to the extent necessary to finance the operations of such Foreign Subsidiaries in the ordinary course of business or (ii) otherwise if approved in advance in writing by Agent;

(k) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash Investments by Borrower [***] in the aggregate in any fiscal year; and

(l) additional Investments that do not exceed [***] in the aggregate.

"Permitted Liens" means:

(a) Liens in favor of Agent or Lenders;

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

(c) Liens for taxes, fees, assessments or other governmental charges or levies, either not yet due or being contested in good faith by appropriate proceedings diligently conducted; provided, that Borrower maintains adequate reserves therefor on Borrower's Books in accordance with GAAP;

(d) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of Borrower's business and imposed without action of such parties; provided, that the payment thereof is not yet required;

(e) Liens arising from judgments, decrees or attachments in circumstances which do not constitute an Event of Default hereunder;

(f) the following deposits, to the extent made in the ordinary course of business: deposits under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds;

(g) Liens on Equipment or software or other intellectual property constituting purchase money Liens and Liens in connection with capital leases securing Indebtedness permitted in clause (c) of "Permitted Indebtedness";

(h) Liens incurred in connection with Subordinated Indebtedness;

(i) leasehold interests in leases or subleases and licenses (other than with respect to Intellectual Property) granted in the ordinary course of business and not interfering in any material respect with the business of the licensor;

(j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due;

(k) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets);

(l) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms;

(m) easements, servitudes, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property;

(n) (i) Liens on Cash securing obligations permitted under clause (g) of the definition of Permitted Indebtedness and (ii) security deposits in connection with real property leases and corporate credit cards, the combination of (i) and (ii) in an aggregate amount not to exceed [***] at any time; and

(o) licenses that qualify as Permitted Transfers;

(p) additional Liens so long as (i) such Liens do not secure debt for borrowed money, (ii) such Liens attach to specific, and not substantially all of the, assets of the Company or any of its Subsidiaries, and (iii) the aggregate principal amount of the obligations secured thereby does not exceed [***] at any time outstanding; and

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

"Permitted Transfers" means:

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

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

(c) transfers by and among Borrower and Loan Parties;

(d) transfers constituting the making of Permitted Investments, or the granting of Permitted Liens;

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

(f) sales of Borrower's equity interests in Vivasure Medical US, Inc.; and

(g) other transfers of assets having a fair market value of not more than [***] in the aggregate in any fiscal year.

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

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

"Prime Rate" means the "prime rate" as reported in *The Wall Street Journal* or any successor publication thereto.

"Principal Stock Exchange" means the NASDAQ or, if the common Equity Interests are not listed on the NASDAQ, the principal national securities exchange or public quotation system on which the common Equity Interests are then listed for trading or quoted.

"Public Health Laws" means all Requirements of Law relating to the procurement, development, clinical and non-clinical evaluation, product approval or licensure, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale, labeling, promotion, clinical trial registration or post market requirements of any drug product (including, without limitation, any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) and the Public Health Service Act (42 U.S.C. § 282(j)), including without limitation all applicable regulations promulgated by the FDA at Title 21 of the Code of Federal Regulations and all applicable regulations promulgated by the National Institutes of Health ("NIH") and codified at Title 42, Part 11 of the Code of Federal Regulations.

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

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

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

"Registration" means any registration, authorization, approval, license, permit, clearance, certificate, and exemption issued or allowed by the FDA or state pharmacy licensing authorities (including, without limitation, new drug applications, abbreviated new drug applications, investigational new drug applications, pricing and reimbursement approvals, labelling approvals or their foreign equivalent, and wholesale distributor permits).

"Regulatory Action" means an administrative or regulatory enforcement action, proceeding or investigation, warning letter, untitled letter, Form 483 or similar inspectional observations, other written notice of violation letter, recall, seizure, "Section 305 notice" or other similar written communication, or consent decree, issued or required by the FDA or the NIH under the Public Health Laws or by a comparable governmental authority under similar Requirements of Law in any other regulatory jurisdiction.

"Requirements of Law" means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities), in each case that are applicable to and binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

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

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

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

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

"Second Interest Only Extension Condition" means that the Performance Milestone Date has occurred on or prior to [***].

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

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

"Subsequent Financing" means the closing of any sale of Equity Interests of the Borrower which becomes effective after the Closing Date and results in aggregate proceeds to Borrower of at least $10,000,000.

"Subsidiary" means an entity, whether a corporation, partnership, limited liability company, joint venture or otherwise, in which Borrower owns or controls, either directly or indirectly, fifty percent (50%) or more of the outstanding voting securities, including each entity listed on Schedule 5.14 hereto.

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

"Term Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading "Tranche 1 Commitment", "Tranche 2-A Commitment", "Tranche 2-B Commitment" or "Tranche 3 Commitment" opposite such Lender's name on Schedule 1.1.

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

"Term Loan Advance" means each Tranche 1 Advance, Tranche 2-A Advance, Tranche 2-B Advance, Tranche 3 Advance and any other funds advanced under Section 2.1(a).

"Term Loan Interest Rate" means, for any day, a per annum rate of interest equal to the greater of (i) (x) the Prime Rate *plus* (y) 2.0%, and (ii) 9.50%.

"Term Loan Maturity Date" means November 6, 2028.

"Terumo Agreement" means collectively (i) that certain Distribution Agreement, by and among BioMed, Terumo Corporation and Terumo Medical Corporation dated June 13, 2019, as amended by that Amendment to Distribution Agreement, dated as of June 30, 2020 and (ii) that certain letter agreement, dated June 20, 2022, between BioMed, Terumo Corporation and Terumo Medical Corporation.

"Terumo Restructuring" means the re-negotiation of the Terumo Agreement as disclosed by the Company to Agent prior to the Closing Date, provided that any agreements entered into in connection with the Terumo Restructuring shall be among the same parties as the Terumo Agreement.

"Testing Effective Date" means April 1, 2025; provided, however, that such date shall be extended to December 1, 2025 upon Borrower's achievement of either Financing Milestone I or Financing Milestone II; provided that testing of the Minimum Cash financial covenant set forth in Section 7.20 shall be suspended until December 1, 2025 if the Financing Milestone I Date or the Financing Milestone II Date occurs after April 1, 2025 but prior to December 1, 2025.

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

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

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

"Tranche" means the Tranche 1 Advance, Tranche 2-A Advance, Tranche 2-B Advance and/or the Tranche 3 Advance, as applicable.

"Tranche 1 Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 1 Commitment opposite such Lender's name on Schedule 1.1.

"Tranche 2 Facility Charge" means three quarters percent (0.75%) of the principal amount of any Tranche 2-A Advance or Tranche 2-B Advance, which is payable to Lenders in accordance with Section 4.2(d).

"Tranche 2-A Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 2-A Commitment opposite such Lender's name on Schedule 1.1.

"Tranche 2-B Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 2-B Commitment opposite such Lender's name on Schedule 1.1.

"Tranche 3 Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 3 Commitment opposite such Lender's name on Schedule 1.1.

"Tranche 3 Facility Charge" means three quarters percent (0.75%) of the principal amount of any Tranche 3 Advance, which is payable to Lenders in accordance with Section 4.2(e).

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

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

[***]

1.2 Certain Additional Defined Terms. The following terms are defined in the Sections or subsections referenced opposite such terms:

Defined Term	Section
"Agent"	Preamble
"Assignee"	11.13
"Borrower"	Preamble
"Claims"	11.10
"Collateral"	3
"Confidential Information"	11.12
"End of Term Charge"	2.5(b)
"Event of Default"	9
"Financial Statements"	7.1
"Israeli Security Documents"	7.13(b)
"Israeli Security Requirements"	7.13(b)
"Lenders"	Preamble
"Maximum Rate"	2.2
"Prepayment Charge"	2.4
"Process Letter"	Addendum 5
"Publicity Materials"	11.18
"Register"	11.7
"Rights to Payment"	1.1
"SBA"	7.16
"SBIC"	7.16
"SBIC Act"	7.16

1.3 Unless otherwise specified, all references in this Agreement or any Annex or Schedule hereto to a "Section," "subsection," "Exhibit," "Annex," or "Schedule" shall refer to the corresponding Section, subsection, Exhibit, Annex, or Schedule in or to this Agreement. Unless otherwise specifically provided herein, any accounting term used in this Agreement or the other Loan Documents shall have the meaning customarily given such term in accordance with GAAP as in effect on the date hereof, and all financial computations hereunder shall be computed in accordance with GAAP as in effect on the date hereof, consistently applied. Unless otherwise defined herein or in the other Loan Documents, terms that are used herein or in the other Loan Documents and defined in the UCC shall have the meanings given to them in the UCC. For all purposes under the Loan Documents, in connection with any Division or plan of Division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

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

1.5 Any reference in any Loan Document to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a Division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a limited liability company shall constitute a separate Person under the Loan Documents (and each Division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity) on the first date of its existence. In connection with any Division, if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then such asset shall be deemed to have been transferred from the original Person to the subsequent Person.

SECTION 2
THE LOAN

2.1 Term Loan Advances.

(a) Advances.

(i) *Tranche 1*. Subject to the terms and conditions of this Agreement, on the Closing Date, Lenders will severally (and not jointly) make, and Borrower agrees to draw, a Term Loan Advance of Fifteen Million Dollars ($15,000,000) (such Term Loan Advance, the "Tranche 1 Advance").

(ii) *Tranche 2-A*. Subject to the terms and conditions of this Agreement, at any time beginning on the Financing Milestone I Date and continuing through the earlier to occur of (A) the date that is one hundred twenty (120) days from the Financing Milestone I Date and (B) April 30, 2026, Borrower may request and Lenders shall severally (and not jointly) make up to two (2) additional Term Loan Advances, either as a single Term Loan Advance of Seven Million Five Hundred Thousand Dollars ($7,500,000) or an initial Term Loan Advance of Five Million Dollars ($5,000,000) and, at Borrower's election, a subsequent Term Loan Advance of Two Million Five Hundred Thousand Dollars ($2,500,000) (such Term Loan Advances, the "Tranche 2-A Advances").

(iii) *Tranche 2-B*. Subject to the terms and conditions of this Agreement, any time beginning on the Performance Milestone Date and continuing through the earlier to occur of (A) the date that is one hundred twenty (120) days from the Performance Milestone Date and (B) September 30, 2026, Borrower may request and Lenders shall severally (and not jointly) make up to three (3) additional Term Loan Advances in minimum increments of Five Million Dollars ($5,000,000) (or if less, the remaining amount of Term Loan Advances available to be drawn pursuant to this Section 2.1(a)(iii)) in an aggregate principal amount up to the difference of Fifteen Million Dollars ($15,000,000) *minus* the aggregate original principal amount of all Tranche 2-A Advances made by the Lenders (such Term Loan Advances, the "Tranche 2-B Advances").

(iv) *Tranche 3*. Subject to the terms and conditions of this Agreement, Borrower may request and Lenders shall severally (and not jointly) make, on or prior to the Amortization Date but only following and conditioned on the approval by the Lender's investment committee in its sole and unfettered discretion, in each case, one or more additional Term Loan Advances in minimum increments of Five Million Dollars ($5,000,000) (or if less, the remaining amount of Term Loan Advances available to be drawn pursuant to this Section 2.1(a)(iv)) in an aggregate principal amount up to Twenty Million Dollars ($20,000,000) (such Term Loan Advances, the "Tranche 3 Advances").

The aggregate outstanding Term Loan Advances shall not exceed the Maximum Term Loan Amount. Each Term Loan Advance of each Lender shall not exceed its respective Term Commitment.

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

(c) Interest. The principal balance of each Term Loan Advance shall bear interest thereon from such Advance Date at the Term Loan Interest Rate based on a year consisting of three hundred sixty (360) days, with interest computed daily based on the actual number of days elapsed. The Term Loan Interest Rate will float and change on the day the Prime Rate changes from time to time.

(d) Payment. Borrower will pay accrued but unpaid interest on each Term Loan Advance on the first calendar day of each month (each such date, a "Payment Date"), beginning the month after the Advance Date. Borrower shall repay the aggregate principal balance of the Term Loan Advances that is outstanding on the day immediately subsequent to the Amortization Date, in equal monthly installments of principal and interest (mortgage style) beginning on the Amortization Date and continuing

on the first calendar day of each month thereafter until the Secured Obligations (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement) are repaid; provided, however, that, in the event that Amortization Date occurs and the Second Interest Only Extension Condition is satisfied thereafter, no further payment of principal with respect to the Term Loan Advances shall be required until December 1, 2027 and payments of principal and interest (mortgage style) shall re-commence on such date. The entire principal balance of the Term Loan Advances and all accrued but unpaid interest hereunder, shall be due and payable on the Term Loan Maturity Date. Borrower shall make all payments under this Agreement without setoff, recoupment or deduction and regardless of any counterclaim or defense. If a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately subsequent Business Day. Agent or Lenders will initiate debit entries to Borrower's account as authorized on the ACH Authorization (i) on each Payment Date of all periodic obligations payable to Lenders under each Term Loan Advance and (ii) out-of-pocket legal fees and costs incurred by Agent or Lenders in connection with Section 11.12; provided that, with respect to clause (i) above, in the event that Lenders or Agent informs Borrower that Lenders will not initiate a debit entry to Borrower's account for a certain amount of the periodic obligations due on a specific Payment Date, Borrower shall pay to Lenders, such amount of periodic obligations in full in immediately available funds on such Payment Date; provided, further, that, with respect to clause (i) above, if Lenders or Agent informs Borrower that Lenders will not initiate a debit entry as described above later than the date that is three (3) Business Days prior to such Payment Date, Borrower shall pay to Lenders such amount of periodic obligations in full in immediately available funds on the date that is three (3) Business Days after the date on which Lenders or Agent notifies Borrower of such; provided, further, that, with respect to clause (ii) above, in the event that Lenders or Agent informs Borrower that Lenders will not initiate a debit entry to Borrower's account for specified out-of-pocket legal fees and costs incurred by Agent or Lenders, Borrower shall pay to Lenders such amount in full in immediately available funds within three (3) Business Days.

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

2.3 Default Interest. In the event any payment is not paid on the scheduled payment date, an amount equal to four percent (4%) of such past due amount shall be payable on demand. In addition, upon the occurrence and during the continuation of an Event of Default hereunder, all Secured Obligations, including principal, interest, compounded interest, and professional fees, shall bear interest at a rate per annum equal to the rate set forth in Section 2.1(c), plus four percent (4%) per annum. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded at the rate set forth in Section 2.1(c) or this Section 2.3, as applicable.

2.4 Prepayment. At its option, Borrower may prepay at any time all or a portion the outstanding Advances by paying the entire principal balance (or such portion thereof), all accrued and unpaid interest thereon, all unpaid Lender's fees and expenses due hereunder accrued to the date of the repayment (including, without limitation, the portion of the End of Term Charge applicable to the aggregate original principal amount of the Term Loan Advances being prepaid in accordance with Section 2.5,

together with a prepayment charge equal to the following percentage of the outstanding principal amount of such Advance amount being so prepaid: with respect to each Advance (a) if the principal amount of such Advance amounts are prepaid on or prior to the date which is twelve (12) months following the Closing Date, three percent (3.00%); (b) if the principal amount of such Advance amounts are prepaid after the date which is twelve (12) months following the Closing Date but on or prior to the date which is twenty-four (24) months following the Closing Date, two percent (2.00%); and (c) thereafter through the day before the Term Loan Maturity Date, one percent (1.00%) (each, a "Prepayment Charge"). Borrower agrees that the Prepayment Charge is a reasonable calculation of Lenders' lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the Advances. Borrower shall prepay the outstanding amount of all principal and accrued interest through the prepayment date and the Prepayment Charge upon the occurrence of a Change in Control or any other prepayment hereunder. Notwithstanding the foregoing, Agent and Lenders agree to waive the Prepayment Charge if Agent and Lenders (in their sole and absolute discretion) agree in writing to refinance the Advances prior to the Term Loan Maturity Date. Any amounts paid under this Section shall be applied by Agent to the then unpaid amount of any outstanding Secured Obligations (including principal and interest) in such order and priority as Agent may choose in its sole discretion. For the avoidance of doubt, if a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately subsequent Business Day.

2.5 End of Term Charge.

(a) On any date that Borrower partially prepays the outstanding Secured Obligations pursuant to Section 2.4, Borrower shall pay Lenders an amount equal to six point three five percent (6.35)% multiplied by the principal amount of such Term Loan Advances being prepaid.

(b) On the earliest to occur of (i) the Term Loan Maturity Date, (ii) the date that Borrower prepays the outstanding Secured Obligations (other than any inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) in full, or (iii) the date that the Secured Obligations become due and payable in full pursuant to the terms of this Agreement, Borrower shall pay Lenders a charge equal to (x) six point three five percent (6.35)% multiplied by the aggregate original principal amount of the Term Loan Advances made hereunder *minus* (y) the aggregate amount of payments made pursuant to Section 2.5(a) (the "End of Term Charge"). Notwithstanding the required payment date of such End of Term Charge, the applicable pro rata portion of the End of Term Charge shall be deemed earned by Lenders on the date the applicable Term Loan Advance is made. For the avoidance of doubt, if a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately subsequent Business Day.

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

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

2.8 Treatment of Prepayment Charge and End of Term Charge. Borrower agrees that any Prepayment Charge and any End of Term Charge payable shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, and Borrower agrees that it is reasonable under the circumstances currently existing and existing as of the Closing Date. The Prepayment Charge and the End of Term Charge shall also be payable in the event the Secured Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure, or by any other means. Each Loan Party expressly waives (to the fullest extent it may

lawfully do so) the provisions of any present or future statute or law that prohibits or may prohibit the collection of the foregoing Prepayment Charge and End of Term Charge in connection with any such acceleration. Borrower agrees (to the fullest extent that each may lawfully do so): (a) each of the Prepayment Charge and the End of Term Charge is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (b) each of the Prepayment Charge and the End of Term Charge shall be payable notwithstanding the then prevailing market rates at the time payment is made; (c) there has been a course of conduct between Lenders and Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Charge and the End of Term Charge as a charge (and not interest) in the event of prepayment or acceleration; and (d) Borrower shall be estopped from claiming differently than as agreed to in this Section. Borrower expressly acknowledges that its agreement to pay each of the Prepayment Charge and the End of Term Charge to Lenders as herein described was on the Closing Date and continues to be a material inducement to Lenders to provide the Term Loan Advances.

SECTION 3
SECURITY INTEREST

3.1 Grant of Security Interest. As security for the prompt and complete payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, each Borrower grants to Agent a security interest in all of such Borrower's right, title, and interest in, to and under all of such Borrower's personal property and other assets including without limitation the following (except as set forth herein) whether now owned or hereafter acquired (collectively, the "Collateral"): (a) Receivables; (b) Equipment; (c) Fixtures; (d) General Intangibles; (e) Inventory; (f) Investment Property; (g) Deposit Accounts; (h) Cash; (i) Goods; and all other tangible and intangible personal property of such Borrower whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Borrower and wherever located, and any of such Borrower's property in the possession or under the control of Agent; and, to the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing.

3.2 Notwithstanding the broad grant of the security interest set forth in Section 3.1, above, the Collateral shall not include (a) any "intent to use" trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, provided, that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use of an intent-to-use trademark application pursuant to 15 U.S.C. Section 1060(a) (or any successor provision) such intent-to-use application shall constitute Collateral, (b) nonassignable licenses or contracts, which by their terms require the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, Sections 9406, 9407 and 9408 of the UCC) and (c) any Excluded Account.

SECTION 4
CONDITIONS PRECEDENT TO LOAN

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

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

(a) duly executed copies of the Loan Documents , and all other documents and instruments reasonably required by Agent to effectuate the transactions contemplated hereby or to create

and perfect the Liens of Agent with respect to all Collateral, in all cases in form and substance reasonably acceptable to Agent;

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

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

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

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

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

(g) certified copies, dated as of recent date, of searches for financing statements;

(h) payment of the Due Diligence Fee (which, for the avoidance of doubt, has been previously paid), Initial Facility Charge and reimbursement of Agent's and Lenders' current expenses reimbursable pursuant to this Agreement, which amounts may be deducted from the initial Advance;

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

(j) all certificates of insurance evidencing insurance required by Section 6.2;

(k) duly executed landlord consents for its (i) chief executive office or its principal place of business and (ii) offices or business locations, including warehouses, containing in excess of [***] of Borrower's assets or property;

(l) duly executed bailee agreements for any bailee location holding a portion of Borrower's assets or property valued, individually or in the aggregate, in excess of [***];

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

(n) all reports, declarations and forms required by the SBA and requested by the Agent, including but not limited to SBA 652, SBA 1031 and SBA 480; and

(o) UCC-1 financing statements in respect of each Loan Party filed in its respective jurisdiction of formation.

4.2 All Advances. On each Advance Date:

(a) Agent shall have received (i) an Advance Request for the relevant Advance as required by Section 2.1(b), duly executed by Borrower's Chief Executive Officer or Chief Financial Officer, and (ii) any other documents Agent may reasonably request.

(b) The representations and warranties set forth in this Agreement shall be true and correct in all material respects on and as of the applicable Advance Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(c) at the time of and immediately after such Advance no Default or Event of Default shall have occurred and be continuing.

(d) With respect to any Tranche 2-A and Tranche 2-B Advance, Borrower shall have paid the applicable Tranche 2 Facility Charge.

(e) With respect to any Tranche 3 Advance, Borrower shall have paid the applicable Tranche 3 Facility Charge.

Each Advance Request shall be deemed to constitute a representation and warranty by Borrower on the relevant Advance Date as to the matters specified in subsections (b) and (c) of this Section 4.2 and as to the matters set forth in the Advance Request.

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

SECTION 5
REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that:

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

Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws affecting creditors' rights generally and by general principles of equity.

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

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

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

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

5.6 Laws.

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

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

(c) None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower, any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. None of the funds to be provided under this Agreement will be used, directly or indirectly, (a) for any activities in violation of any applicable anti-money laundering, economic sanctions and anti-bribery laws and regulations or (b) for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

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

5.8 Tax Matters. Except as set forth on Schedule 5.8, (a) Borrower and its Subsidiaries have filed all federal and state income Tax returns and other material Tax returns that they are required to file, (b) Borrower and its Subsidiaries have duly paid all federal and state income Taxes and other material Taxes or installments thereof that they are required to pay, except Taxes being contested in good faith by appropriate proceedings and for which Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP, and (c) to the best of Borrower's knowledge, no proposed or pending Tax assessments, deficiencies, audits or other proceedings with respect to Borrower or any Subsidiary have had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

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

5.10 Intellectual Property.

(a) Except as described on Schedule 5.10, Borrower has all material rights with respect to intellectual property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower. Without limiting the generality of the foregoing, except for restrictions that are unenforceable under Division 9 of the UCC or otherwise permitted under this Agreement with respect to Licenses, Borrower has the right, to the extent required to operate Borrower's business, to freely transfer, license or assign Intellectual Property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower, without condition, restriction or payment of any kind (other than license payments in the ordinary course of business) to any third party, and Borrower owns or has the right to use, pursuant to valid licenses, all software development tools, library functions, compilers and all other third-party software and other items that are material in the operation or conduct of Borrower's business and used in the design, development, promotion, sale, license, manufacture, import, export, use or distribution of Borrower Products except customary covenants in inbound license agreements and equipment leases where Borrower is the licensee or lessee. Except as disclosed on Schedule 5.10, Borrower is not a party to, nor is it bound by, any Restricted License.

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

(c) There are no material unpaid fees or royalties under any Material Agreements that have become overdue. Each Material Agreement is in full force and effect and is legal, valid, binding, and enforceable in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. Except as set forth on Schedule 5.10(c), to the knowledge of Borrower, neither Borrower nor any of its Subsidiaries, as applicable, is in breach of or default in any manner that could reasonably be expected to materially affect the Borrower Products under any Material Agreement to which it is a party, and no circumstances or grounds exist that would give rise to a claim of breach or right of rescission, termination or nonrenewal of any of the Material Agreements, including the execution, delivery and performance of this Agreement and the other Loan Documents.

5.11 Borrower Products. Except as set forth on Schedule 5.11, no Intellectual Property owned by Borrower or Borrower Product has been or is subject to any actual or, to the knowledge of Borrower, threatened litigation, proceeding (including any proceeding in the United States Patent and Trademark Office or any corresponding foreign office or agency) or outstanding decree, order, judgment, settlement agreement or stipulation that restricts in any manner Borrower's use, transfer or licensing thereof or that may affect the validity, use or enforceability thereof. There is no decree, order, judgment, agreement, stipulation, arbitral award or other provision entered into in connection with any litigation or proceeding that obligates Borrower to grant licenses or ownership interest in any future Intellectual Property related to the operation or conduct of the business of Borrower or Borrower Products. Borrower has not received any written notice or claim, or, to the knowledge of Borrower, oral notice or claim, challenging or questioning Borrower's ownership in any Intellectual Property (or written notice of any claim challenging or

questioning the ownership in any licensed Intellectual Property of the owner thereof) or suggesting that any third party has any claim of legal or beneficial ownership with respect thereto nor, to Borrower's knowledge, is there a reasonable basis for any such claim. Neither Borrower's use of its Intellectual Property nor the production and sale of Borrower Products infringes the Intellectual Property or other rights of others.

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

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

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

5.15 Solvency. The fair salable value of the Loan Parties' consolidated assets (including goodwill minus disposition costs) exceeds the fair value of the Loan Parties' liabilities; no Loan Party is left with unreasonably small capital after the transactions in this Agreement; and Borrower and each of its Subsidiaries are able to pay their debts (including trade debts) as they mature. The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

SECTION 6
INSURANCE; INDEMNIFICATION

6.1 Coverage. Borrower shall cause to be carried and maintained commercial general liability insurance covering Borrower and each of its Subsidiaries, on an occurrence form, against risks and in such amounts customarily insured against in Borrower's line of business. Such risks shall include the risks of bodily injury, including death, property damage, personal injury, advertising injury, and contractual liability per the terms of the indemnification agreement found in Section 6.3. Borrower must maintain a minimum of $[***] of commercial general liability insurance for each occurrence. Borrower maintains and shall continue to maintain a minimum of $[***] of directors' and officers' insurance for each occurrence and $[***] in the aggregate. So long as there are any Secured Obligations outstanding (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement), Borrower shall also cause to be carried and maintained insurance upon the business and assets of Borrower and its Subsidiaries, insuring against all risks of physical loss or damage howsoever caused, in an amount not less than the full replacement cost of the Collateral, provided that such insurance may be subject to standard exceptions and deductibles. If Borrower fails to obtain the insurance called for by this Section 6.1 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Agent may obtain such insurance or make such payment, and all amounts so paid by Agent are immediately due and payable, bearing interest at the then highest rate applicable to the Secured Obligations, and secured by the Collateral.

Agent will make reasonable efforts to provide Borrower with notice of Agent obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Agent are deemed an agreement to make similar payments in the future or Agent's waiver of any Event of Default.

6.2 Certificates. Borrower shall deliver to Agent certificates of insurance that evidence compliance with its insurance obligations in Section 6.1 and the obligations contained in this Section 6.2. Borrower's insurance certificate shall reflect Agent (shown as "Hercules Capital, Inc., as Agent, and its successors and/or assigns") as an additional insured for commercial general liability, a lenders loss payable for all risk property damage insurance, subject to the insurer's approval, and a lenders loss payable for property insurance and additional insured for liability insurance for any future insurance that Borrower may acquire from such insurer. Attached to the certificates of insurance will be additional insured endorsements for liability and lender's loss payable endorsements for all risk property damage insurance; it be acknowledged and agreed that Borrower shall provide copies of all such policies in effect as of the Closing Date and such endorsements for such policies not later than fifteen (15) Business Days after the Closing Date. All certificates of insurance will provide for a minimum of thirty (30) days' advance written notice to Agent of cancellation (other than cancellation for non-payment of premiums, for which ten (10) days' advance written notice shall be sufficient) or any other change adverse to Agent's interests. Any failure of Agent to scrutinize such insurance certificates for compliance is not a waiver of any of Agent's rights, all of which are reserved. Borrower shall provide Agent with copies of each insurance policy, and upon entering or amending any insurance policy required hereunder, Borrower shall provide Agent with copies of such policies and shall promptly deliver to Agent updated insurance certificates and endorsements with respect to such policies.

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

SECTION 7
COVENANTS

Borrower agrees as follows:

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

(a) as soon as practicable (and in any event within thirty (30) days) after the end of each month, (i) trial balances prepared in accordance with GAAP as of the end of such month, (ii) a report detailing any material contingencies (including the commencement of any material litigation by or against Borrower) or any other occurrence that could reasonably be expected to have a Material Adverse Effect, (iii) a trial balances report in respect of such month in form and substance satisfactory to Agent, (iv) a report showing agings of accounts receivable and accounts payable and (v) following regulatory approval of Backbeat, Virtue SAB or any of Borrower's Products, net revenue reports, sales KPIs and royalty reporting as of the end of such month;

(b) as soon as practicable (and in any event within forty-five (45) days) after the end of each fiscal quarter, unaudited interim and year-to-date financial statements as of the end of such fiscal quarter (prepared on a consolidated and consolidating basis, if applicable), including balance sheet and related statements of income and cash flows accompanied by a report detailing any material contingencies (including the commencement of any material litigation by or against Borrower) or any other occurrence that could reasonably be expected to have a Material Adverse Effect, certified without qualification by a duly authorized officer of Borrower to the effect that they have been prepared in accordance with GAAP, except (i) for the absence of footnotes, and (ii) that they are subject to normal year-end adjustments;

(c) as soon as practicable (and in any event within ninety (90) days) after the end of each fiscal year, audited financial statements as of the end of such year (prepared on a consolidated and consolidating basis, if applicable), including balance sheet and related statements of income and cash flows, and setting forth in comparative form the corresponding figures for the preceding fiscal year, certified by a firm of independent certified public accountants selected by Borrower and reasonably acceptable to Agent, accompanied by any management report from such accountants;

(d) as soon as practicable (and in any event within thirty (30) days) after the end of each month, a Compliance Certificate in the form of Exhibit E;

(e) [reserved];

(f) Subject to the last paragraph of this Section 7.1, promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements, information or reports that Borrower has made available to holders of its common stock, and copies of any regular, periodic and special reports or registration statements that Borrower files with the Securities and Exchange Commission or any Governmental Authority that may be substituted therefor, or any national securities exchange;

(g) copies of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries;

(h) [reserved];

(i) financial and business projections promptly following their approval by Company's Board, and in any event, within thirty (30) days prior to the end of Borrower's fiscal year, as well as budgets, operating plans and other financial information reasonably requested by Agent;

(j) insurance certificates required by Section 6.2, annually or otherwise promptly upon renewal of insurance policies required to be maintained in accordance with Section 6.1;

(k) prompt notice of any legal process that is reasonably likely to result in damages, expenses or liabilities in excess of [***]; and

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

Borrower shall not make any change in its (a) accounting policies or reporting practices (other than as permitted under GAAP or pursuant to applicable securities laws or regulations of the SEC), or (b) fiscal years or fiscal quarters. The fiscal year of Borrower shall end on December 31.

The executed Compliance Certificate and all Financial Statements required to be delivered hereunder shall be sent per instructions (i) specified on Addendum 2 or (ii) otherwise provided by Agent to Borrower via a written notice from time to time.

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

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

7.3 Further Assurances. Borrower shall, and shall cause each other Loan Party to, from time to time execute, deliver and file, alone or with Agent, any financing statements, security agreements, collateral assignments, notices, control agreements, promissory notes or other documents to perfect, give the highest priority to Agent's Lien on the Collateral or otherwise evidence Agent's rights herein. Borrower shall from time to time procure any instruments or documents as may be reasonably requested by Agent, and take all further action that may be necessary, or that Agent may reasonably request, to perfect and protect the Liens granted hereby or pursuant to applicable Loan Documents. In addition, and for such purposes only, Borrower hereby authorizes Agent to execute and deliver on behalf of Borrower and to file such financing statements (including an indication that the financing statement covers "all assets or all personal property" of Borrower in accordance with Section 9-504 of the UCC), collateral assignments, notices, control agreements, security agreements and other documents without the signature of Borrower either in Agent's name or in the name of Agent as agent and attorney-in-fact for Borrower. Borrower shall protect and defend Borrower's title to the Collateral and Agent's Lien thereon against all Persons claiming any interest adverse to Borrower or Agent other than Permitted Liens.

7.4 Indebtedness. Borrower shall not create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness, or

prepay any Indebtedness or take any actions which impose on Borrower an obligation to prepay any Indebtedness, except for (a) the conversion of Indebtedness into equity securities and the payment of cash in lieu of fractional shares in connection with such conversion, (b) purchase money Indebtedness pursuant to its then applicable payment schedule, (c) prepayment by any Subsidiary of (i) inter-company Indebtedness owed by such Subsidiary to any Borrower, or (ii) if such Subsidiary is not a Borrower, intercompany Indebtedness owed by such Subsidiary to another Subsidiary that is not a Borrower, (d) payments made on Subordinated Indebtedness to the extent permitted under the relevant Subordination Agreement, (e) any trade payables in the ordinary course of business or (f) as otherwise permitted hereunder or approved in writing by Agent.

7.5 Collateral. Borrower shall at all times (a) keep the Collateral and all other property and assets used in Borrower's business or in which Borrower now or hereafter holds any interest free and clear from any legal process or Liens whatsoever (except for Permitted Liens), and (b) shall give Agent prompt written notice of any legal process affecting the Collateral, such other property and assets, or any Liens thereon, provided however, that the Collateral and such other property or assets may be subject to Permitted Liens except that there shall be no Liens whatsoever on Intellectual Property. Borrower shall not agree with any Person other than Agent or Lenders not to encumber its property other than in connection with Permitted Liens. Borrower shall not enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Borrower to create, incur, assume or suffer to exist any Lien upon any of its property (including Intellectual Property), whether now owned or hereafter acquired, to secure its obligations under the Loan Documents to which it is a party other than (i) this Agreement and the other Loan Documents, (ii) any agreements governing any purchase money Liens or capital lease obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby) and (iii) customary restrictions on the assignment of leases, licenses and other agreements. Borrower shall cause its Subsidiaries to protect and defend such Subsidiary's title to its assets from and against all Persons claiming any interest adverse to such Subsidiary, and Borrower shall cause its Subsidiaries at all times to keep such Subsidiary's property and assets free and clear from any legal process or Liens whatsoever (except for Permitted Liens, provided however, that there shall be no Liens whatsoever on Intellectual Property), and shall give Agent prompt written notice of any legal process affecting such Subsidiary's assets.

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

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

7.8 Transfers. Except for Permitted Transfers, Borrower shall not, and shall not permit any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey ("Transfer") any equitable, beneficial or legal interest in any material portion of its assets (including, without limitation, pursuant to a Division).

7.9 Mergers and Consolidations. Borrower shall not, nor will it permit any Subsidiary to, merge, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than mergers or consolidations of (a) a Subsidiary which is not a Borrower into another Subsidiary or into Borrower or (b) a Borrower into another Borrower).

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

7.11 Corporate Changes.

(a) Neither Borrower nor any Subsidiary shall change its corporate name, legal form or jurisdiction of formation without twenty (20) days' prior written notice to Agent.

(b) Neither Borrower nor any Subsidiary shall suffer a Change in Control.

(c) Neither Borrower nor any Subsidiary shall relocate its chief executive office or its principal place of business unless: (i) it has provided prior written notice to Agent; and (ii) such relocation shall be within the continental United States of America.

(d) If Borrower intends to add any new offices or business locations, including warehouses, containing any portion of Borrower's assets or property valued, individually or in the aggregate, in excess of [***], or if any portion of Borrower's assets or property valued, individually or in the aggregate, in excess of [***] is held at any existing office or business location, including warehouses, then Borrower will, unless Agent and such landlord are not already parties to a landlord consent governing both the Collateral and the applicable office or business location, cause the landlord of any such offices or business locations, including warehouses, to execute and deliver a landlord consent in form and substance satisfactory to Agent.

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

(f) The Borrower will not, and will not permit any Subsidiary to, engage to any material extent in any business other than those businesses conducted by the Borrower and its Subsidiaries on the date hereof or any business reasonably related or incidental thereto or representing a reasonable expansion thereof.

(g) Without the prior written consent of Agent, the Borrower will not make, or agree to make, any modification, amendment or waiver of any of the terms or provisions of Borrower's Organizational Documents that is adverse to Agent or any of the Lenders.

7.12 Deposit Accounts. Neither Borrower nor any Subsidiary shall maintain any Deposit Accounts, or accounts holding Investment Property, except with respect to which Agent has an Account Control Agreement; provided that (a) no Account Control Agreement shall be required for any Excluded Account, and (b) the aggregate amount of all cash on deposit in Deposit Accounts maintained in Israel by Subsidiaries organized or operating in Israel shall not exceed [***].

7.13 Joinder of Subsidiaries.

(a) Borrower shall notify Agent of each Subsidiary formed or acquired subsequent to the Closing Date (including any new Subsidiary formed by Division) and, within twenty (20) days of such formation or acquisition (or such longer period of time as agreed to by Agent in writing in its sole discretion or, with respect to any Subsidiary organized in Israel, such time period specified in clause (b) below), shall cause any such Subsidiary to execute and deliver to Agent a Joinder Agreement and, subject to clause (b) below, such other documents and instruments as shall be requested by Agent to effectuate the transactions contemplated by such Joinder Agreement (in each case in form and substance acceptable to Agent), or, if requested by Agent, a Guaranty and appropriate collateral security documents to secure the obligations pursuant to such Guaranty (in each case in form and substance acceptable to Agent); it being agreed that if such new Subsidiary is formed by a Division, the foregoing requirements shall be satisfied substantially concurrently with the formation of such Subsidiary. [***]

(b) With respect to any Subsidiary organized in Israel, the Borrower shall cause such Subsidiary to execute and deliver to Agent the following documents in form and substance reasonably satisfactory to Agent, and to perform such other actions specified below, within (1) with respect to any such Subsidiaries existing on the Closing Date, sixty (60) days of the Closing Date and (2) with respect to any such Subsidiaries formed or acquired after the Closing Date, sixty (60) days of such formation or acquisition (or such longer period of time as agreed to by Agent in writing in its sole discretion) (collectively, the "Israeli Security Requirements" and the documents referred to in clauses (i) through (iv), the "Israeli Security Documents"):

i. create a fixed charge over its Intellectual Property and other assets by entering into an Israeli law fixed charge debenture in favor of Agent;

ii. create a floating charge over all of its assets by entering into an Israeli law floating charge debenture in favor of Agent;

iii. create a fixed pledge in favor of Agent over 100% of the shares and related rights beneficially owned by any Loan Party in such Subsidiary by causing such Loan Party to enter into an Israeli law share pledge agreement and any instruments and deliverables thereunder;

iv. duly file and register the foregoing security documents with the appropriate public registries in Israel within timeframes specified by Agent in order to duly perfect the respective security interests created thereunder;

v. four original copies of Forms 10 of the Israeli ROC;

vi. a legal opinion of such Subsidiary's Israeli counsel;

vii. a duly-executed certificate attaching such items described in Section 4.1(d) through (f);

viii. a duly-executed perfection certificate of such Subsidiary;

ix. copies, dated as of recent date, of lien, judgment and insolvency searches in respect of such Subsidiary;

x. a UCC-1 financing statement in respect of such Subsidiary filed with the D.C. Recorder of Deeds; and

xi. a Process Letter in accordance with clause (f) of Addendum 5;

It is understood and agreed that the Borrower and its Subsidiaries shall not be required to deliver any documents governed by Israeli law or take any other action in Israel with respect to the Collateral, other than pursuant to the Israeli Security Requirements.

(c) Notwithstanding the foregoing or any other provision of the Loan Documents, BioMed's Subsidiary Accelerated Technologies, Inc., a Delaware corporation, shall not be required to become a Borrower or Guarantor, so long as it does not conduct any business or hold any assets in excess of $[***].

7.14 Regulatory and Product Notices. Borrower shall promptly (but in any event within three (3) Business Days) after the receipt or occurrence thereof notify Agent of:

(a) any written notice received by Borrower or its Subsidiaries from a governmental authority alleging potential or actual violations of any FDA Laws or Federal Health Care Program Laws by Borrower or its Subsidiaries,

(b) any written notice that the FDA (or international equivalent) is limiting, suspending or revoking any Registrations (including, but not limited to, the issuance of a clinical hold),

(c) any written notice that Borrower or its Subsidiaries has become subject to any Regulatory Action,

(d) the exclusion or debarment from any governmental healthcare program or debarment or disqualification by FDA (or international equivalent) of Borrower or its Subsidiaries,

(e) any written notice that any product of Borrower or its Subsidiaries has been seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Borrower Product are pending or threatened in writing against Borrower or its Subsidiaries, or

(f) narrowing or otherwise limiting the scope of marketing authorization or the labeling of the products of Borrower and its Subsidiaries under any such Registration,

except, in each case of (a) through (f) above, where such action would not reasonably be expected to have, either individually or in the aggregate, any Material Regulatory Liabilities.

7.15 Notification of Event of Default. Borrower shall notify Agent immediately of the occurrence of any Event of Default.

7.16 SBA Addendum. One or more affiliates of Agent have received a license from the U.S.

Small Business Administration ("SBA") to extend loans as a small business investment company ("SBIC") pursuant to the Small Business Investment Act of 1958, as amended, and the associated regulations (collectively, the "SBIC Act"). Portions of the Loan to Borrower may be made by a Lender that is an SBIC. Addendum 3 to this Agreement outlines various responsibilities of Agent, each Lender and Borrower associated with a loan made by an SBIC, and such Addendum 3 is hereby incorporated in this Agreement.

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

7.18 Material Agreement. Borrower shall (a) not, without the consent of Agent, terminate the Material Agreement or amend the Material Agreement in a manner that is reasonably likely to have a material negative impact on Agent or Lenders, and (b) give prompt written notice to Agent of entering into a Material Agreement or materially amending or terminating a Material Agreement.

7.19 Compliance with Laws.

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

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

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

(d) None of Borrower, any of its Subsidiaries or any of their respective directors, officers or employees, or to the knowledge of Borrower, any agent for Borrower or its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned

Person. No Loan, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

7.20 Financial Covenants.

(a) Minimum Cash.

(i) Beginning on the Testing Effective Date and (subject to the proviso to the definition of "Testing Effective Date") at all times thereafter, Borrower shall maintain Qualified Cash in an amount greater than or equal to (x) the outstanding principal amount of the Term Loan Advances, *multiplied by* (y) (1) prior to December 1, 2025, 35% or (2) on and after December 1, 2025, (A) if the Performance Milestone Date has not occurred on or prior to December 1, 2025, 50% until the date on which the Performance Milestone Date has occurred and (B) on and after the Performance Milestone Date, 35%.

(ii) Notwithstanding the foregoing, the financial covenant set forth in Section 7.20(a)(i) shall not be tested at any time that the Borrower's Market Capitalization exceeds Five Hundred Million Dollars ($500,000,000); it being understood that if such condition is not satisfied, then testing will automatically be reinstated without any action or notice by or to any Person.

7.21 Intellectual Property. Each Borrower shall (i) protect, defend and maintain the validity and enforceability of its Intellectual Property; (ii) promptly advise Agent in writing of infringements of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrowers' business to be abandoned, forfeited or dedicated to the public without Agent's written consent. If a Borrower (a) obtains any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (b) applies for any Patent or the registration of any Trademark, then such Borrower shall immediately provide written notice thereof to Agent and shall execute such intellectual property security agreements and other documents and take such other actions as Agent may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent in such property. If a Borrower decides to register any Copyrights or mask works in the United States Copyright Office, such Borrower shall: (x) provide Agent with at least fifteen (15) days prior written notice of such Borrower's intent to register such Copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Agent may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent in the Copyrights or mask works intended to be registered with the United States Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office contemporaneously with filing the Copyright or mask work application(s) with the United States Copyright Office. With the delivery of each Compliance Certificate hereunder, Borrowers shall provide to Agent an updated copy of Schedule 5.10 including a description of any new Patents, Trademarks, Copyrights or mask works registered since the Closing Date or the date of delivery of the most recently updated schedule, together with any intellectual property security agreement required for Agent to perfect and maintain a first priority perfected security interest in such property. Borrower shall provide written notice to Agent within thirty (30) days of entering or becoming bound by any Restricted License (other than off-the-shelf software that is commercially available to the public). Borrower shall take such steps as Agent requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (1) any Restricted License to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (2) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with

Agent's rights and remedies under this Agreement and the other Loan Documents.

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

SECTION 8
RIGHT TO INVEST

Lenders or their assignee or nominee shall, for so long as such applicable Lender shall constitute a "Lender" under this Agreement, have the right, in its discretion, to participate in any Subsequent Financing in an aggregate amount of up to Five Million Dollars ($5,000,000) on the same terms, conditions and pricing afforded to others participating in any such Subsequent Financing. This Section 8, and all rights and obligations provided for hereunder, shall terminate upon the earliest to occur of (a) termination of this Agreement and (b) such time that the Lenders or their assignees or nominees, have purchased Five Million Dollars ($5,000,000) of Company's Equity Interests in the aggregate in Subsequent Financings.

SECTION 9
EVENTS OF DEFAULT

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

9.1 Payments. A Loan Party fails to pay any amount due under this Agreement or any of the other Loan Documents on the due date; provided, however, that an Event of Default shall not occur on account of a failure to pay due solely to an administrative or operational error of Agent or Lenders or Borrower's bank if Borrower had the funds to make the payment when due and makes the payment within three (3) Business Days following Borrower's knowledge of such failure to pay; or

9.2 Covenants. A Loan Party breaches or defaults in the performance of any covenant or Secured Obligation under this Agreement, or any of the other Loan Documents or any other agreement among Borrower, Agent and Lenders, and (a) with respect to a Default under any covenant under this Agreement (other than under Sections 6, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.15, 7.16, 7.17, 7.18, 7.19, 7.20, 7.21, and 7.22), any other Loan Document, or any other agreement among Borrower, Agent and Lenders, such default continues for more than ten (10) days after the earlier of the date on which (i) Agent or Lenders has given notice of such default to Borrower and (ii) Borrower has actual knowledge of such default or (b) with respect to a Default under any of Sections 6, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.15, 7.16, 7.17, 7.18, 7.19, 7.20, 7.21, and 7.22), the occurrence of such Default; or

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

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

9.5 Insolvency. (a) A Loan Party or any of its Subsidiaries fails to be solvent as described under Section 5.15 hereof; (b) a Loan Party or any of its Subsidiaries begins an Insolvency Proceeding; or

(c) an Insolvency Proceeding is begun against a Loan Party or any of its Subsidiaries and is not dismissed or stayed within thirty (30) days (but no Advances shall be made while any of the conditions described in clause (a) exist or until any Insolvency Proceeding is dismissed); or

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

9.7 Attachment; Levy; Restraint on Business.

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

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

9.8 Other Obligations. The occurrence of any default under (i) any agreement or obligation of a Loan Party involving any Indebtedness in excess of [***], (ii) any other material agreement or obligation, if a Material Adverse Effect could reasonably be expected to result from such default or (iii) any Material Agreement.

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

9.10 Stop Trade. At any time, an SEC stop trade order or NASDAQ market trading suspension of the Common Stock shall be in effect for five (5) consecutive days or five (5) days during a period of ten (10) consecutive days, excluding in all cases a suspension of all trading on a public market, provided that Borrower shall not have been able to cure such trading suspension within thirty (30) days of the notice thereof or list the Common Stock on another public market within sixty (60) days of such notice

SECTION 10
REMEDIES

10.1 General. Upon the occurrence of any one or more Events of Default, Agent may, and at the direction of the Required Lenders shall, accelerate and demand payment of all or any part of the outstanding Secured Obligations together with a Prepayment Charge and declare them to be immediately due and payable (provided, that upon the occurrence of an Event of Default of the type described in Section 9.5, all of the Secured Obligations (including, without limitation, the Prepayment Charge and the End of Term Charge) shall automatically be accelerated and made due and payable, in each case without any further notice or act). Borrower hereby irrevocably appoints Agent as its lawful attorney-in-fact to: (a) exercisable following the occurrence of an Event of Default, (i) sign Borrower's name on any invoice or bill of lading for any account or drafts against account debtors; (ii) demand, collect, sue, and give releases to any account debtor for monies due, settle and adjust disputes and claims about the accounts directly with account debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Agent's or Borrower's name, as Agent may elect); (iii) make, settle, and adjust all claims under Borrower's insurance policies; (iv) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (v) transfer the Collateral into the name of Agent or a third party as the UCC permits; and (vi) receive, open and dispose of mail addressed to Borrower; and (b) regardless of whether an Event of Default has occurred, (i) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; and (ii) notify all account debtors to pay Agent directly. Borrower hereby appoints Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Secured Obligations have been satisfied in full and the Loan Documents (other than the Warrant) have been terminated. Agent's foregoing appointment as Borrower's attorney in fact, and all of Agent's rights and powers, coupled with an interest, are irrevocable until all Secured Obligations (other than inchoate indemnity obligations which, by their terms, survive termination of this Agreement) have been fully repaid and performed and the Loan Documents have been terminated. Agent may, and at the direction of the Required Lenders shall, exercise all rights and remedies with respect to the Collateral under the Loan Documents (other than the Warrant) or otherwise available to it under the UCC and other applicable law, including the right to release, hold, sell, lease, liquidate, collect, realize upon, or otherwise dispose of all or any part of the Collateral and the right to occupy, utilize, process and commingle the Collateral. All Agent's rights and remedies shall be cumulative and not exclusive

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

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

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

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

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

Fifth, to Lenders and Agent, ratably (in proportion to all remaining Secured Obligations owing to each), in an amount equal to the sum of all other outstanding and unpaid Secured Obligations (including principal, interest, and the default rate interest set forth in Section 2.3, if required under this Agreement), in such order and priority as Agent may choose in its sole discretion; and

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

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

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

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

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

SECTION 11
MISCELLANEOUS

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

11.2 Notice. Except as otherwise provided herein, any notice, demand, request, consent, approval, declaration, service of process or other communication (including the delivery of Financial Statements) that is required, contemplated, or permitted under the Loan Documents or with respect to the

subject matter hereof shall be in writing, and shall be deemed to have been validly served, given, delivered, and received upon the earlier of: (i) the day of transmission by electronic mail or hand delivery or delivery by an overnight express service or overnight mail delivery service; or (ii) the third calendar day after deposit in the United States of America mails, with proper first class postage prepaid, in each case addressed to the party to be notified as follows:

(a) If to Agent:

HERCULES CAPITAL, INC.
Legal Department
Attention: Chief Legal Officer; Jeffrey Ralto; Adam Soller; Dimitri Pissios
1 North B Street, Suite 2000
San Mateo, CA 94401

email: ***/###/***
Telephone: ***/###/***

(b) If to Lenders:

HERCULES CAPITAL, INC.
Legal Department
Attention: Chief Legal Officer; Jeffrey Ralto; Adam Soller; Dimitri Pissios
1 North B Street, Suite 2000
San Mateo, CA 94401

email: ***/###/***
Telephone: ***/###/***

(c) If to Borrower:

Orchestra BioMed Holdings, Inc.
Attention: Andrew Taylor, CFO
150 Union Square Drive
New Hope, PA 18938

email: ***/###/***
Telephone: ***/###/***

with a copy to

Paul Hastings LLP
200 Park Avenue
New York, NY 10166
Attention: Kristopher Villarreal
email: ***/###/***

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

11.3 Entire Agreement; Amendments.

(a) This Agreement and the other Loan Documents constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and thereof, and supersede and

replace in their entirety any prior proposals, term sheets, non-disclosure or confidentiality agreements, letters, negotiations or other documents or agreements, whether written or oral, with respect to the subject matter hereof or thereof (including Agent's proposal letter dated September 13, 2024 and the Non-Disclosure Agreement).

(b) Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 11.3(b). The Required Lenders and Loan Parties party to the relevant Loan Document may, or, with the written consent of the Required Lenders, Agent and Loan Parties party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of Lenders or of Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan Advance, reduce the stated rate of any interest or fee payable hereunder, or extend the scheduled date of any payment thereof, in each case without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 11.3(b) without the written consent of such Lender; (C) reduce any percentage specified in the definition of Required Lenders, consent to the assignment or transfer by Loan Parties of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release a Loan Party from its obligations under the Loan Documents, in each case without the written consent of all Lenders; or (D) amend, modify or waive any provision of Section 11.17 without the written consent of Agent. Any such waiver and any such amendment, supplement or modification shall apply equally to each Lender and shall be binding upon the applicable Loan Parties, Lenders, Agent and all future holders of the Loans.

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

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

11.6 Survival. All agreements, representations and warranties contained in this Agreement and the other Loan Documents or in any document delivered pursuant hereto or thereto shall be for the benefit of Agent, Lenders and shall survive the execution and delivery of this Agreement. Sections 6.3, 11.8, 11.9, 11.10, 11.11, 11.14, 11.15 11.17 and 11.18, shall survive the termination of this Agreement.

11.7 Successors and Assigns. The provisions of this Agreement and the other Loan Documents shall inure to the benefit of and be binding on Borrower and its permitted assigns (if any). No Loan Party shall assign its obligations under this Agreement or any of the other Loan Documents without Agent's

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

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

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

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

11.11 Mutual Waiver of Jury Trial / Judicial Reference.

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

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

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

11.12 Professional Fees. Borrower promises to pay Agent's and Lenders' fees and expenses necessary to finalize the Loan Documents, including but not limited to reasonable attorneys' fees, UCC

searches, filing costs, and other miscellaneous expenses. In addition, Borrower promises to pay any and all reasonable attorneys' and other professionals' fees (including allocated costs of in-house counsel) and expenses incurred by Agent and Lenders after the Closing Date in connection with or related to: (a) the Loan; (b) the administration, collection, or enforcement of the Loan; (c) the amendment or modification of the Loan Documents; (d) any waiver, consent, release, or termination under the Loan Documents; (e) the protection, preservation, audit, field exam, sale, lease, liquidation, or disposition of Collateral or the exercise of remedies with respect to the Collateral; (f) any legal, litigation, administrative, arbitration, or out of court proceeding in connection with or related to Borrower or the Collateral, and any appeal or review thereof; and (g) any bankruptcy, restructuring, reorganization, assignment for the benefit of creditors, workout, foreclosure, or other action related to Borrower, the Collateral, the Loan Documents, including representing Agent or Lenders in any adversary proceeding or contested matter commenced or continued by or on behalf of Borrower's estate, and any appeal or review thereof.

11.13 Confidentiality. Agent and Lenders acknowledge that certain items of Collateral and information provided to Agent and Lenders by Borrower are confidential and proprietary information of Borrower, if and to the extent such information either (x) is marked as confidential by Borrower at the time of disclosure, or (y) should reasonably be understood to be confidential (the "Confidential Information"). Accordingly, Agent and Lenders agree that any Confidential Information it may obtain in the course of acquiring, administering, or perfecting Agent's security interest in the Collateral shall not be disclosed to any other Person or entity in any manner whatsoever, in whole or in part, without the prior written consent of Borrower, except that Agent and Lenders may disclose any such information: (a) to its Affiliates and its partners, investors, lenders, directors, officers, employees, agents, advisors, counsel, accountants, representatives and other professional advisors if Agent or Lenders in their sole discretion determine that any such party should have access to such information in connection with such party's responsibilities in connection with the Loan or this Agreement and, provided that such recipient of such Confidential Information either (i) agrees to be bound by the confidentiality provisions of this Section or (ii) is otherwise subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information; (b) if such information is generally available to the public or to the extent such information becomes publicly available other than as a result of a breach of this Section or becomes available to Agent or any Lender, or any of their respective Affiliates on a non-confidential basis from a source other than Borrower; (c) if required or appropriate in any report, statement or testimony submitted to any Governmental Authority having or claiming to have jurisdiction over Agent or Lenders and any rating agency; (d) if required or appropriate in response to any summons or subpoena or in connection with any litigation, to the extent permitted or deemed advisable by Agent's or Lenders' counsel; (e) to comply with any legal requirement or law applicable to Agent or Lenders or demanded by any Governmental Authority; (f) to the extent reasonably necessary in connection with the exercise of, or preparing to exercise, or the enforcement of, or preparing to enforce, any right or remedy under any Loan Document (including Agent's sale, lease, or other disposition of Collateral after the occurrence of a Default), or any action or proceeding relating to any Loan Document; (g) to any participant or assignee of Agent or Lenders or any prospective participant or assignee, provided, that such participant or assignee or prospective participant or assignee is subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information; (h) to any investor or potential investor (and each of their respective Affiliates or clients) in Agent or Lenders (or each of their respective Affiliates); provided that such investor, potential investor, Affiliate or client is subject to confidentiality obligations with respect to the Confidential Information; (i) otherwise to the extent consisting of general portfolio information that does not identify Borrower; or (j) otherwise with the prior consent of Borrower; provided, that any disclosure made in violation of this Agreement shall not affect the obligations of Borrower or any of its Affiliates or any guarantor under this Agreement or the other Loan Documents. Agent's and Lenders' obligations under this Section 11.13 shall supersede all of their respective obligations under the Non-Disclosure Agreement.

11.14 Assignment of Rights. Borrower acknowledges and understands that Agent or Lenders

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

11.15 Revival of Secured Obligations; Termination. This Agreement and the Loan Documents shall remain in full force and effect and continue to be effective if any petition is filed by or against Borrower for liquidation or reorganization, if Borrower becomes insolvent or makes an assignment for the benefit of creditors, if a receiver or trustee is appointed for all or any significant part of Borrower's assets, or if any payment or transfer of Collateral is recovered from Agent or Lenders. The Loan Documents and the Secured Obligations and Collateral security shall continue to be effective, or shall be revived or reinstated, as the case may be, if at any time payment and performance of the Secured Obligations or any transfer of Collateral to Agent, or any part thereof is rescinded, avoided or avoidable, reduced in amount, or must otherwise be restored or returned by, or is recovered from, Agent, Lenders or by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment, performance, or transfer of Collateral had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, avoided, avoidable, restored, returned, or recovered, the Loan Documents and the Secured Obligations shall be deemed, without any further action or documentation, to have been revived and reinstated except to the extent of the full, final, and indefeasible payment to Agent or Lenders in Cash.

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

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

11.18 Agency. Agent and each Lender hereby agree to the terms and conditions set forth on Addendum 4 attached hereto. Borrower acknowledges and agrees to the terms and conditions set forth on Addendum 4 attached hereto.

11.19 Publicity. Notwithstanding anything else herein to the contrary, Borrower hereby agrees that the Agent and Lender may, at Agent's or such Lender's sole expense, and without any prior approval by or compensation to the Borrower, make a public announcement of the transactions contemplated by this Agreement, and may publicize or use (a) the other party's name (including a brief description of the relationship among the parties hereto), logo or hyperlink to such other parties' web site, separately or together, in written and oral presentations, advertising, promotional and marketing materials, client lists, public relations materials or on its web site (together, the "Publicity Materials"); (b) the names of officers of such other parties in the Publicity Materials; and (c) such other parties' name, trademarks, servicemarks in any news or press release concerning such party, in each case to the extent such information is not deemed

confidential in accordance with Section 11.13.

11.20 Multiple Borrowers. Each Borrower hereby agrees to the terms and conditions set forth on Addendum 5 attached hereto.

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

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

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IN WITNESS WHEREOF, Borrower, Agent and Lenders have duly executed and delivered this Loan and Security Agreement as of the date set forth above.

BORROWER:

ORCHESTRA BIOMED HOLDINGS, INC.

Signature: /s/ David Hochman
Print Name: David Hochman
Title: Chief Executive Officer

ORCHESTRA BIOMED, INC.

Signature: /s/ David Hochman
Print Name: David Hochman
Title: Chief Executive Officer

CALIBER THERAPEUTICS, LLC

Signature: /s/ David Hochman
Print Name: David Hochman
Title: Chief Executive Officer

BACKBEAT MEDICAL, LLC

Signature: /s/ David Hochman
Print Name: David Hochman
Title: Chief Executive Officer

FREEHOLD SURGICAL, LLC

Signature: /s/ David Hochman
Print Name: David Hochman
Title: Chief Executive Officer

Accepted in San Mateo, California:

AGENT:
HERCULES CAPITAL, INC.

Signature: /s/ Jennifer Choe
Print Name: Jennifer Choe
Title: Deputy General Counsel,
Portfolio Transactions

LENDERS:

HERCULES CAPITAL, INC.

Signature: /s/ Jennifer Choe
Print Name: Jennifer Choe
Title: Deputy General Counsel,
Portfolio Transactions

HERCULES CAPITAL IV, L.P.

By: Hercules Technology SBIC Management, LLC, its General Partner

By: Hercules Capital, Inc., its Manager

Signature: /s/ Jennifer Choe
Print Name: Jennifer Choe
Title: Deputy General Counsel,
Portfolio Transactions

HERCULES SBIC V, L.P.

By: Hercules Technology SBIC Management, LLC, its General Partner

By: Hercules Capital, Inc., its Manager

Signature: /s/ Jennifer Choe
Print Name: Jennifer Choe
Title: Deputy General Counsel,
Portfolio Transactions

Table of Addenda, Exhibits and Schedules

[Addendum 2, all Exhibits and all Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K.]

Schedule 5.11	Borrower Products
Schedule 5.13	Employee Loans
Schedule 5.14	Capitalization and Subsidiaries
Schedule 7.23	Affiliate Transactions

ADDENDUM 1 to LOAN AND SECURITY AGREEMENT

TAXES; INCREASED COSTS

1. **Defined Terms**. For purposes of this Addendum 1:

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

   b. "**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Term Commitment pursuant to a law in effect on the date on which (A) such Lender acquires such interest in the Loan or Term Commitment or (B) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2 or Section 4 of this Addendum 1, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient's failure to comply with Section 7 of this Addendum 1 and (iv) any withholding Taxes imposed under FATCA.

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

   d. "**Foreign Lender**" means a Lender that is not a U.S. Person.

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

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

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

h. "**Recipient**" means Agent or any Lender, as applicable.

i. "**Withholding Agent**" means Borrower and Agent.

2. **Payments Free of Taxes**. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2 or Section 4 of this Addendum 1) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

3. **Payment of Other Taxes by Borrower**. Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

4. **Indemnification by Borrower**. Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under Section 2 of this Addendum 1 or this Section 4) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate describing the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. In addition, Borrower agrees to pay, and to hold Agent and any Lender harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all excise, sales or other similar Taxes (excluding Taxes imposed on or measured by the net income of Agent or such Lender) that may be payable or determined to be payable with respect to any of the Collateral or this Agreement.

5. **Indemnification by Lenders**. Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), that are payable or paid by Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Agent to Lenders from any other source against any amount due to Agent under this Section 5.

6. **Evidence of Payments**. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to the provisions of this Addendum 1, Borrower shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

7. **Status of Lenders**.

a. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 7(b)(i), 7(b)(ii) and 7(b)(iv) of this Addendum 1) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

b. Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

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

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

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

B. executed copies of IRS Form W-8ECI;

C. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance**

Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

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

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

iv. if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Agent as may be necessary for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

c. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Agent in writing of its legal inability to do so.

8. **Treatment of Certain Refunds**. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to the provisions of this Addendum 1 (including by the payment of additional amounts pursuant to the provisions of this Addendum 1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under the provisions of this Addendum 1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 8 (plus any penalties,

interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 8 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

9. **Increased Costs**. If any change in applicable law shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result shall be to increase the cost to such Recipient of making, converting to, continuing or maintaining any Term Loan Advance or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Recipient (whether of principal, interest or any other amount), then, upon the request of such Recipient, Borrower will pay to such Recipient such additional amount or amounts as will compensate such Recipient for such additional costs incurred or reduction suffered.

10. **Survival**. Each party's obligations under the provisions of this Addendum 1 shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Term Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

ADDENDUM 3 to LOAN AND SECURITY AGREEMENT

SBIC

1.1 *Borrower's Business*. For purposes of this Addendum 3, Borrower shall be deemed to include its "affiliates" as defined in Title 13 Code of Federal Regulations Section 121.103. Borrower (i) represents and warrants to Agent and Lenders, with respect to subsection (a) below, as of the initial SBA Funding Date, and (ii) represents and warrants to Agent and Lenders, as of each SBA Funding Date and covenants to Agent and Lenders for a period of one year after each SBA Funding Date or for such longer period as set forth below with respect to subsections 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 below, as follows:

(a) Size Status. Borrower's primary NAICS code is 541715 and Borrower has less than One Thousand (1,000) employees in the aggregate (as determined in accordance with Title 13 of Federal Regulations Section 121.106);

(b) No Relender. Borrower's primary business activity does not involve, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair;

(c) No Passive Business. Borrower is engaged in a regular and continuous business operation (excluding the mere receipt of payments such as dividends, rents, lease payments, or royalties). Borrower's employees are carrying on the majority of day to day operations. Borrower will not pass through substantially all of the proceeds of the Loan to another entity;

(d) No Real Estate Business. Borrower is not classified under North American Industry Classification System (NAICS) codes 531110 (lessors of residential buildings and dwellings), 531120 (lessors of nonresidential buildings except miniwarehouses), 531190 (lessors of other real estate property), 237210 (land subdivision), or 236117 (new housing for-sale builders). Borrower is not classified under NAICS codes 236118 (residential remodelers), 236210 (industrial building construction), or 236220 (commercial and institutional building construction), if Borrower is primarily engaged in construction or renovation of properties on its own account rather than as a hired contractor. Borrower is not classified under NAICS codes 531210 (offices of real estate agents and brokers), 531311 (residential property managers), 531312 (nonresidential property managers), 531320 (offices of real estate appraisers), or 531390 (other activities related to real estate), unless it derives at least 80 percent of its revenue from non-Affiliate sources. The proceeds of the Loan will not be used to acquire or refinance real property unless Borrower (x) is acquiring an existing property and will use at least 51 percent of the usable square footage for its business purposes; (y) is building or renovating a building and will use at least 67 percent of the usable square footage for its business purposes; or (z) occupies the subject property and uses at least 67 percent of the usable square footage for its business purposes.

(e) No Project Finance. Borrower's assets are not intended to be reduced or consumed, generally without replacement, as the life of its business progresses, and the nature of Borrower's business does not require that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets (e.g., real estate development projects and oil and gas wells). The primary purpose of the Loan is not to fund production of a single item or defined limited number of items, generally over a defined production period, where such production will constitute the majority of the activities of Borrower (e.g., motion pictures and electric generating plants).

(f) No Farm Land Purchases. Borrower will not use the proceeds of the Loan to acquire farm land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

(g) No Foreign Investment. The proceeds of the Loan will not be used substantially for a foreign operation, passed through to a foreign business or used to acquire a foreign business. Borrower will not have, on or within one year after each SBA Funding Date and each other Loan provided by a Lender that is an SBIC more than 49 percent of its employees or tangible assets located outside the United States of America.

1.2 *Small Business Administration Documentation*. Agent and Lenders acknowledge that Borrower completed, executed and delivered to Agent prior to each SBA Funding Date SBA Forms 480, 652 and 1031 (Parts A and B) together with a business plan showing Borrower's financial projections (including balance sheets and income and cash flows statements) for the period described therein and a written statement (whether included in the purchase agreement or pursuant to a separate statement) from Agent regarding its intended use of proceeds from the sale of securities to Lenders (the "Use of Proceeds Statement"). Borrower represents and warrants to Agent and Lenders that the information regarding Borrower and its affiliates set forth in the SBA Form 480, Form 652 and Form 1031 and the Use of Proceeds Statement delivered as of each SBA Funding Date is accurate and complete.

1.3 *Inspection*. The following covenants contained in this Section 3 are intended to supplement and not to restrict the related provisions of the Loan Documents. Subject to the preceding sentence, Borrower will permit, for so long as Lenders hold any debt or equity securities of Borrower, Agent, Lenders or their representative, at Agent's or Lenders' expense, and examiners of the SBA to visit and inspect the properties and assets of Borrower, to examine its books of account and records, and to discuss Borrower's affairs, finances and accounts with Borrower's officers, senior management and accountants, all at such reasonable times as may be requested by Agent or Lenders or the SBA.

1.4 *Annual Assessment*. Upon request of Agent or Lender, promptly after the end of each calendar year (but in any event prior to February 28 of each year) and at such other times as may be reasonably requested by Agent or Lenders, Borrower will deliver to Agent a written assessment of the economic impact of Lenders' investment in Borrower, specifying the full-time equivalent net jobs created and total jobs created or retained in connection with the investment, the impact of the investment on the revenues and profits of Borrower's business and on taxes paid by Borrower and its employees, and such other information as may be required regarding Borrower in connection with the filing of Lenders' SBA Form 468. Lenders will assist Borrower with preparing such assessment. In addition to any other rights granted hereunder, Borrower will grant Agent and Lenders and the SBA access to Borrower's books and records for the purpose of verifying the use of such proceeds. Borrower also will furnish or cause to be furnished to Agent and Lenders such other information regarding the business, affairs and condition of Borrower as Agent or Lenders may from time to time reasonably request, and such information shall be certified by the President, Chief Executive Officer or Chief Financial Officer of Borrower to the extent requested by Agent or Lender for compliance with the SBIC Act.

1.5 *Use of Proceeds*. Borrower will use the proceeds from the Loan only for purposes set forth in Section 7.17. Borrower will deliver to Agent from time to time promptly following Agent's request, a written report, certified as correct by Borrower's Chief Financial Officer, verifying the purposes and amounts for which proceeds from the Loan have been disbursed. Borrower will supply to Agent such additional information and documents as Agent reasonably requests with respect to its use of proceeds and will permit Agent and Lenders and the SBA to have access to any and all Borrower records and information and personnel as Agent deems necessary to verify how such proceeds have been or are being used, and to assure that the proceeds have been used for the purposes specified in Section 7.17.

1.6 *Activities and Proceeds*. Neither Borrower nor any of its affiliates (if any) will engage in any activities or use directly or indirectly the proceeds from the Loan for any purpose for which a small business investment company is prohibited from providing funds by the SBIC Act, including 13 C.F.R. §107.720. Borrower shall not, nor shall it cause or permit any of its subsidiaries to, without obtaining the prior written approval of Agent, change Borrower's or any such subsidiary's business activities from that conducted on the date hereof to a business activity from which a licensee under the SBIC Act is prohibited from providing funds by the SBIC Act. Borrower agrees that any such change in its or any such subsidiary's business activities without such prior written consent of Agent shall constitute a material breach of the obligations of Borrower under this Addendum 1.

1.7 *Compliance and Resolution.* Borrower agrees that a failure to comply with Borrower's obligations under this Addendum, or any other set of facts or circumstances where it has been asserted by any governmental regulatory agency (or Agent or Lenders believe that there is a substantial risk of such assertion) that Agent, Lenders and their affiliates are not entitled to hold, or exercise any significant right with respect to, any securities issued to Lenders by Borrower, will constitute a breach of the obligations of Borrower under the financing agreements among Borrower, Agent and Lenders. In the event of (i) a failure to comply with Borrower's obligations under this Addendum; or (ii) an assertion by any governmental regulatory agency (or Agent or Lenders believe that there is a substantial risk of such assertion) of a failure to comply with Borrower's obligations under this Addendum, then (y) Agent, Lenders and Borrower will meet and resolve any such issue in good faith to the satisfaction of Borrower, Agent, Lenders, and any governmental regulatory agency, and (z) upon request of Lenders or Agent, Borrower will cooperate and assist with any assignment of the financing agreements among Hercules Capital IV, L.P., Hercules SBIC V, L.P. and Hercules Capital, Inc.

ADDENDUM 4 to LOAN AND SECURITY AGREEMENT

Agent and Lender Terms

(a) Each Lender hereby irrevocably appoints Hercules Capital, Inc. to act on its behalf as Agent hereunder and under the other Loan Documents and irrevocably authorizes Agent to take such actions on its behalf and to exercise such powers as are delegated to Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Agent shall have only those duties which are specified in this Agreement and it may perform such duties by or through its agents, representatives or employees. In performing its duties on behalf of Lenders, Agent shall exercise the same care which it would exercise in dealing with loans made for its own account, but it shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of all or any of the Loan Documents, or for any representations, warranties, recitals or statements made therein or made in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents furnished or delivered in connection herewith or therewith by Agent to any Lender or by or on behalf of Borrower to Agent or any Lender, or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein, as to the use of the proceeds of the Term Loan Advances, the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Agent. Agent shall not be responsible for insuring the Collateral or for the payment of any Taxes, assessments, charges or any other charges or liens of any nature whatsoever upon the Collateral or otherwise for the maintenance of the Collateral, except in the event Agent enters into possession of a part or all of the Collateral, in which event Agent shall preserve the part in its possession. Unless the officers of Agent acting in their capacity as officer of Agent on Borrower's account have actual knowledge thereof or have been notified in writing thereof by Lenders, Agent shall not be required to ascertain or inquire as to the existence or possible existence of any Event of Default.

(b) Neither Agent nor any of its officers, directors, employees, attorneys, representatives or agents shall be liable to Lenders for any action taken or omitted hereunder or under any of the other Loan Documents or in connection herewith or therewith unless caused by its or their gross negligence or willful misconduct. No provision of this Agreement or of any other Loan Document shall be deemed to impose any duty or obligation on Agent to perform any act or to exercise any power in any jurisdiction in which it shall be illegal, or shall be deemed to impose any duty or obligation on Agent to perform any act or exercise any right or power if such performance or exercise (a) would subject Agent to a Tax in a jurisdiction where it is not then subject to a Tax or (b) would require Agent to qualify to do business in any jurisdiction where it is not so qualified. Without prejudice to the generality of the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or (where so instructed) refraining from acting under this Agreement or under any of the other Loan Documents in accordance with the instructions of Lenders. Agent shall be entitled to refrain from exercising any power, discretion or authority vested in it under this Agreement unless and until it has obtained the written instructions of Lenders. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon Agent in its individual capacity. With respect to its participation in the Loan Agreement hereunder, Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same rights and powers as though it were not performing the duties and functions delegated to it hereunder and the term "Lender" or

"Lenders" or any similar term shall unless the context clearly indicates otherwise include Agent in its individual capacity.

(c) Agent may rely, and shall be fully protected in acting, or refraining to act, upon, any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, bond or other paper or document that it has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of cables, telecopies and telexes, to have been sent by the proper party or parties. In the absence of its gross negligence or willful misconduct, Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to Agent and conforming to the requirements of this Agreement or any of the other Loan Documents. Agent may consult with counsel, and any opinion or legal advice of such counsel shall be full and complete authorization and protection in respect of any action taken, not taken or suffered by Agent hereunder or under any Loan Documents in accordance therewith. Agent shall have the right at any time to seek instructions concerning the administration of the Collateral from any court of competent jurisdiction. Agent shall not be under any obligation to exercise any of the rights or powers granted to Agent by this Agreement and the other Loan Documents at the request or direction of Lenders unless Agent shall have been provided by Lenders with adequate security and indemnity against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction.

(d) Each Lender agrees to indemnify Agent in its capacity as such (to the extent not reimbursed by Borrower and without limiting the obligation of Borrower to do so), according to its respective Term Commitment percentages (based upon the total outstanding Term Commitments) in effect on the date on which indemnification is sought under this Addendum 4, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time be imposed on, incurred by or asserted against Agent in any way relating to or arising out of, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by Agent under or in connection with any of the foregoing; The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

(e) To the extent not reimbursed either by Borrower or from the application of Collateral proceeds pursuant to Section 10.2, a Lender (the "Indemnified Lender") shall be indemnified by the other Lender (an "Indemnifying Lender"), on a several basis in proportion to each Lender's pro rata portion of the Term Commitment, and each Indemnifying Lender agrees to reimburse the Indemnified Lender for the Indemnifying Lender's pro rata share of the following items (an "Indemnified Payment"):

(i) all reasonable out-of-pocket costs and expenses of the Indemnified Lender incurred by the Indemnified Lender in connection with the discharge of its activities under this Agreement or the Loan Agreement, including reasonable legal expenses and attorneys' fees; provided, that the Indemnified Lender shall consult with the other Lender regarding the incurrence of such costs and expenses at reasonable intervals (but not more often than monthly) and any such reasonable costs and expenses shall be "Claims" hereunder notwithstanding any disagreement by the other Lender as to their incurrence; and

(ii) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, which may be imposed on, incurred by or asserted against the Indemnified

Lender in any way relating to or arising out of this Agreement, or any action taken or omitted by the Indemnified Lender hereunder;

provided, however, that the Indemnified Lender shall not be reimbursed or indemnified for an Indemnified Payment, except to the extent that the Indemnified Lender paid more than its ratable share of such payment. All Indemnified Payments as set forth in this clause (e) to an Indemnified Lender are intended to be paid ratably by the other Lender.

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

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

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

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

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

(h) In connection with any exercise of Enforcement Actions hereunder, neither any Agent nor any Lender or any of its partners, or any of their respective directors, officers, employees, attorneys, accountants, or agents shall be liable as such for any action taken or omitted by it or them, except for its or their own gross negligence or willful misconduct with respect to its duties under this Agreement.

(i) Each Lender and Agent may execute any of its powers and perform any duties hereunder either directly or by or through agents or attorneys-in-fact. Each Lender and Agent shall be entitled to advice of counsel concerning all matters pertaining to such powers and duties. No Lender or Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it, if the selection of such agents or attorneys-in-fact was done without gross negligence or willful misconduct.

Each Lender agrees that it will make its own independent investigation of the financial condition and affairs of Borrower in connection with the making of Term Loan Advances pursuant to the Loan Agreement and has made and shall continue to make its own appraisal of the creditworthiness of Borrower. Neither Agent nor any Lender shall have any duty or responsibility either initially or on a continuing basis to make any

such investigation or any such appraisal on behalf of all Lenders or to provide the other Lenders with any credit or other information with respect thereto whether coming into its possession before the date hereof or any time or times thereafter and shall further have no responsibility with respect to the accuracy of or the completeness of the information provided to Lenders by Borrower.

ADDENDUM 5 to LOAN AND SECURITY AGREEMENT

Multiple Borrower Terms

(a) Borrower's Agent. Each Borrower hereby irrevocably appoints Company as its agent, attorney-in-fact and legal representative for all purposes, including requesting disbursement of the Term Loan and receiving account statements and other notices and communications to Borrowers (or any of them) from Agent or any Lender. Agent may rely, and shall be fully protected in relying, on any request for the Term Loan Advances, disbursement instruction, report, information or any other notice or communication made or given by Company, whether in its own name or on behalf of one or more of the other Borrowers, and Agent shall not have any obligation to make any inquiry or request any confirmation from or on behalf of any other Borrower as to the binding effect on it of any such request, instruction, report, information, other notice or communication, nor shall the joint and several character of Borrowers' obligations hereunder be affected thereby.

(b) Waivers. Each Borrower hereby waives: (i) any right to require Agent to institute suit against, or to exhaust its rights and remedies against, any other Borrower or any other person, or to proceed against any property of any kind which secures all or any part of the Secured Obligations, or to exercise any right of offset or other right with respect to any reserves, credits or deposit accounts held by or maintained with Agent or any Indebtedness of Agent or any Lender to any other Borrower, or to exercise any other right or power, or pursue any other remedy Agent or any Lender may have; (ii) any defense arising by reason of any disability or other defense of any other Borrower or any guarantor or any endorser, co-maker or other person, or by reason of the cessation from any cause whatsoever of any liability of any other Borrower or any guarantor or any endorser, co-maker or other person, with respect to all or any part of the Secured Obligations, or by reason of any act or omission of Agent or others which directly or indirectly results in the discharge or release of any other Borrower or any guarantor or any other person or any Secured Obligations or any security therefor, whether by operation of law or otherwise; (iii) any defense arising by reason of any failure of Agent to obtain, perfect, maintain or keep in force any Lien on, any property of any Borrower or any other person; (iv) any defense based upon or arising out of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any other Borrower or any guarantor or any endorser, co-maker or other person, including without limitation any discharge of, or bar against collecting, any of the Secured Obligations (including without limitation any interest thereon), in or as a result of any such proceeding. Until all of the Secured Obligations have been paid, performed, and discharged in full, nothing shall discharge or satisfy the liability of any Borrower hereunder except the full performance and payment of all of the Secured Obligations. If any claim is ever made upon Agent for repayment or recovery of any amount or amounts received by Agent in payment of or on account of any of the Secured Obligations, because of any claim that any such payment constituted a preferential transfer or fraudulent conveyance, or for any other reason whatsoever, and Agent repays all or part of said amount by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Agent or any of its property, or by reason of any settlement or compromise of any such claim effected by Agent with any such claimant (including without limitation the any other Borrower), then and in any such event, each Borrower agrees that any such judgment, decree, order, settlement and compromise shall be binding upon such Borrower, notwithstanding any revocation or release of this Agreement or the cancellation of any note or other instrument evidencing any of the Secured Obligations, or any release of any of the Secured Obligations, and each Borrower shall be and remain liable to Agent and Lenders under this Agreement for the amount so repaid or recovered, to the same extent as if such amount had never originally been received by Agent or any Lender, and the provisions of this sentence shall survive, and continue in effect, notwithstanding any revocation or release of this Agreement. Each Borrower hereby expressly and unconditionally waives all rights of subrogation, reimbursement and indemnity of every kind against any other Borrower, and all rights of recourse to any assets or property of any other Borrower, and all rights to any collateral or security held for the payment and performance of any Secured Obligations, including (but not limited to) any of the foregoing rights

which Borrower may have under any present or future document or agreement with any other Borrower or other person, and including (but not limited to) any of the foregoing rights which any Borrower may have under any equitable doctrine of subrogation, implied contract, or unjust enrichment, or any other equitable or legal doctrine.

(c) Consents. Each Borrower hereby consents and agrees that, without notice to or by Borrower and without affecting or impairing in any way the obligations or liability of Borrower hereunder, Agent may, from time to time before or after revocation of this Agreement, do any one or more of the following in its sole and absolute discretion: (i) accept partial payments of, compromise or settle, renew, extend the time for the payment, discharge, or performance of, refuse to enforce, and release all or any parties to, any or all of the Secured Obligations; (ii) grant any other indulgence to any Borrower or any other Person in respect of any or all of the Secured Obligations or any other matter; (iii) accept, release, waive, surrender, enforce, exchange, modify, impair, or extend the time for the performance, discharge, or payment of, any and all property of any kind securing any or all of the Secured Obligations or any guaranty of any or all of the Secured Obligations, or on which Agent at any time may have a Lien, or refuse to enforce its rights or make any compromise or settlement or agreement therefor in respect of any or all of such property; (iv) substitute or add, or take any action or omit to take any action which results in the release of, any one or more other Borrowers or any endorsers or guarantors of all or any part of the Secured Obligations, including, without limitation one or more parties to this Agreement, regardless of any destruction or impairment of any right of contribution or other right of Borrower; (v) apply any sums received from any other Borrower, any guarantor, endorser, or co-signer, or from the disposition of any Collateral or security, to any Indebtedness whatsoever owing from such person or secured by such Collateral or security, in such manner and order as Agent determines in its sole discretion, and regardless of whether such Indebtedness is part of the Secured Obligations, is secured, or is due and payable. Each Borrower consents and agrees that Agent shall be under no obligation to marshal any assets in favor of Borrower, or against or in payment of any or all of the Secured Obligations. Each Borrower further consents and agrees that Agent shall have no duties or responsibilities whatsoever with respect to any property securing any or all of the Secured Obligations. Without limiting the generality of the foregoing, Agent shall have no obligation to monitor, verify, audit, examine, or obtain or maintain any insurance with respect to, any property securing any or all of the Secured Obligations.

(d) Independent Liability. Each Borrower hereby agrees that one or more successive or concurrent actions may be brought hereon against such Borrower, in the same action in which any other Borrower may be sued or in separate actions, as often as deemed advisable by Agent. Each Borrower is fully aware of the financial condition of each other Borrower and is executing and delivering this Agreement based solely upon its own independent investigation of all matters pertinent hereto, and such Borrower is not relying in any manner upon any representation or statement of Agent or any Lender with respect thereto. Each Borrower represents and warrants that it is in a position to obtain, and each Borrower hereby assumes full responsibility for obtaining, any additional information concerning any other Borrower's financial condition and any other matter pertinent hereto as such Borrower may desire, and such Borrower is not relying upon or expecting Agent to furnish to it any information now or hereafter in Agent's possession concerning the same or any other matter.

(e) Subordination. All Indebtedness of a Borrower now or hereafter arising held by another Borrower is subordinated to the Secured Obligations and Borrower holding the Indebtedness shall take all actions reasonably requested by Agent to effect, to enforce and to give notice of such subordination.

(f) Service of Process. Each Subsidiary that is organized outside of the United States of America shall appoint CT Corporation System, or other agent acceptable to Agent, as its agent for the purpose of accepting service of any process in the United States of America, evidenced by a service of process letter in form and substance satisfactory to Agent (each, a "Process Letter"). Each such Loan Party shall take all actions, including payment of fees to such agent, to ensure that each Process Letter remains effective at all times.

Exhibit 10.2

Orchestra BioMed, Holdings, Inc.
150 Union Square Drive
New Hope, Pennsylvania 18938

November 7, 2024

Darren Sherman
delivered via email

Dear Darren:

I am pleased to inform you that the Orchestra BioMed Holdings, Inc. compensation committee has approved a one-time cash bonus payment to you in the amount of $150,000 (the "Bonus"). The Bonus will be paid through payroll on or before November 15, 2024, subject to applicable withholding.

As a condition to the payment to you of the Bonus, you agree that in the event of (i) your voluntary resignation without Good Reason, or (ii) the termination of your employment for Cause (as Good Reason and Cause are defined in your January 26, 2023 Orchestra BioMed Holdings, Inc. Amended and Restated Employment Agreement), in either case before May 15, 2026, you agree to repay the Bonus as follows within ten (10) business days of the termination of your employment:

- if your employment terminates prior to May 15, 2025, you shall repay all $150,000 of the Bonus;
- if your employment terminates on or after May 15, 2025 but prior to November 15, 2025, you shall repay $100,000 of the Bonus;
- if your employment terminates on or after November 15, 2025 but prior to May 15, 2026, you shall repay $50,000 of the Bonus; and
- if your employment terminates on or after May 15, 2026, you shall not be required to repay any of the Bonus.

To indicate your acceptance of these terms, please sign below and return a signed copy of this letter to me by November 10, 2024.

/s/ Andrew Taylor
Andrew Taylor
Chief Financial Officer

Agreed to and accepted by on 11/8/2024:

/s/ Darren Sherman
Darren Sherman
President and Chief Operating Officer

***** Certain information in this document has been excluded pursuant to Regulation S-K, item 601(b)(10). Such excluded information is not material and is information that the company treats as private or confidential. Such omitted information is indicated by brackets "[***]") in this exhibit. *****

COMMERCIAL LEASE

THIS LEASE is made on the 14 day of December, 2009.

The Landlord hereby agrees to lease to the Tenant, and the Tenant hereby agrees to hire and take from the Landlord, the Leased Premises described below pursuant to the terms and conditions specified herein:

LANDLORD: Union Square L.P.

Address: P.O. Box 59
New Hope, PA 18938
Telephone: [Omitted pursuant Item to 601(a)(6)]
Facsimile: [Omitted pursuant Item to 601(a)(6)]

TENANT: Caliber Therapeutics Inc.

Address: 150 Union Square Drive, New Hope, PA 18938
Telephone: [Omitted pursuant Item to 601(a)(6)]
Facsimile: ( )
Email:

1. **Leased Premises**:

The Leased Premises are those premises described as:

Address: Suite 150 Union Square Drive, New Hope, PA 18938

Gross Floor Area of Leased Premises: +/- 3023 square feet

2. **Term**:

A. The term of the Lease ("Initial Term") shall be SIX (6) MONTHS & shall commence on: the 1st day of February, 2010 ("**Commencement Date**") and end on: the 31st day of July, 2010 ("**Expiration Date**"), unless sooner terminated or extended, as hereinafter provided.

B. The period commencing on the day the tenancy begins, and ending on the last day of the twelfth month next succeeding the Commencement Date, shall constitute the first lease year as used herein, and each successive period of twelve months shall constitute a lease year.

C. If Tenant remains in possession of the Leased Premises with the written consent of the Landlord after the lease Expiration Date stated above (without exercising, if applicable, an option to extend) this Lease will be converted to a month-to-month tenancy and each party shall have the right to terminate the Lease by giving written notice to the other party at least thirty (30) days prior to the termination of any one-month tenancy.

3. **Option to Extend**:

Tenant is granted the right and option to extend the term of this Lease for one (1) additional (6) month term beyond the Initial Term hereof (the "extension period", together with the Initial Term, the "Term"), the extension period to commence upon the expiration of the Initial Term of this Lease, provided that:

A. Such option must be exercised, if at all, by written notice from Tenant to Landlord given at least two (2) months prior to the expiration of the Initial Term;

B. At the time of exercising the option, and at the commencement of the extension period, this Lease shall be in full force and effect and there shall exist no Event of Default by Tenant; and

C. In the event the foregoing option is effectively exercised, all terms and conditions contained in this Lease shall continue to apply during any extension period.

4. **Base Rent**:

A. The Tenant agrees to pay the ANNUAL BASE RENT of:

[***] Dollars ($[***]) payable in equal installments of $[***] in advance on the first day of each and every calendar month during the Initial Term of this Lease without deduction or demand.

B. Rent shall increase as per the "Lease Breakdown Lease Exhibit A Exhibit Date 12-14-09" throughout any additional extension period of this Lease.

C. Rent shall be payable to Landlord's address above.

D. Tenant shall pay a "late charge" of ten percent (10%) each month on a cumulative basis of any installment of Rent (or any such charge as maybe considered Additional Rent under this Lease) when paid more than ten (10) days after the due date.

E. Tenant shall pay $50.00 for any checks returned by the bank for insufficient funds.

5. **Base Rent Adjustment Non - Applicable**

If in any tax year commencing with the fiscal year 0, the real estate taxes and property insurance on the land and Building of which the Leased Premises are a part are in excess of the amount of real estate taxes and property insurance thereon for the fiscal year 0 (hereinafter called the "Base Year), Tenant will pay to Landlord as Additional Rent hereunder, when and as designated by notice in writing by Landlord, [***]% percent of Tenant's proportionate share of such increase in the real estate taxes and property insurance over the Base Year that may occur in each year of the term of this Lease or any extension or renewal thereof and proportionately for any part of a fiscal year.

6. **Additional Rent**:

All sums of money required to be paid by Tenant under this Lease (except for Base Rent), whether or not the same are designated "Additional Rent", shall be owed by Tenant to Landlord as rent. Base Rent and Additional Rent shall be referred to sometimes as Rent.

7. **Common Area Maintenance Rent**:

Tenant shall be required to pay to Landlord Additional Rent for maintenance of common areas, which shall include cleaning of common hallways, washing the exterior of windows, common area utilities, trash removal, snow removal, landscape maintenance and any other maintenance expenses that are of a general nature. The annual amount of Common Area Maintenance Rent for the first year of this Lease term is $[***] per square foot of gross floor area, and is subject to annual increase, as needed. The monthly amount of Common Area Maintenance Rent for the Leased Premises is $[***]. Annual increases for Common Area Maintenance Rent are not to exceed per the "Lease Breakdown Lease Exhibit A Exhibit Date 12-14-09" per term.

8. **Utility Rent**:

Unless Utilities are the responsibility of the Tenant (Section 12) the Landlord shall provide the Leased Premises with heat, air conditioning and electricity. Utility Rent for utilities and services that are furnished to the Leased Premises are paid as Additional Rent. The annual amount allocated for utilities for Year One of this Lease term is $[***] per square foot of gross floor area, and is subject to annual increase, based on current electric rates. The monthly Utility Rent is $[***]. Annual increases for Utility Rent are per "Lease Breakdown Lease Exhibit A Exhibit Date 12-14-09". The application for and the connecting of additional utilities / services and the payment for such services shall be made by and only in the name of the responsible party as indicated below:

Telephone / Cable / Fax / Computer: Tenant

9. **Security Deposit**:

Upon execution of this Lease, the sum of [***] Dollars ($[***]) shall be deposited by the Tenant with the Landlord as security for the faithful performance of all the covenants and conditions of the lease by the said Tenant ("Security Deposit"). The Security Deposit is not an advance rent deposit or measure of Landlord's damages in case of Tenant's default. Upon each occurrence of an Event of Default hereunder, Landlord may use all or part of the Security Deposit to pay delinquent payments due under the Lease and the cost of any damages injury, expense of liability caused by such Event of Default without prejudice to any other right or remedy provided under this Lease, at law or in equity. Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to its original amount. If the Tenant faithfully performs all the covenants and conditions on his part to be performed, then the Security Deposit (or portion thereof remaining) shall be returned to the Tenant, without interest. This Security Deposit is not required to be placed in an escrow account.

10. **Use of Premises**:

The Leased premises maybe used only for the following purpose(s):

Laboratory and Office

11. **Condition of Leased Premises; Maintenance and Repair**:

At the time of delivery of possession, the Leased Premises shall be in good order and repair and condition. The Tenant agrees to take good care of and maintain the Leased Premises in good condition through the term of the lease.

Subject to the provisions of this Lease, Tenant shall make and pay the costs of all repairs and maintenance of all interior painting; repairs and maintenance of approved signs; and repairs and replacements of all floor coverings, lighting, and other fixtures and equipment inside the Leased Premises, and repair and restoration of all damaged plate glass in the Leased Premises unless such repairs are required due to the neglect of Landlord. Tenant shall maintain the HVAC system at its sole cost, unless any repairs are a result of the landlord's negligence, in which case Landlord shall pay the cost of any such repairs, or Tenant can opt to have Landlord fully maintain and warrant the HVAC system by initialing this paragraph. The present cost of this warranty is $[***] per unit per month, and is subject to increase/decrease to match Landlord's cost for providing this warranty. The Leased Premises is serviced by One (1) units; current monthly warranty cost $[***]. Annual increases for the HVAC warranty are not to exceed [***]% per year.

/s/ DS (Tenant initials)

12. **Utilities**:

Responsibility for all utilities and services that are furnished to the Leased Premises shall be as designated below. The application for and connecting of utilities, as well as all services, shall be made by and only in the name of the responsible party. Any utility attributable to Landlord shall be subject to increase as needed.

Electric: Landlord Water/Sewer: Tenant Trash: Landlord
Cleaning (interior): Tenant Telephone: Tenant

13. **Compliance with Laws and Regulations**:

Tenant, at its expense, shall promptly comply with all federal, state, and municipal laws, orders, and regulations, and with all lawful directives of public officers, which impose any duty upon it or Landlord with respect to the Leased Premises, Tenant at its expense, shall obtain all required licenses or permits for the conduct of its business within the terms of this Lease, or for the making of repairs, alterations, improvements, or additions to the Leased Premises after delivery of possession. Landlord, when necessary, will join with the Tenant in applying for all such permits or licenses.

14. **Alterations and Improvements**:

Tenant shall not make any alterations, improvements or additions to the Leased Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall supply Landlord with a list of contractors and subcontractors, and with plans and specifications for all such alterations, improvements and additions prior to requesting such consent. All alterations, improvements and additions made by Tenant shall remain upon the Leased Premises at the expiration or earlier termination of this Lease and shall become the property of Landlord unless Landlord shall, prior to or after the termination of this Lease, have given written notice to Tenant to remove same or any of same, in which event Tenant shall remove such alterations, improvements and additions and restore the Premises to the same good order and condition in which it was on the Commencement Date. Should Tenant fail so to do, Landlord may do so, and Tenant shall reimburse Landlord for Landlord's expenses, on demand. All of such alterations, improvements or additions shall be made solely at Tenant's expense; and Tenant agrees to indemnify, defend and save harmless Landlord (a) on account of any injury to any persons or property by reason of any such improvements, additions or alterations, and (b) from the payment of any claim on account of bills for labor or materials furnished or claimed to have been furnished in connection therewith. Tenant agrees to procure all necessary licenses, permits and approvals before undertaking such work and to do all such work in a good and workmanlike manner, employing materials of highest quality and complying with all applicable governmental requirements.

15. **Assignment/Subletting Restrictions**:

Tenant may not assign this agreement or sublet the Leased Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Any assignment, sublease or other purported license to use the Leased Premises by Tenant without the Landlord's consent shall be void and shall (at Landlord's option) terminate this Lease. In the event that Landlord shall provide its consent to an assignment or sublease of the Leased Premises, such consent (i) shall not constitute a waiver of Landlord's right to withhold its consent to a subsequent assignment or sublease; and (ii) shall not reduce Tenants obligations under the Lease.

16. **Insurance**:

A. **By Landlord**: Landlord shall at all times during the term of this Lease, at its expense, insure and keep in effect on the Building in which the Leased Premises are located, fire insurance with extended coverage. The Tenant shall not permit any use of the Leased Premises which will make voidable any insurance on the property of which the Leased Premises are a part, or on the contents of said property or which shall be contrary to any law or regulation from time to time established by the applicable fire insurance rating association. Tenant shall on demand reimburse the Landlord, and all other tenants, the full amount of any increase in insurance premiums caused by the Tenants use of the premises.

B. **By Tenant**: Tenant shall, at its expense, during the term hereof, maintain and deliver to Landlord, upon request, public liability and property damage and plate glass insurance policies insuring Tenant and Landlord with respect to the Leased Premises. Such policies shall name the Landlord and Tenant as insured, and have limits of at least $[***] for injury or death to any one person and $[***] for any one accident, and with respect to damage to property and with full coverage for plate glass. Tenant shall maintain insurance upon all property in the Premises owned by Tenant or for which Tenant is legally liable. Tenant shall maintain insurance against such other perils and in such amounts as Landlord may in writing from time to time require. Such policies shall be in whatever form and with such insurance companies as are reasonably satisfactory to Landlord, and shall name the Landlord as additional insured, and shall provide for at least ten days prior notice to landlord of cancellation. If Tenant fails to procure and maintain insurance as required hereunder, Landlord may do so, and Tenant shall, on written demand, as Additional Rent, reimburse Landlord for all monies expended by Landlord to procure and maintain such insurance. Tenant hereby waives and releases Landlord of and from any and all liabilities, claims and losses for which Landlord is or may be held liable to the extent Tenant receives insurance proceeds on account thereof.

17. **Indemnification of Landlord**:

Tenant shall defend, indemnify, and hold Landlord harmless from and against any claim, loss, expense or damage to any person or property in or upon the Leased Premises, arising out of Tenant's use or occupancy of the Leased Premises, or arising out of any act or neglect of Tenant or its servants, employees, agents, or invitees.

18. **Condemnation**:

If all or any part of the Leased Premises is taken by eminent domain, this Lease shall expire on the date of such taking, and the rent shall be apportioned as of that date. No part of any such award shall belong to Tenant.

19. **Destruction of Premises**:

If the Leased Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Landlord and this Lease shall continue in full force and effect except as follows:

A. **Partial Destruction**: If the Leased Premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be promptly repaired by and at the expense of Landlord to the condition of Leased Premises at the time of the commencement of the Lease and only to the extent of Landlord's recovery of insurance proceeds equitably allocable to the Leased Premises. The rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the Leased Premises which is usable. Landlord shall not be responsible for repair or replacement of any fixtures or personal property installed by Tenant, regardless of whether such fixtures or personal property were installed by Tenant before or after the commencement of the Lease, including, but not limited to, any fit-out work performed by Tenant.

B. **Total Destruction**: If the Leased Premises are totally damaged or rendered wholly unusable by fire or other casualty then the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premise shall have been repaired and restored by Landlord, subject to Landlord's right to elect not to restore the same as hereinafter provided. For purposes of this Section, the Leased Premises shall be deemed to be totally damaged if the Leased Premises cannot be restored to substantially the same condition as existed at the commencement of this Lease within ninety (90) days after the date on which the fire or other casualty took place, in which case the term of this Lease shall expire as fully and completely as if such date were the date set forth above for the termination of this Lease and Tenant shall forthwith quit, surrender and vacate the Leased Premises without prejudice, however, to Landlord's rights and remedies against Tenant under the Lease with respect to the period prior to such termination. Any payments of rent made by Tenant which were on account of any period subsequent to such termination date shall be returned to Tenant.

C. **Tenant's Liability**: Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, however, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty.

D. **Landlord's Election**: If the Building in which the Leased Premises are rendered unusable by fire or other casualty or (whether or not the Leased Premises are damaged in whole or in part) if the building shall be damaged to the extent that Landlord shall decide to demolish it, then, in either of such events, Landlord may elect to terminate this Lease by written notice to Tenant given within 90 days after such fire or casualty specifying a date for the expiration of the Lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this Lease shall expire as fully and completely as if such date were the date set forth above for the termination of this Lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice, however, to Landlord's rights and remedies against Tenant under the Lease with respect to the period prior to such termination. Any payments of rent made by Tenant which were on account of any period subsequent to such termination date shall be returned to Tenant, Unless Landlord shall serve a termination notice as provided for herein, Landlord shall make the repairs and restorations to the extent provided in Section 18.A., above, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Landlord's control.

20. **Default**:

Each of the following shall constitute an Event of Default ("Event of Default"):

A. **Failure to Pay Annual Base Rent and Other Payment Failure**: Tenant fails to pay Base Rent, any utility, Additional Rent or other charge or payment due or payable by Tenant under this Lease on any day upon which the same shall be due and payable, if such failure continues for ten (10) days after receipt of written notice that he same is due and payable; or

B. **Other Violations**: Tenant defaults in the performance of any other obligation, covenant or agreement of Tenant to be performed or observed under this Lease, and such default continues and is not cured by Tenant within ten (10) days after Landlord has given to Tenant a written notice specifying the same (provided that if such default cannot reasonably be cured within 10 days, no Event of Default shall occur if Tenant initiates such cure within the 10 day period and diligently pursues it to completion in a reasonable time thereafter), but in no event shall such period exceed the lesser of (i) an additional sixty (60) days or (ii) the remaining term of the Lease; or

C. **Occupancy**: Tenant fails to assume occupancy of the Leased Premises, to open its business or to operate its business in the Leased Premises pursuant to the provisions of this Lease.

D. **Judgment**: Any execution or attachment is issued against Tenant or any of Tenant's property and is not discharged or vacated within the twenty (20) days after issuance thereof.

E. **Insolvency**: Tenant makes an assignment for the benefit of creditors or becomes a party or subject to any liquidation or dissolution action or proceeding, or the institution of any bankruptcy, reorganization, insolvency or other proceeding for the relief of financially distressed debtors with respect to Tenant, or a receiver, liquidator, custodian or trustee is appointed for Tenant or a substantial part of Tenant's assets and, if any of the same occur involuntarily the same is not dismissed or discharged within thirty (30) days; or the entry of an order or relief against Tenant under Title II of the United States Code entitled "Bankruptcy"; or Tenant taking any action to effect, or which indicates Tenant's or acquiescence in, any of the foregoing.

21. **Landlords Rights upon Default**:

Upon the occurrence of an Event of Default, the Landlord may exercise any or all of its rights under this Lease, in addition to those it may have at law or in equity.

A. **Termination**: Upon the occurrence of any one or more of such Event of Default, Landlord may serve upon Tenant a notice that this Lease will terminate on a date to be specified therein, and Tenant shall have no right to avoid the cancellation or termination by payment of any sum due or by other performance of any condition, term or covenant broken, and notwithstanding any statute, rule or law, or decision of any court to the contrary, Tenant shall remain liable as set forth hereinafter for rent and any other charges due Landlord under this Lease, plus the costs incurred by Landlord to prepare the Leased Premises for a new Tenant.

B. **Right of Possession**: Upon any Event of Default, and if the notice provided for in Paragraph 20 A above shall have been given and this Lease shall be terminated; or if the Leased Premises becomes vacant or deserted; then in all or any of such events, in addition to and not in lieu of, all other remedies of Landlord, Landlord may without notice terminate all services (including, but not limited to, the furnishing of utilities) and re-enter the Leased Premises, either by force or otherwise, and/or by summary proceedings or otherwise disposes Tenant, and remove its effects and repossess and enjoy the Leased Premises, together with all alterations, additions and improvements, all without being liable to prosecution or damages therefore.

22. **Additional Remedies of Landlord**:

A. In the event of any Event of Default, re-entry, termination and/or dispossession by summary proceedings or otherwise, in addition to, and not in lieu of, all other remedies which Landlord has under this Lease, at law or in equity; (1) the Base Rent, Common Area Maintenance Rent and all Additional Rent shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration; and (2) Landlord may relet the Leased Premises or any part of parts thereof, either in the name of Landlord or otherwise for a term of rental which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease, and at such rental or rentals and upon such other terms and conditions as Landlord, in its sole discretion, may deem advisable. Landlord may make such alterations and repairs as Landlord deems necessary in order to relet the Leased Premises. Upon each such reletting all rentals received by Landlord from such reletting shall be applied, first, to the payment of any costs and expenses of such reletting, including brokerage fees, attorneys' fees and costs of such alterations and repairs; second, to the payment of any indebtedness other than rent due hereunder from Tenant to landlord; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such rents received from such reletting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such reentry or taking possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

B. Landlord shall have the election, in place and instead of holding Tenant so liable, to recover against Tenant, as liquidated damages for loss of the bargain and not as a penalty, a sum equal to the monthly amount of Base Rent and all Additional Rent multiplied by the number of months and fractional months which would have constituted the balance of the term (or such lesser time period specified by Landlord), together with costs and reasonable attorney's fees. Actions to collect amounts due by Tenant may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until the expiration of the Lease term.

C. Tenant hereby expressly waives the service of notice of intention to re-enter or to institute legal proceedings granted by or under any present or future laws in the event of Tenant being evicted or disposed for any cause, or in any event of Landlord obtaining possession of the Leased Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

23. **Confession of Judgment**:

THE FOLLOWING PARAGRAPHS SET FORTH WARRANTS OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST MAKER IN GRANTING THIS RIGHT TO CONFESS JUDGMENT AGAINST TENANT, TENANT HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, AND, ON THE ADVICE OF THE SEPARATE COUNSEL OF TENANT, UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TENANT HAD OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF PENNSYLVANIA.

A. LESSEE HEREBY EMPOWERS ANY PROTHONOTARY OR ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR LESSEE IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT FOR RENT AND/OR THE CHARGES, PAYMENTS, COSTS AND EXPENSES HEREIN RESERVED AS RENT, OR HEREIN AGREED TO BE PAID BY LESSEE AND/OR TO SIGN FOR LESSEE AN AGREEMENT FOR ENTERING IN ANY COMPETENT COURT AN AMICABLE ACTION OR ACTIONS FOR THE RECOVERY OF SUCH RENT OR OTHER CHARGES OR EXPENSES, AND IN SAID SUITS OR IN SAID AMICABLE ACTION OR ACTIONS TO CONFESS JUDGMENT AGAINST LESSEE FOR ALL OR ANY PART OF THE RENT SPECIFIED IN THIS LEASE AND THEN DUE. AND UNPAID, AND OTHER CHARGES, PAYMENTS, COSTS AND EXPENSES RESERVED AS RENT OR AGREED TO BE PAID BY LESSEE AND THEN DUE AND UNPAID, AND FOR INTEREST AND COSTS TOGETHER WITH A REASONABLE ATTORNEY'S COMMISSION. SUCH AUTHORITY SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF, BUT JUDGMENT MAY BE CONFESSED AS AFORESAID FROM TIME TO TIME AS OFTEN AS ANY OF SAID RENT AND/OR OTHER CHARGES RESERVED AS RENT OR AGREED TO BE PAID BY LESSEE SHALL FALL DUE OR BE IN ARREARS.

B. UPON THE EXPIRATION OF THE THEN CURRENT TERM OF THIS LEASE OR THE EARLIER TERMINATION OR SURRENDER HEREOF AS PROVIDED IN THIS LEASE, IT SHALL BE LAWFUL FOR ANY ATTORNEY TO APPEAR AS ATTORNEY FOR LESSEE AS WELL AS FOR ALL PERSONS CLAIMING BY, THROUGH OR UNDER LESSEE AND TO SIGN AN AGREEMENT FOR ENTERING IN ANY COMPETENT COURT AN AMICABLE ACTION IN EJECTMENT AGAINST LESSEE AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER LESSEE AND THEREIN CONFESS JUDGMENT FOR THE RECOVERY BY LESSOR OF POSSESSION OF THE HEREIN PREMISES, FOR WHICH THIS LEASE SHALL BE ITS SUFFICIENT WARRANT, WHEREUPON, IF LESSOR SO DESIRES, A WRIT OF POSSESSION OR OTHER APPROPRIATE WRIT UNDER THE RULES OF CIVIL PROCEDURE THEN IN EFFECT MAY ISSUE FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDINGS; PROVIDED, HOWEVER, IF FOR ANY REASON AFTER SUCH Action SHALL HAVE BEEN COMMENCED, THE SAME SHALL BE DETERMINED AND THE POSSESSION OF THE PREMISES HEREBY DEMISED REMAIN IN OR BE RESTORED TO LESSEE, LESSOR SHALL HAVE THE RIGHT FOR THE SAME DEFAULT AND UPON ANY SUBSEQUENT DEFAULT OR DEFAULTS, OR UPON THE TERMINATION OF THIS LEASE UNDER ANY OF THE TERMS OF THIS LEASE TO BRING ONE OR MORE FURTHER AMICABLE ACTION OR ACTIONS AS HEREINBEFORE SET FORTH TO RECOVER POSSESSION OF THE SAID PREMISES AND CONFESS JUDGMENT FOR THE RECOVERY OF POSSESSION OF THE PREMISES AS HEREINABOVE PROVIDED.

C. IN ANY AMICABLE ACTION OF EJECTMENT AND/OR FOR RENT IN ARREARS, LESSOR SHALL FIRST CAUSE TO BE FILED IN SUCH ACTION AN AFFIDAVIT MADE BY IT OR SOMEONE ACTING FOR IT SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT, AND, IF A TRUE COPY OF THIS LEASE (AND OF THE TRUTH OF THE COPY SUCH AFFIDAVIT SHALL BE SUFFICIENT EVIDENCE) BE FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING. LESSEE HEREBY RELEASES TO LESSOR AND TO ANY AND ALL ATTORNEYS WHO MAY APPEAR FOR LESSEE ALL ERRORS IN SAID PROCEEDINGS AND ALL LIABILITY THEREOF. IF PROCEEDINGS SHALL BE COMMENCED BY LESSOR TO RECOVER POSSESSION UNDER THE ACTS OF ASSEMBLY AND RULES OF CIVIL PROCEDURE, EITHER AT THE END OF THE TERM OR EARLIER TERMINATION OF THIS LEASE, OR FOR NON-PAYMENT OF RENT OR ANY OTHER REASON, LESSEE SPECIFICALLY WAIVES THE RIGHT TO THE NOTICE PROVIDED FOR ELSEWHERE IN THIS LEASE AND TO THE 15 OR 30 DAYS' NOTICE REQUIRED BY THE LANDLORD AND TENANT ACT OF 1951, AND AGREES THAT 5 DAYS' NOTICE SHALL BE SUFFICIENT IN EITHER OR ANY SUCH CASE.

Tenant acknowledges and agrees to the provisions set forth in this Section 23.

Tenant initials /s/ DS

24. **Care and Operation of Premises**:

A. The Leased Premises, including Tenant's windows and signs, shall be kept neat, clean and in good repair and order by Tenant at Tenant's expense. Tenant shall store all of Tenant's trash, garbage, and other refuse in suitable receptacles within the Leased Premises and shall be responsible for the removal and disposition of refuse from the Leased Premises to proper container areas provided by Landlord.

B. Tenant shall not cause or permit any unusual or objectionable noises or odors to emanate from the Leased Premises, or permit the playing or making of any music, sound or advertising matter which can be heard outside of the Leased Premises. Tenant agrees that no noxious fumes or hazardous wastes or chemicals will be used on or emitted from the Leased Premises in the daily conduct of the Tenant's business.

C. Tenant shall not obstruct, encumber or use for any purposes, other than ingress or egress to and from the Leased Premises, the sidewalks in front of or abutting any part of the Leased Premises or the entrances or vestibules thereof and no selling shall be conducted or products or signs displayed by Tenant anywhere within the Union Square Condominium outside the Leased Premises unless the same shall be expressly permitted by this Lease.

25. **Gross Floor Area**:

For the purpose of this Lease, "gross floor area" shall be deemed to mean the area within the exterior faces of the exterior walls (except party walls and walls between spaces occupied by two or more separate occupants, in both of which cases the center of the wall in question shall be used instead of the exterior face thereof) of all floors, without deduction or exclusion for any space occupied by or used for columns or other interior construction or equipment servicing the Leased Premises, and any common hallway directly behind leased area.

26. **Signs**:

Tenant shall post no signs unless specifically approved by Landlord. All signs shall conform to all zoning codes and shall be of such size, color, design and character and in such location as Landlord shall approve in writing. No other signs, lettering or other forms of inscription or advertising devices shall be displayed on the exterior of the Leased Premises or on the inner or on the outer face of the windows, entrances, or doors, without prior written approval of Landlord. Landlord reserves to itself the exclusive right to the use of the roof of the Building for all purposes. Tenant shall be entitled to signage at the entry to the Leased Premises, as approved by Landlord.

27. **Common Areas**:

Landlord reserves tire right to make changes, additions, alterations or improvements in or to the common areas of the Building; provided, however that there shall thereby be caused no unreasonable obstruction of Tenant's right of access to the Leased Premises, or any unreasonable interference with Tenant's use of the Leased Premises, or any reduction in the minimum required size of such common areas.

Tenant will at its expense, keep the areas immediately in front of its doors free of debris, et cetera.

28. **Rules and Regulations**:

Tenant, and its servants, employees, agents, licensees and concessionaires shall observe faithfully and comply with such reasonable rules and regulations existing for the property or those which maybe from time to time adopted by the Landlord governing the use of the common areas. The Landlord reserves the right from time to time to make reasonable changes in such rules and regulations and to make reasonable changes, additions, alterations or improvements in or to such common areas. Tenant further agrees that it is bound by all of the covenants, terms, conditions, requirements and rules and regulations in the Declaration of Condominium, Bylaws, and Rules and Regulations of Union Square Condominium (the "Condominium Documents"), the terms of which are incorporated herein by reference. Tenant acknowledges receipt of the Condominium Documents prior to executing this Lease.

29. **Extraneous Warranties and Representations**:

Landlord or Landlord's agents have made no representations, warranties or promises with respect to the Union Square Condominium, the Building, or the Leased Premises, except as herein expressly set forth.

30. **Landlord's Right to Enter**:

Landlord may, at reasonable tunes, and with prior notice (except in case of emergency) enter the Leased Premises to inspect it, to make repairs or alterations, and to show it to potential buyers, lenders or tenants.

31. **Surrender upon Termination**:

At the end of the Lease term Tenant shall peaceably surrender the Leased Premises to Landlord in as good condition as it was in at the beginning of the term, reasonable use and wear excepted.

32. **Quiet Enjoyment**:

Landlord agrees that if Tenant shall pay the rent as aforesaid and perform the covenants and agreements herein contained on its part to be performed, Tenant shall peaceably hold and enjoy the said Leased Premises without hindrance or interruption by Landlord or by any other person or persons acting under or through Landlord.

33. **No Smoking Building**:

The Building in which the Leased Premises is located is a non-smoking building and Tenant agrees that neither Tenant, his employees, guests or clients will be allowed to smoke in the Building.

34. **Subordination**:

This Lease, and the Tenant's leasehold interest, is and shall be subordinate, subject and inferior to any and all mortgages, liens, security interests and encumbrances now and hereafter placed on the Leased Premises by Landlord, any and all extensions, renewals, consolidations, assignments and refinancings (collectively, "Mortgages") of such mortgages, liens, security interests and encumbrances and all advances paid under such mortgages. In the case that Landlord's interest under the Mortgage shall terminate for any reason and if the holder of any such Mortgage ("Mortgagee") or if the grantee of a deed in lieu of foreclosure, or if the purchaser at any foreclosure sale or at any sale under a power of sale contained in any such Mortgage shall at its sole option so request, Tenant shall attorn to, and recognize such Mortgagee, grantee or purchaser, as the case may be, as Landlord under this Lease for the balance then remaining of the term of this Lease, subject to all terms of this Lease. The aforesaid provisions shall be self operative and no further instrument or document shall be necessary unless required by any such Mortgagee, grantee or purchaser. Notwithstanding anything to the contrary set forth above, any Mortgagee may at any time subordinate its Mortgage to this Lease, without Tenants consent, by execution of a written document subordinating such Mortgage to this Lease, and thereupon this Lease shall be deemed prior to such Mortgage.

35. **Execution of Estoppel Certificate**:

At any time Landlord or any Mortgagee, can require Tenant, within 20 days of the date of such written request, to execute and deliver to Landlord and/or such Mortgagee, without charge and in a form satisfactory to Landlord and/or such Mortgagee, a written statement: (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the term of this lease; (c) certifying that Tenant is in occupancy of the Leased Premises, and that the Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed by Landlord have been satisfied and performed except as shall be stated; (e) certifying that Landlord is not in default under the Lease and thereafter no defenses or offsets against the enforcement of this Lease by Landlord, or stating the defaults and/or defenses claim by Tenant; (f) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid; (g) reciting the amount of Security Deposited held by Landlord, if any, and (h) any other information which Landlord or the Mortgagee shall reasonably require.

36. **Parking**:

Tenant shall be entitled to four (4) red hang tags for parking in the "red zone" area of the Union Square parking lot, and one (1) yellow hang tag ("yellow zone") per additional company employee.

37. **Miscellaneous Terms**:

A. **Notices**: Any notice, statement, demand or other communication by one party to the other, shall be given by personal delivery, by mailing the same by certified mail, return receipt requested, postage prepaid or by private delivery service guaranteeing overnight delivery, addressed to the Tenant at the premises, or to the Landlord at the address set forth above, or by facsimile transmission to the fax numbers set forth above. The date of notice shall be deemed to be the date personally delivered, the date fax, two (2) business days after deposit in the United States mail, or one (1) business day after deposited with overnight delivery service.

B. **Severability**: If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.

C. **Waiver**: The failure of either party to enforce any of the provisions of this lease shall not be considered a waiver of that provision or the right of the party to thereafter enforce the provision.

D. **Waiver of Jury Trial**: Landlord and Tenant do hereby waive the right of Jury Trial in any action arising as a result of any claim made under this Lease or in any other ways otherwise in connection herewith. The parties understand that this will result in any dispute not heard by a jury but will be heard by a Judge or other proper party as the case may be.

E. **Complete Agreement**: This Lease constitutes the entire understanding of the parties with respect to the subject matter hereof and may not be modified except by an instrument in writing and signed by the parties.

F. **Brokers**: Tenant represents and warrants to Landlord that Tenant has had no dealing, negotiations or consultations with respect to the Leased Premises or this transaction with any broker or finder and that no broker or finder called the Leased Premises or any other space in the Union Square Condominium to Tenant's attention. In the event that any broker or finder claims to have submitted the Leased Premises or any other space in the Union Square Condominium to Tenant, to have induced Tenant to lease the Leased Premises or to have taken part with Tenant or any of its principals, agents or employees in any dealings, negotiations or consultations with respect to the Leased Premises or this transaction, Tenant shall be responsible for and shall defend, indemnify and save Landlord harmless from and against all costs, fees (including, without limitation, reasonable attorney's fees), expenses, liabilities and claims incurred or suffered by Landlord as a result thereof.

G. **<u>NEW BUSINESS PAPERWORK</u>: THE TENANT IS RESPONSIBLE IN GETTING ANY AND ALL PAPERWORK FROM THE MUNICIPALITY NEEDED FOR A NEW BUSINESS AT THE LOCATION SITED ABOVE. THIS INCLUDES BUT IS NOT LIMITED TO A CERTIFICATE OF OCCUPANCY, ZONING APPROVAL, BUSINESS SIGN PERMIT, ETC...**

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 14 day of December, 2009.

LANDLORD: UNION SQUARE, L.P.
a Pennsylvania limited partnership
By UNION SQUARE COMPLEX, INC.,
a Pennsylvania corporation, its general partner

ATTEST:

/s/ Leslie K. Cohen
,Sec.

/s/ Brad Michael
By: Brad Michael, Partner

TENANT: Caliber Therapeutics Inc.

/s/ Leslie K. Cohen Witness

By: /s/ Darren Sherman
SIGNATURE

By: Darren Sherman
PRINT NAME

Witness

By:
SIGNATURE

By:
PRINT NAME

LEASE BREAKDOWN:

Lease Exhibit:	A
Exhibit Date:	12/14/09

ADDENDUM TO LEASE

LEASE DATED: **December 14th, 2009**

DATE OF THIS ADDENDUM: **June 22nd, 2010**

BETWEEN:

- **UNION SQUARE, L.P. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC., (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that as of June 22nd , 2010 the following changes have been made to the Lease:

   a. The Lease is hereby extended beyond the Initial Term starting August 1st , 2010. The expiration of the Extended Term will be 12-31-12

   b. There will be Two (2) additional One (1) Year Options on the Lease.

   c. Rent structure is hereby changed as per the **Lease Break down, Lease Exhibit B, Exhibit Dated 6-22-10**.

Except as expressly amended herein, the Commercial Lease between **Union Square L.P. (Landlord) and Caliber Therapeutics Inc. (Tenant) dated December 14th, 2009 (date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 23rd day of June, 2010.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Brad Michael
By Brad Michael, Partner

Witness

TENANT:
CALIBER THERAPEUTICS INC.

/s/ Leslie Cohen
Witness

/s/ Darren Sherman
By Darren Sherman

LEASE BREAKDOWN:

Lease Exhibit:	B
Exhibit Date:	6/22/10

SECOND ADDENDUM TO LEASE

LEASE DATED: **December 14th, 2009**

DATE OF THIS ADDENDUM: **February 1st, 2011**

BETWEEN:

- **UNION SQUARE, L.P. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC., (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that as of February 1st, 2011 the following changes have been made to the Lease:

   a. Tenant has chosen to take over all Utility responsibility for the Leased Premises. Rent as been changed and is now reflected in Lease Breakdown, Lease Exhibit C, Exhibit Date 2-1-11 attached for the remaining term and all option terms.

   b. It is also agreed that Tenant may at any time sublet space to Backbeat Medical Inc. without additional approval of the Landlord. Landlord has approved this sublet if it is needed.

   c. Tenant will reimburse Landlord any utility expenses in full as of the February billing month 2011 until utility has been fully transferred into Tenants name.

Except as expressly amended herein, the Commercial Lease between **Union Square L.P. (Landlord) and Caliber Therapeutics Inc. (Tenant) dated December 14th, 2009 (date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 1st day of February, 2011.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Brad Michael
By Brad Michael, Partner

Witness

TENANT:
CALIBER THERAPEUTICS INC.

/s/ Leslie Cohen
Witness

/s/ Darren Sherman
By Darren Sherman

LEASE BREAKDOWN:

Lease Exhibit:	C
Exhibit Date:	2/1/11

THIRD ADDENDUM TO LEASE

LEASE DATED: **DECEMBER 14th, 2009**

DATE OF THIS ADDENDUM: **SEPTEMBER 18th, 2012**

BETWEEN:

- **UNION SQUARE, L.P. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that:

   a. The Initial Lease Term has been extended through 1-31-14 as per the attached Lease Breakdown, Lease Exhibit D, Exhibit Date 9-18-12.

Except as expressly amended herein, the Commercial Lease between **Union Square L.P. (Landlord) and Caliber Therapeutics Inc. (Tenant) dated December 14th, 2009 (date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 28th day of September, 2012.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Leslie K. Cohen
Witness

/s/ Brad Michael
By: Brad Michael, Partner

TENANT:
CALIBER THERAPEUTICS INC.

/s/ illegible
Witness

/s/ Darren Sherman
By: Darren Sherman

LEASE BREAKDOWN:

Lease Exhibit:	D
Exhibit Date:	9/8/12

FOURTH ADDENDUM TO LEASE

LEASE DATED: **DECEMBER 14th, 2009**

DATE OF THIS ADDENDUM: **January 15th, 2015**

BETWEEN:

- **UNION SQUARE, L.P. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that:

   a. The Initial Lease Term has been extended through 1-31-17 as per the attached Lease Breakdown, Lease Exhibit E, Exhibit Date 1-14-15.

   b. The lease will now encompass Suite 140 (2438 sq ft) and the current Suite 150 (3023 sq ft) for a total leased square footage of 5,461 as shown on the attached Lease Breakdown, Lease Exhibit E, Exhibit Date 1-14-15.

Except as expressly amended herein, the Commercial Lease between **Union Square L.P. (Landlord) and Caliber Therapeutics Inc. (Tenant) dated Dec. 14th, 2009 (date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 20th day of January, 2015.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Leslie K.Cohen
Witness

/s/ Brad Michael
By: Brad Michael, Partner

TENANT:
Caliber Therapeutics Inc.

Witness

/s/ John P. Brancaccio
By: John P. Brancaccio, Treasurer

LEASE BREAKDOWN:

Lease Exhibit:	E
Exhibit Date:	1/12/15

***** Certain information in this document has been excluded pursuant to Regulation S-K, item 601(b)(10). Such excluded information is not material and is information that the company treats as private or confidential. Such omitted information is indicated by brackets "[***]") in this exhibit. *****

FIFTH ADDENDUM TO LEASE

LEASE DATED: **DECEMBER 14th, 2009**

DATE OF THIS ADDENDUM: **January 20th, 2017**

BETWEEN:

- **UNION SQUARE, L.P. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC. (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that:

   a. The Initial Lease Term has been extended through 1-31-19 as per the attached Lease Breakdown, Lease Exhibit F, Exhibit Date 1-20-17.

   b. One additional one year option was also added on the Lease Breakdown, Lease Exhibit F, Exhibit Date 1-20-17 should the Tenant choose to accept it.

2. As a note to clarify the Security Deposits in place. When Caliber took over both suites 140 and 150, both existing security deposits for Caliber ($[***]) and what was Backbeat ($[***]) are being used in total for the current total suite 150.

Except as expressly amended herein, the Commercial Lease between **Union Square L.P. (Landlord) and Caliber Therapeutics Inc. (Tenant) dated December 14th, 2009 (date)** is hereby ratified in its entirety as though set forth at length herein,

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 30th day of January, 2017.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Brad Michael
By: Brad Michael, Partner

Witness

TENANT:
Caliber Therapeutics Inc.

/s/ John P. Brancaccio
By:

Witness

LEASE BREAKDOWN:

Lease Exhibit:	F
Exhibit Date:	1/20/17

SIXTH ADDENDUM TO LEASE

LEASE DATED: **DECEMBER 14th, 2009**

DATE OF THIS ADDENDUM: **August 8th, 2017**

BETWEEN:

- **UNION SQUARE, L.P. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that:

   a. The Tenant will be adding storage unit #5 as additional rental space. The storage unit is located in the 500 building lower level unit #5. The approximate square footage of the storage unit is 150 square feet.

   b. Monthly rent has been revised to show the additional rent of the storage unit and is as described in the updated Lease Breakdown, Lease Exhibit G, Exhibit Dated 8-8-17.

   c. The storage rental only may have early termination of leasing of just the storage unit. Landlord would still require 45 days written notice of vacating the storage unit.

   d. No security deposit is being requested for the storage unit.

Except as expressly amended herein, the Commercial Lease between **Union Square L.P. (Landlord) and Caliber Therapeutics Inc. (Tenant) dated December 14th, 2009 (date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 10th day of August, 2017.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Brad Michael
By: Brad Michael, Partner

Witness

TENANT:
Caliber Therapeutics Inc.

/s/ Darren Sherman
By: Darren Sherman

Witness

LEASE BREAKDOWN:

Lease Exhibit:	G
Exhibit Date:	8/8/17

***** Certain information in this document has been excluded pursuant to Regulation S-K, item 601(b)(10). Such excluded information is not material and is information that the company treats as private or confidential. Such omitted information is indicated by brackets "[***]") in this exhibit. *****

SEVENTH ADDENDUM TO LEASE

LEASE DATED: **DECEMBER 14th, 2009**

DATE OF THIS ADDENDUM: **January 29th, 2019**

BETWEEN:

- **UNION SQUARE, L.P. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that:

   a. The Tenant will be extending the existing lease until 9-30-19 of the existing space.

   b. The Tenant will be adding Suite 140 to the existing lease on 9-1-19 for one month at $[***] rent. Starting on 10-1-19 Tenant will be extending the Lease for a term of 5 years for both Suites 140 & 150.

   c. Square Footage Leased, Lease Term Dates, Base Monthly Rent, CAM Rent, HVAC Warranty, and Storage Rent Monthly Rent have been revised as described in the updated Lease Breakdown, Lease Exhibit H, Exhibit Dated 1-29-19.

   d. Landlord has agreed to offer the Tenant an allowance of $[***] towards retrofit expenses. Landlord reserves the right to approve expenses to confirm that they relate to the retrofit of the physical space. The allowance can be used for any portion of the leased premises.

   e. An additional Security Deposit of $[***] needed at the execution of this addendum for the addition of Suite 140.

Except as expressly amended herein, the Commercial Lease between **Union Square L.P. (Landlord) and Caliber Therapeutics Inc. (Tenant) dated December 14th, 2009 (date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 31st day of August, 2019.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Brad Michael
By: Brad Michael, Partner

Witness

TENANT:
Caliber Therapeutics Inc.

/s/ Kate Hennessy
Witness

/s/ C. Evan Ballantyne
By: C. Evan Ballantyne, CFO

LEASE BREAKDOWN:

Lease Exhibit:	H
Exhibit Date:	1/29/19

***** Certain information in this document has been excluded pursuant to Regulation S-K, item 601(b)(10). Such excluded information is not material and is information that the company treats as private or confidential. Such omitted information is indicated by brackets "[***]") in this exhibit. *****

EIGHTH ADDENDUM TO LEASE

LEASE DATED: **DECEMBER 14th, 2009**

DATE OF THIS ADDENDUM: **August 30th, 2019**

BETWEEN:

- **UNION SQUARE, LP. (LANDLORD), AND**
- **CALIBER THERAPEUTICS INC (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that:

   a. The Suite named in the SEVENTH ADDENDUM was incorrectly noted. Corrected Notation - The Tenant will be adding Suite 145 to the existing lease on 9-1-19 for one month at $[***] rent. Starting on 10-1-19 Tenant will be extending the Lease for a term of 5 years for both Suites 145 & 150.

   b. An additional Security Deposit of $[***] will be needed at the execution of this addendum for the addition of Suite 145.

   c. All other terms of previous Addendum to remain intact.

   d. Tenant has hereby changed its Name in Tenancy to - Orchestra BioMed, Inc. All future Lease Notifications shall read that Name instead of Caliber Therapeutics Inc.

Except as expressly amended herein, the Commercial Lease between **_Union Square L.P._(Landlord) and _Caliber Therapeutics Inc._(Tenant) dated _Dec. 14th, 2009_(date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 30th day of __ August ___, 2019.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Brad Michael
By: Brad Michael, Partner

Witness

TENANT:
Caliber Therapeutics, Inc.

/s/ Darren R. Sherman
By: Darren R. Sherman

Witness

***** Certain information in this document has been excluded pursuant to Regulation S-K, item 601(b)(10). Such excluded information is not material and is information that the company treats as private or confidential. Such omitted information is indicated by brackets "[***]") in this exhibit. *****

NINTH ADDENDUM TO LEASE

LEASE DATED: **DECEMBER 14th, 2009**

DATE OF THIS ADDENDUM: **August 8th, 2024**

BETWEEN:

- **UNION SQUARE, LP. (LANDLORD), AND**
- **ORCHESTRA BIOMED, INC (TENANT)**

LEASED SPACE: 150 UNION SQUARE DRIVE, NEW HOPE, PA 18938.

1. It is agreed between the parties that:

   a. The lease term will be extended as shown on the **Lease Breakdown, Lease Exhibit I, Exhibit Dated 8/8/24** showing a new term expiration of 9/30/27.

   b. The existing and new rates of the Base Monthly Rent, CAM Monthly Rent, HVAC Warranty Monthly Rent, and Storage Rent are all noted on the **Lease Breakdown, Lease Exhibit I, Exhibit Dated 8/8/24**.

Except as expressly amended herein, the Commercial Lease between **_Union Square L.P._(Landlord) and _Orchestra BioMed, Inc._(Tenant) dated _Dec. 14th, 2009_(date)** is hereby ratified in its entirety as though set forth at length herein.

IN WITNESS WHEREOF the parties intending to be legally bound, have set their hands and seals on this 2nd day of September, 2024.

LANDLORD:
UNION SQUARE, LIMITED PARTNERSHIP

/s/ Brad Michael
By: Brad Michael, Partner

Witness

TENANT:
Orchestra BioMed Inc.

/s/ Andrew Taylor
By: Andrew Taylor

Witness

LEASE BREAKDOWN:

Lease Exhibit:	I
Exhibit Date:	8/8/24

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David P. Hochman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Orchestra BioMed Holdings, Inc.;

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

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

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

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

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

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

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

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

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

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

Dated: November 12, 2024

/s/ David P. Hochman
David P. Hochman
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Andrew Taylor, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Orchestra BioMed Holdings, Inc.;

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

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

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

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

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

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

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

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

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

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

Dated: November 12, 2024

/s/ Andrew Taylor
Andrew Taylor
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

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

In connection with the Quarterly Report of Orchestra BioMed Holdings, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David P. Hochman, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in this Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 12, 2024

/s/ David P. Hochman
David P. Hochman
Chief Executive Officer
(Principal Executive Officer)

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

Exhibit 32.2

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

In connection with the Quarterly Report of Orchestra BioMed Holdings, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Andrew Taylor, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in this Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 12, 2024

/s/ Andrew Taylor
Andrew Taylor
Chief Financial Officer
(Principal Financial Officer)

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