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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549  
**FORM 10-Q**

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(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended March 31, 2025  
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: 001-39577**

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**Elutia Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**47-4790334**  
(I.R.S. Employer Identification No.)

**12510 Prosperity Drive, Suite 370**  
**Silver Spring, MD**  
(Address of principal executive offices)

**20904**  
(Zip Code)

(Registrant's telephone number, including area code): **(240) 247-1170**

N/A

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value \$0.001 per share	ELUT	The Nasdaq Capital Market

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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 May 8, 2025, there were 36,802,258 shares of the registrant's Class A common stock and 4,313,406 shares of the registrant's Class B common stock outstanding.

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## FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (the “Quarterly Report”) contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical facts contained in this Quarterly Report, including, without limitation, statements regarding our results of operations, financial position, and business strategy; expectations regarding our products and their targeted effects; plans for our sales and marketing growth; expectations regarding the potential payment of post-closing earnout payments from the sale of our former Orthobiologics segment (the “Orthobiologics Business”) to Berkeley Biologics, LLC (“Berkeley”); our anticipated expansion of our product development and research activities; increases in expenses and seasonality; expectations regarding our competitive advantages, and overall clinical and commercial success; expectations regarding the pending lawsuits and claims related to our recall of a single lot of Fiber Viable Bone Matrix (“FiberCel”) and a separate single lot of viable bone matrix (“VBM”) and expectations regarding the litigation matter with Medtronic Sofamor Danek USA, Inc. (“Medtronic”), amounts recoverable under insurance, indemnity and contribution agreements and the impact of such lawsuits and claims on our future financial position; and our expectations and plans regarding pursuit of any strategic transactions are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

Without limiting the foregoing, the words “aim,” “believe,” “may,” “will,” “should,” “expect,” “exploring,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential,” “seeks,” or “continue” or the negative of these terms or other similar expressions, are intended to identify forward-looking statements, although not all forward-looking statements contain these words. These forward-looking statements are not a guarantee of future results, performance, or achievements, and one should avoid placing undue reliance on such statements.

These forward-looking statements are based on our management’s beliefs and assumptions and on information currently available to us. Such beliefs and assumptions may or may not prove to be correct. Additionally, such forward-looking statements are subject to a number of known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied in the forward-looking statements, including, but not limited to the following:

- our ability to successfully commercialize, market and sell our newly approved EluPro® antibacterial envelope device;
- our ability to continue as a going concern;
- our ability to achieve or sustain profitability;
- the risk of product liability claims and our ability to obtain or maintain adequate product liability insurance;
- our ability to defend against the various lawsuits related to FiberCel and VBM and avoid a material adverse financial consequence;
- our ability to raise funds in the future;
- the continued and future acceptance of our products by the medical community;
- our ability to enhance our products, expand our product indications and develop, acquire and commercialize additional product offerings;
- our dependence on our commercial partners and independent sales agents to generate a substantial portion of our net sales;

- our dependence on a limited number of third-party suppliers and manufacturers, which, in certain cases are exclusive suppliers for products essential to our business;
- our ability to successfully realize the anticipated benefits of the sale of our Orthobiologics Business;
- physician awareness of the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products;
- our ability to compete against other companies, most of which have longer operating histories, more established products and/or greater resources than we do;
- pricing pressure as a result of cost-containment efforts of our customers, purchasing groups, third-party payors and governmental organizations could adversely affect our sales and profitability;
- our ability to obtain regulatory approval or other marketing authorizations by the U.S. Food and Drug Administration and comparable foreign authorities for our products and product candidates; and
- our ability to obtain, maintain and adequately protect our intellectual property rights.

These and other important factors discussed in Part I, Item 2. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and Part II, Item 1A. “Risk Factors” in this Quarterly Report, and in Part I, Item 1A. “Risk Factors” and Part II, Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2024 (the “Annual Report”) and in our other filings with the Securities and Exchange Commission (the “SEC”), each of which filings are accessible on the SEC’s website at [www.sec.gov](http://www.sec.gov) and the Investor Relations page of our website at <https://investors.Elutia.com/financials/sec-filings>, could cause actual results to differ materially from those indicated by the forward-looking statements made in this Quarterly Report.

Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties.

You should read this Quarterly Report and the documents that we reference in this Quarterly Report completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements. Except as required by applicable law, 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, changed circumstances or otherwise.

As used in this Quarterly Report, unless otherwise specified or the context otherwise requires, references to “we,” “us,” “our,” the “Company” and “Elutia” refer to the operations of Elutia Inc. and its consolidated subsidiaries.

#### **WEBSITE DISCLOSURE**

We may use our website as a distribution channel of material information about the Company. Financial and other important information regarding the Company is routinely posted on and accessible through the Investor Relations sections of its website at [www.Elutia.com](http://www.Elutia.com). In addition, you may automatically receive email alerts and other information about the Company when you enroll your email address by visiting the “Email Alerts” option under the IR Resources menu of the Investor Relations of our website at [www.Elutia.com](http://www.Elutia.com). The reference to our website address does not constitute incorporation by reference of the information contained on or available through our website, and you should not consider such information to be a part of this Quarterly Report.

## **TRADEMARKS, TRADE NAMES AND SERVICE MARKS**

This Quarterly Report includes our trademarks, trade names and service marks, including, without limitation, “Elutia®,” “CanGaroo®,” “EluPro®,” “CanGarooRM®,” “ProxiCor®,” “Tyke®,” “VasCure®,” “SimpliDerm®,” “SimpliDerm Ellipse®” and our logo, which are our property and are protected under applicable intellectual property laws. This Quarterly Report also contains trademarks, trade names and service marks of other companies, which are the property of their respective owners. Solely for convenience, trademarks, trade names and service marks may appear in this Quarterly Report without the ®, TM and SM symbols, but such references are not intended to indicate, in any way, that we or the applicable owner forgo or will not assert, to the fullest extent permitted under applicable law, our rights or the rights of any applicable licensors to these trademarks, trade names and service marks. We do not intend our use or display of other parties’ trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

## **INDUSTRY AND OTHER DATA**

Unless otherwise indicated, information contained in this Quarterly Report concerning our industry and the markets in which we operate, including our general expectations, market position and market opportunity, is based on our management’s estimates and research, as well as industry and general publications and research, surveys and studies conducted by third parties. We believe the information from these third-party publications, research, surveys and studies included in this Quarterly Report is reliable. Management’s estimates are derived from publicly available information, their knowledge of our industry and their assumptions based on such information and knowledge, which we believe to be reasonable. This data involves a number of assumptions and limitations which are subject to a high degree of uncertainty and risk due to a variety of factors, including those described in this Quarterly Report under “Forward-Looking Statements” and Part I, Item 1A. “Risk Factors” in our Annual Report which can be found at <https://investors.Elutia.com/financials/sec-filings>. These and other factors could cause our future performance to differ materially from our assumptions and estimates.

**TABLE OF CONTENTS**

	Page
<a href="#">FORWARD-LOOKING STATEMENTS</a>	1
<a href="#">WEBSITE DISCLOSURE</a>	2
<a href="#">TRADEMARKS, TRADE NAMES AND SERVICE MARKS</a>	3
<a href="#">INDUSTRY AND OTHER DATA</a>	3
<a href="#">PART I – FINANCIAL INFORMATION</a>	
<a href="#">Item 1. Financial Statements (Unaudited)</a>	
<a href="#">Condensed Consolidated Balance Sheets</a>	5
<a href="#">Condensed Consolidated Statements of Operations</a>	6
<a href="#">Condensed Consolidated Statements of Changes in Stockholders' Equity (Deficit)</a>	7
<a href="#">Condensed Consolidated Statements of Cash Flows</a>	8
<a href="#">Notes to Condensed Consolidated Financial Statements</a>	9
<a href="#">Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	26
<a href="#">Item 3. Quantitative and Qualitative Disclosures About Market Risk</a>	39
<a href="#">Item 4. Controls and Procedures</a>	40
<a href="#">PART II – OTHER INFORMATION</a>	
<a href="#">Item 1. Legal Proceedings</a>	40
<a href="#">Item 1A. Risk Factors</a>	40
<a href="#">Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</a>	40
<a href="#">Item 3. Defaults Upon Senior Securities</a>	40
<a href="#">Item 4. Mine Safety Disclosures</a>	41
<a href="#">Item 5. Other Information</a>	41
<a href="#">Item 6. Exhibits</a>	42
<a href="#">Signatures</a>	44

**PART I – FINANCIAL INFORMATION**

**Item 1. Financial Statements.**

**ELUTIA INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In Thousands, Except for Share and Per Share Data)**

**(UNAUDITED)**

	<u>March 31, 2025</u>	<u>December 31, 2024</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 17,358	\$ 13,239
Accounts receivable, net	2,860	2,276
Inventory	4,286	3,911
Insurance receivables of litigation costs	3,893	4,760
Prepaid expenses and other current assets	1,620	1,986
Total current assets	<u>30,017</u>	<u>26,172</u>
Property and equipment, net	1,031	773
Intangible assets, net	7,424	8,273
Operating lease right-of-use assets and other	826	909
<b>Total assets</b>	<b><u>\$ 39,298</u></b>	<b><u>\$ 36,127</u></b>
<b>Liabilities and Stockholders' Deficit</b>		
Current liabilities:		
Accounts payable	\$ 4,516	\$ 4,149
Accrued expenses	6,092	7,104
Current portion of long-term debt	2,500	1,250
Current portion of revenue interest obligation	5,500	4,400
Contingent liability for legal proceedings	17,808	20,432
Current operating lease liabilities	435	460
Total current liabilities	<u>36,851</u>	<u>37,795</u>
Long-term debt	21,762	22,603
Long-term revenue interest obligation	4,735	5,490
Warrant liability	12,089	16,076
Long-term operating lease liabilities	319	423
Total liabilities	<u>75,756</u>	<u>82,387</u>
Commitments and contingencies (Note 9)		
Stockholders' equity (deficit):		
Class A Common stock, \$0.001 par value per share, 200,000,000 shares authorized as of March 31, 2025 and December 31, 2024, and 36,552,348 and 30,897,232 shares issued and outstanding as of March 31, 2025 and December 31, 2024, respectively	37	31
Class B Common stock, \$0.001 par value per share, 20,000,000 shares authorized as of March 31, 2025 and December 31, 2024 and 4,313,406 issued and outstanding as of March 31, 2025 and December 31, 2024	4	4
Additional paid-in capital	197,027	183,298
Accumulated deficit	(233,526)	(229,593)
Total stockholders' deficit	<u>(36,458)</u>	<u>(46,260)</u>
<b>Total liabilities and stockholders' deficit</b>	<b><u>\$ 39,298</u></b>	<b><u>\$ 36,127</u></b>

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

**ELUTIA INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(In Thousands, Except Share and Per Share Data)**

**(UNAUDITED)**

	Three Months Ended	
	March 31,	
	2025	2024
Net sales	\$ 6,030	\$ 6,694
Cost of goods sold	3,573	3,851
Gross profit	2,457	2,843
Sales and marketing	3,031	3,309
General and administrative	3,871	5,056
Research and development	905	1,172
Litigation costs, net	2,572	1,785
Total operating expenses	10,379	11,322
Loss from operations	(7,922)	(8,479)
Interest expense, net	1,085	1,313
(Gain) loss on revaluation of warrant liability	(5,187)	9,637
Other expense (income), net	105	(1,443)
Loss before provision for income taxes	(3,925)	(17,986)
Income tax expense	8	8
Net loss	(3,933)	(17,994)
Less: dilutive gain on revaluation of warrant liability	(5,201)	—
Net loss for diluted earnings per share	\$ (9,134)	\$ (17,994)
Net loss per share - basic	\$ (0.10)	\$ (0.75)
Net loss per share - diluted	\$ (0.21)	\$ (0.75)
Weighted average common shares outstanding - basic	38,616,207	23,912,326
Weighted average common shares outstanding - diluted	42,913,111	23,912,326

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

**ELUTIA INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
**(In Thousands, Except Share Amounts)**

(UNAUDITED)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Number of Shares	Amount	Number of Shares	Amount			
<b>Balance, December 31, 2024</b>	30,897,232	\$ 31	4,313,406	\$ 4	\$ 183,298	\$ (229,593)	\$ (46,260)
Issuance of common stock in connection with registered direct offering, net of issuance costs of \$1.2 million	5,520,000	6	—	—	12,590	—	12,596
Issuance of common stock under Employee Stock Purchase Plan	31,558	—	—	—	80	—	80
Vesting of restricted stock units, net of shares withheld and taxes paid	103,558	—	—	—	(152)	—	(152)
Stock-based compensation	—	—	—	—	1,211	—	1,211
Net loss	—	—	—	—	—	(3,933)	(3,933)
<b>Balance, March 31, 2025</b>	<u>36,552,348</u>	<u>\$ 37</u>	<u>4,313,406</u>	<u>\$ 4</u>	<u>\$ 197,027</u>	<u>\$ (233,526)</u>	<u>\$ (36,458)</u>
<b>Balance, December 31, 2023</b>	18,884,196	\$ 19	4,313,406	\$ 4	\$ 137,021	\$ (175,644)	\$ (38,600)
Exercises of Common Warrants and Prefunded Warrants	1,075,825	1	—	—	4,033	—	4,034
Issuance of common stock under Employee Stock Purchase Plan	65,459	—	—	—	70	—	70
Vesting of restricted stock units, net of shares withheld and taxes paid	11,028	—	—	—	(6)	—	(6)
Stock-based compensation	—	—	—	—	2,197	—	2,197
Net loss	—	—	—	—	—	(17,994)	(17,994)
<b>Balance, March 31, 2024</b>	<u>20,036,508</u>	<u>\$ 20</u>	<u>4,313,406</u>	<u>\$ 4</u>	<u>\$ 143,315</u>	<u>\$ (193,638)</u>	<u>\$ (50,299)</u>

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

**ELUTIA INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In Thousands)  
**(UNAUDITED)**

	Three Months Ended	
	March 31,	
	2025	2024
Net loss	\$ (3,933)	\$ (17,994)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	868	864
(Gain) loss on revaluation of warrant liability	(5,187)	9,637
Gain on revaluation of revenue interest obligation	—	(1,443)
Amortization of deferred financing costs and debt discount	53	54
Interest expense recorded as additional revenue interest obligation and long-term debt	702	781
Stock-based compensation	1,211	2,197
Changes in operating assets and liabilities:		
Accounts receivable	(584)	(1,143)
Inventory	(375)	801
Receivables of litigation costs	867	665
Prepaid expenses and other	449	168
Accounts payable and accrued expenses	(225)	2,026
Contingent liability for legal proceedings	(2,624)	567
Other liabilities	(103)	179
<b>Net cash used in operating activities</b>	<b>(8,881)</b>	<b>(2,641)</b>
<b>INVESTING ACTIVITIES:</b>		
Expenditures for property and equipment	(278)	(15)
<b>Net cash used in investing activities</b>	<b>(278)</b>	<b>(15)</b>
<b>FINANCING ACTIVITIES:</b>		
Proceeds from private placement and warrants, net of offering costs	13,796	—
Repayments of long-term debt	—	(2,000)
Proceeds from exercises of Common Warrants and Prefunded Warrants	—	1,140
Payments on revenue interest obligation	—	(2,600)
Repayments of insurance premium financings	(446)	(673)
Payments for taxes upon vesting of restricted stock units	(152)	(6)
Proceeds from stock option exercises and issuance of common stock under ESPP	80	70
<b>Net cash provided by (used in) financing activities</b>	<b>13,278</b>	<b>(4,069)</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>4,119</b>	<b>(6,725)</b>
<b>Cash and cash equivalents, beginning of period</b>	<b>13,239</b>	<b>19,276</b>
<b>Cash and cash equivalents, end of period</b>	<b>\$ 17,358</b>	<b>\$ 12,551</b>
<b>Supplemental Cash Flow and Non-Cash Financing Activities Disclosures:</b>		
Cash paid for interest	\$ 526	\$ 2,541
Fair value of warrants issued	\$ 1,200	\$ —
Conversion of Common Warrants and Prefunded Warrants to common stock	\$ —	\$ 2,894

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

ELUTIA INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(UNAUDITED)

**Note 1. Organization and Description of Business**

Elutia Inc. (together with its consolidated subsidiaries, "Elutia" or the "Company") is a commercial-stage company leveraging its unique understanding of biologics combined with local drug delivery to improve the interaction between implanted medical devices and patients by reducing complications associated with these surgeries. The Company has developed a portfolio of products using both human and porcine tissue that are designed to be as close to natural biological material as possible. Elutia's portfolio of products spans the Device Protection, Women's Health and Cardiovascular markets. These products are primarily sold to healthcare providers or commercial partners.

**Note 2. Summary of Significant Accounting Policies**

*Basis of Presentation and Liquidity*

The unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by GAAP for complete financial statements and should be read in conjunction with the Company's condensed consolidated financial statements and accompanying notes included in the Company's annual report on Form 10-K ("Annual Report") for the fiscal year ended December 31, 2024. The financial information as of March 31, 2025 and for the three months ended March 31, 2025 and 2024 is unaudited, but in the opinion of management, all adjustments considered necessary for a fair statement of the results for these interim periods have been included. The condensed consolidated balance sheet data as of December 31, 2024 was derived from audited financial statements but does not include all disclosures required by GAAP. The results of the Company's operations for any interim period are not necessarily indicative of the results that may be expected for any other interim period or any future year or period.

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation.

On November 8, 2023, the Company completed the sale of substantially all of the assets relating to its Orthobiologics segment (the "Orthobiologics Business") to Berkeley Biologics, LLC ("Berkeley"). The Orthobiologics Business was comprised of assets relating to researching, developing, administering, insuring, operating, commercializing, manufacturing, selling and marketing the Company's Orthobiologics products, and the business of contract manufacturing of particulate bone, precision milled bone, cellular bone matrix, acellular dermis, soft tissue and other products. The assets sold represent the entirety of the Company's Orthobiologics segment. In the sale, the Company received approximately \$14.6 million, and the Company may earn up to an additional \$20 million, in the aggregate, in the form of earn-out payments. The earn-out payments are equal to 10% of the actual revenue earned by Berkeley in each of the five years after the closing of the sale from sales of specified Orthobiologics products under the purchase agreement (including improvements, modifications, derivatives and enhancements related to those products). There were no earn-out payments earned or paid in the three months ended March 31, 2025. Additionally, the purchase agreement provides for a customary indemnity holdback in the amount of \$1.5 million to be retained by Berkeley for 24 months after close. In the purchase agreement, the Company has retained the liabilities arising out of the VBM and FiberCel matters, as described in Note 9, both of which products were part of the Orthobiologics Business. The Company recognized a gain of \$6.0 million on the sale of the Orthobiologics Business in the fourth quarter of 2023 and an additional gain of \$0.2 million in the second quarter of 2024 from an adjustment payment related to the final working capital received by Berkeley at the sale date. The indemnity holdback is available as a source of recovery for Berkeley for claims of indemnification under the purchase agreement, and some or all of the holdback may be retained by Berkeley if Berkeley is successful in asserting a claim or

claims for indemnification against the Company. The Company is aware of certain indemnity-related claims raised, including a claim from a former supplier alleging breach of contract. Based on the Company's ongoing assessment of these claims, along with the remaining indemnity holdback of \$1.5 million, the Company does not consider a loss to be probable or estimable as of March 31, 2025. Should the Company receive incremental proceeds in the future through an earn-out payment or payment of the holdback amount, an additional gain will be recorded upon the receipt of such amounts.

In accordance with Accounting Standards Update ("ASU") 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern (Subtopic 205-40)*, the Company has evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the condensed consolidated financial statements are issued. For the three months ended March 31, 2025, the Company incurred a net loss of \$3.9 million, and as of March 31, 2025, the Company had an accumulated deficit of \$233.5 million. In addition, during the three months ended March 31, 2025, the Company used \$8.9 million of cash in operating activities and expects to continue to incur cash outflows during the remainder of 2025. Because of the numerous risks and uncertainties associated with the Company's commercialization and development efforts, the Company is unable to predict when it will become profitable, and it may never become profitable. The Company's inability to achieve and then maintain profitability would negatively affect its business, financial condition, results of operations and cash flows. Furthermore, even if the Company does achieve profitability, it may not be able to sustain or increase profitability on an ongoing basis, or, in general, be able to satisfy its obligations, including those related to the FiberCel Litigation and VBM Litigation described in Note 9, when they become due.

In order to mitigate the current and potential future liquidity issues caused by the matters noted above, the Company may seek to raise capital through the issuance of common stock or debt such as the offerings described in Note 8, issue common stock to satisfy certain obligations in lieu of cash such as the Ligand amendment described in Note 7 or pursue asset sales or other transactions, such as the sale of the Orthobiologics Business described above. However, such transactions may not be successful, and we may not be able to raise additional equity, refinance our debt instruments, or sell assets on acceptable terms, or at all. As such, based on our current operating plans, we believe there is uncertainty as to whether our future cash flows along with our existing cash, issuances of additional equity and cash generated from expected future sales will be sufficient to meet our anticipated operating needs through twelve months from the condensed consolidated financial statement issuance date. Due to these factors, there is substantial doubt about our ability to continue as a going concern within one year after the issuance of the condensed consolidated financial statements.

The accompanying condensed consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. That is, the accompanying financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates continuity of operations, realization of assets, and satisfaction of liabilities in the ordinary course of business.

#### ***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates and assumptions relating to inventories, receivables, long-lived assets, the valuation of stock-based awards, the valuation of the revenue interest obligation, the valuation of the warrant liability, the contingent liabilities for legal proceedings and deferred income taxes are made at the end of each financial reporting period by management. Management continually re-evaluates its estimates, judgments and assumptions, and management's evaluation could change. Actual results could differ from those estimates.

#### ***Net Income (Loss) per Share***

Our common stock has a dual class structure, consisting of Class A common stock, \$0.001 par value per share (the "Class A common stock") and Class B common stock, \$0.001 par value per share (the "Class B common stock"). Other than voting rights, the Class B common stock has the same rights as the Class A common stock, and therefore, both are treated as the same class of stock for purposes of the earnings per share calculation.

Basic net loss per share is computed by dividing net loss available to each class of shares by the weighted-average number of shares of common stock and participating securities outstanding during the period. Participating securities include common and prefunded warrants. Net loss is not allocated to participating securities as they do not have an obligation to fund losses. For purposes of the diluted net loss per share attributable to common stockholders calculation, stock options, restricted stock units (“RSUs”) and warrants are considered to be common stock equivalents. See Note 10 for further discussion of net loss per share attributable to common stockholders.

#### ***Fair Value of Financial Instruments***

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. To increase the comparability of fair value measures, the following hierarchy prioritizes the inputs to valuation methodologies used to measure fair value:

**Level 1** - Valuations based on quoted prices for identical assets and liabilities in active markets.

**Level 2** - Valuations based on observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

**Level 3** - Valuations based on unobservable inputs reflecting the Company’s own assumptions, consistent with reasonably available assumptions made by other market participants. These valuations require significant judgment.

The estimated fair value of financial instruments disclosed in the financial statements has been determined by using available market information and appropriate valuation methodologies. The carrying value of all current assets and current liabilities approximates fair value because of their short-term nature.

#### ***Cash and Cash Equivalents***

The Company maintains its cash balances at banks and financial institutions. The balances are insured up to the legal limit. The Company maintains cash balances that may, at times, exceed this insured limit. The Company considers cash on hand, demand deposits in a bank, money market funds, and all highly liquid investments with an original maturity of 90 days or less to be cash and cash equivalents.

#### ***Accounts Receivable and Allowances***

Accounts receivable in the accompanying balance sheets are presented net of allowances for credit losses. The Company grants credit to customers in the normal course of business but generally does not require collateral or any other security to support its receivables.

The Company evaluates the collectability of accounts receivable based on a combination of factors. In circumstances where a specific customer is unable to meet its financial obligations to the Company, a provision to the allowance for doubtful accounts is recorded to reduce the net recognized receivable to the amount that is reasonably expected to be collected. For all other customers, a provision to the allowance for credit losses is recorded based on factors including the length of time the receivables are past due, the current business environment and the Company’s historical experience. Provisions to the allowance for doubtful accounts are recorded to general and administrative expenses. Account balances are charged off against the allowance when it is probable that the receivable will not be recovered.

#### ***Inventory***

Inventory, consisting of purchased materials, direct labor and manufacturing overhead, is stated at the lower of cost or net realizable value, with cost determined generally using the average cost method. At each balance sheet date, the Company also evaluates inventory for excess quantities, obsolescence or shelf-life expiration. This evaluation includes analysis of the Company’s current and future strategic plans, historical sales levels by product, projections of future demand, the risk of technological or competitive obsolescence for products, general market conditions and a review of the

shelf-life expiration dates for products. To the extent that management determines there is excess or obsolete inventory or quantities with a shelf life that is too near its expiration for the Company to reasonably expect that it can sell those products prior to their expiration, the Company adjusts the carrying value to estimated net realizable value.

**Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed on the straight-line method over the following estimated useful lives of the assets:

Processing and research equipment	5 to 10 years
Office equipment and furniture	3 to 5 years
Computer hardware and software	3 years

Leasehold improvements are amortized on the straight-line method over the shorter of the lease term or the estimated useful life of the asset. Repairs and maintenance costs are expensed as incurred.

**Leases**

In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No 2016-02, *Leases* to increase the transparency and comparability about leases among entities. ASU 2016-02 and certain additional ASUs are now codified as ASC 842, *Leases*. ASC 842 supersedes the lease accounting guidance in ASC 840 and requires lessees to recognize a lease liability and a corresponding lease asset for virtually all lease contracts. The Company determines if an arrangement contains a lease at inception. Right-of-use (“ROU”) assets represent the Company’s right to use an underlying asset for the lease term and lease liabilities represent the Company’s obligation to make lease payments arising from that lease. For leases with a term greater than 12 months, ROU assets and liabilities are recognized at the lease commencement date based on the estimated present value of lease payments over the lease term. The lease term includes the option to extend the lease when it is reasonably certain the Company will exercise that option. When available, the Company uses the rate implicit in the lease to discount lease payments to present value. In the case the implicit rate is not available, the Company uses its incremental borrowing rate based on information available at the lease commencement date, including publicly available data for instruments with similar characteristics, to determine the present value of lease payments. The Company combines lease and non-lease elements for office leases.

In March 2025, the Company executed a new lease for 26,598 square feet. This new facility will be utilized for office, manufacturing and laboratory space. The lease expires in January 2036 with early termination dates in 2029 and 2033. Monthly lease payments (including allocation portions of property taxes, insurance and other landlord operating expenses) total approximately \$75,000 with annual rent escalations of 3%. Rent is abated for the first 12 months of occupancy and is discounted at 50% for months 13 through 18. As of March 31, 2025, the property was not yet made available for use to Elutia by the landlord due to the significant improvement work being performed by the landlord. Consequently, the Company determined that the lease has not yet commenced for accounting purposes.

**Long-Lived Assets**

Purchased intangible assets with finite lives are carried at acquired fair value, less accumulated amortization. Amortization is computed over the estimated useful lives of the respective assets.

The Company periodically evaluates the period of depreciation or amortization for long-lived assets to determine whether current circumstances warrant revised estimates of useful lives. The Company reviews its property and equipment and intangible assets for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. Impairment exists when the carrying value of the company’s asset exceeds the related estimated undiscounted future cash flows expected to be derived from the asset. If impairment exists, the carrying value of that asset is adjusted to its fair value. A discounted cash flow analysis is used to estimate an asset’s fair value, using assumptions that market participants would apply. The results of impairment tests are subject to management’s estimates and assumptions of projected cash flows and operating results. Changes in assumptions or market conditions could result in a

change in estimated future cash flows and could result in a lower fair value and therefore an impairment, which could impact reported results. There were no impairment losses for the three months ended March 31, 2025 or 2024.

***Warrant Liability***

The Company accounts for its warrants in accordance with ASC 815, *Derivatives and Hedging – Contracts in Entity's Own Equity*, as either liabilities or as equity instruments depending on the specific terms of the warrant agreement. The warrants issued in connection with the September 2023 private placement, June 2024 registered direct offering and 2025 registered direct offering (see Note 8) are classified as liabilities and are recorded at fair value. The warrants are subject to re-measurement at each settlement date and at each balance sheet date and any change in fair value is recognized in (gain) loss on revaluation of warrant liability net in the condensed consolidated statements of operations.

***Revenue Recognition***

The Company's revenue is generated from contracts with customers in accordance with ASC 606. The core principle of ASC 606 is that the Company recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. The ASC 606 revenue recognition model consists of the following five steps: (1) identify the contracts 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 (or as) the entity satisfies a performance obligation.

As noted above, the Company enters into contracts to primarily sell and distribute products to healthcare providers or commercial partners. Revenue is recognized when the Company has met its performance obligations pursuant to its contracts with its customers in an amount that the Company expects to be entitled to in exchange for the transfer of control of the products to the Company's customers. For all product sales, the Company has no further performance obligations and revenue is recognized at the point control transfers, which occurs either when: i) the product is shipped via common carrier; or ii) the product is delivered to the customer or distributor, in accordance with the terms of the agreement.

A portion of the Company's product revenue is generated from consigned inventory maintained at hospitals and from inventory physically held by distributors and direct sales representatives. For these types of product sales, the Company retains control until the product has been used or implanted, at which time revenue is recognized.

The Company elected to account for shipping and handling activities as a fulfillment cost rather than a separate performance obligation. Amounts billed to customers for shipping and handling are included as part of the transaction price and recognized as revenue when control of the underlying products is transferred to the customer. The related shipping and freight charges incurred by the Company are included in sales and marketing costs.

Contracts with customers state the final terms of the sale, including the description, quantity, and price of each implant distributed. The payment terms and conditions in the Company's contracts vary; however, as a common business practice, payment terms are typically due in full within 30 to 60 days of delivery. The Company, at times, extends volume discounts to customers.

The Company permits returns of its products in accordance with the terms of contractual agreements with customers. Allowances for returns are provided based upon analysis of the Company's historical patterns of returns matched against the revenues from which they originated. The Company records estimated returns as a reduction of revenue in the same period revenue is recognized.

***Stock-Based Compensation Plans***

The Company accounts for its stock-based compensation plans in accordance with FASB Accounting Standards Codification ("ASC") 718, *Accounting for Stock Compensation*. ASC 718 requires the measurement and recognition of compensation expense for all stock-based awards made to employees and directors, including employee stock options and

restricted stock units. Stock-based compensation cost is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense on a straight-line basis over the requisite service period of the entire award.

***Research and Development Costs***

Research and development costs, which include mainly salaries, outside services and supplies, are expensed as incurred.

***Concentration of Credit Risk***

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash. The Company's cash balances with individual institutions may at times exceed the federally insured limits.

There was one customer that represented 15% and 17% of the Company's net sales for the three months ended March 31, 2025 and 2024, respectively. Additionally, there was one customer that represented 15% and 14% of the Company's accounts receivable as of March 31, 2025 and December 31, 2024, respectively.

***Comprehensive Income (Loss)***

Comprehensive income (loss) comprises net income (loss) and other changes in equity that are excluded from net income (loss). For the three months ended March 31, 2025 and 2024, the Company's net loss equaled its comprehensive loss and accordingly, no additional disclosure is presented.

***Income Taxes***

The Company uses the asset and liability method of accounting for income taxes. Deferred income taxes are recorded to reflect the tax consequences on future years for differences between the tax basis of assets and liabilities and their financial reporting amounts at each year-end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to amounts that are more likely than not to be realized.

The Company is subject to income taxes in the federal and state jurisdictions. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. In accordance with the authoritative guidance on accounting for uncertainty in income taxes, the Company recognizes tax liabilities for uncertain tax positions when it is more likely than not that a tax position will not be sustained upon examination and settlement with various taxing authorities. Liabilities for uncertain tax positions are measured based upon the largest amount of benefit that is more likely than not (greater than 50%) of being realized upon settlement. The Company's policy is to recognize interest and/or penalties related to income tax matters in income tax expense.

**Note 3. Recently Issued Accounting Standards**

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvement to Income Tax Disclosures*. This update improves income tax disclosure requirements, primarily through enhanced transparency and decision usefulness of disclosures. The amendments in this update should be applied prospectively with the option to apply retrospectively and are effective for fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company does not expect the adoption of this guidance to have any material effects on its financial condition, results of operations or cash flows. The Company is currently evaluating any new disclosures that may be required upon adoption of ASU 2023-09.

In November 2024, the FASB issued ASU 2024-03, *Income Statement—Reporting Comprehensive Income—Expense Disaggregation Disclosures* (Topic 220-40). This update assesses the disaggregation of income statement expense which requires more detailed information about specified categories of expenses included in certain expense captions presented on the face of the income statement. The amendments are effective for annual reporting periods beginning after December 15, 2026, and interim reporting periods beginning after December 15, 2027. Early adoption is permitted. The

amendments may be applied either (1) prospectively to financial statements issued for reporting periods after the effective date of this ASU or (2) retrospectively to all prior periods presented in the financial statements. The Company is currently evaluating any new disclosures that may be required upon adoption of ASU 2024-03.

**Note 4. Stock-Based Compensation**

In 2015, the Company established the Elutia Inc. 2015 Stock Option/Stock Issuance Plan, as amended (the “2015 Plan”) which provided for the granting of incentive and non-qualified stock options to employees, directors and consultants of the Company. On October 7, 2020, in connection with the Company’s initial public offering (“IPO”), the Company adopted the Elutia Inc. 2020 Incentive Award Plan, and on June 8, 2023, the Company’s stockholders approved the amendment and restatement of that plan (as amended and restated, the “2020 Plan”), which authorizes the grant of incentive and non-qualified stock options, restricted stock, restricted stock units and stock appreciation rights to employees, directors and consultants. Shares of Class A common stock totaling 1,636,000 were initially reserved for issuance pursuant to the 2020 Plan, and in June 2023, the number of shares of Class A common stock reserved for issuance under the 2020 Plan was increased by 2,000,000 shares. In addition, the shares reserved for issuance under the 2020 Plan also include shares reserved but not issued under the 2015 Plan as well as an annual increase as set forth in the 2020 Plan. As of March 31, 2025, the Company had 1,746,811 shares of Class A common stock available for issuance under the 2020 Plan.

**Stock Options**

The Company’s policy is to grant stock options at an exercise price equal to 100% of the market value of a share of Class A common stock at closing on the date of the grant. The Company’s stock options generally have contractual terms of ten years and vest over a four-year period from the date of grant.

A summary of stock option activity under the Company’s 2015 Plan and 2020 Plan for the three months ended March 31, 2025 is as follows:

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding, December 31, 2024	3,220,991	\$ 5.23	7.3	\$ 475
Granted	—	\$ —		
Exercised	—	\$ —		
Forfeited	(16,776)	\$ 4.93		
Outstanding, March 31, 2025	<u>3,204,215</u>	\$ 5.23	7.0	\$ 22
Vested and exercisable, March 31, 2025	<u>1,906,970</u>	\$ 5.89	6.1	\$ 22

As of March 31, 2025, there was approximately \$2.7 million of total unrecognized compensation expense related to unvested stock options. These costs are expected to be recognized over a weighted-average period of 1.7 years.

The Company uses the Black-Scholes model to value its stock option grants that vest based on the passage of time or the achievement of certain performance criteria and expenses the related compensation cost using the straight-line method over the vesting period. The fair value of stock options is determined on the grant date using assumptions for the estimated fair value of the underlying common stock, expected term, expected volatility, dividend yield, and the risk-free interest rate. The Company uses the simplified method for estimating the expected term used to determine the fair value of options. The expected volatility of the Class A common stock is based on the Company’s historical stock data. The Company uses a zero-dividend yield assumption as the Company has not paid dividends since inception nor does it anticipate paying dividends in the future. The risk-free interest rate approximates recent U.S. Treasury note auction results with a similar life to that of the option. The period expense is then determined based on the valuation of the options and is recognized on a straight-line basis over the requisite service period for the entire award.

No options were granted during the three months ended March 31, 2025; however, the following weighted-average assumptions were used to determine the fair value of time-based options granted during the three months ended March 31, 2024:

Expected term (years)	5.9
Risk-free interest rate	3.2 %
Volatility factor	100.9 %
Dividend yield	—

The Company has granted stock options that vest upon the achievement of certain share price thresholds for twenty consecutive days of trading at each respective threshold. For these stock options, the Company accounted for the awards as market condition awards and used an option pricing model, the Monte Carlo model, to determine the fair value of the respective equity instruments and an expense recognition term of approximately three years. As of March 31, 2025, there were a total of 345,011 stock options outstanding that are market condition stock option awards.

**Restricted Stock Units**

Restricted stock units (“RSUs”) represent rights to receive common shares at a future date. There is no exercise price and no monetary payment is required for receipt of restricted stock units or the shares issued in settlement of the award.

A summary of the RSU activity under the Company’s 2020 Plan for the three months ended March 31, 2025 is as follows:

	Number of Shares Underlying RSUs	Weighted- Average Grant Date Fair Value
Unvested, December 31, 2024	1,417,123	\$ 3.58
Granted	92,000	\$ 2.81
Vested	(154,358)	\$ 3.92
Forfeited	(11,999)	\$ 3.73
Unvested, March 31, 2025	<u>1,342,766</u>	<u>\$ 3.49</u>

The total fair value of the RSUs granted during the three months ended March 31, 2025 was \$0.3 million. For the performance vesting RSUs, the fair value was based on the fair market value of the Company’s Class A common stock on the date of grant. The market condition RSUs are valued as described below. The respective fair values are amortized to expense on a straight-line basis over the vesting period of generally three to four years.

As of March 31, 2025, \$3.9 million of unrecognized compensation costs related to RSUs is expected to be recognized over a weighted average period of 1.8 years.

The Company has granted RSUs that vest upon the achievement of certain share price thresholds for twenty consecutive days of trading at each respective threshold. For these RSUs, the Company accounted for the awards as market condition awards and used a Monte Carlo model to determine the fair value of these RSUs as well as the expense recognition term of approximately three years using the graded vesting method. As of March 31, 2025, there were 252,394 RSUs outstanding that were market condition RSU awards.

**Employee Stock Purchase Plan**

The Company makes shares of its Class A common stock available for purchase under its 2020 Employee Stock Purchase Plan (the “ESPP”). The ESPP provides for separate six-month offering periods that begin in March and September of each year. Under the ESPP, employees may purchase a limited number of shares of Elutia Class A common stock at 85% of the fair market value on either the first day of the offering period or the purchase date, whichever is lower. The ESPP is considered compensatory for purposes of stock-based compensation expense. The number of shares reserved under the ESPP will automatically increase on the first day of each fiscal year through January 1, 2030, in an amount as

set forth in the ESPP. As of March 31, 2025, the total shares of Class A common stock authorized for issuance under the ESPP was 1,126,448, of which 791,675 remained available for future issuance. During the three months ended March 31, 2025, shares of Class A common stock totaling 31,558 were issued under the ESPP.

**Stock-Based Compensation Expense**

Stock-based compensation expense recognized during the three months ended March 31, 2025 and 2024 was comprised of the following (in thousands):

	Three Months Ended March 31,	
	2025	2024
Sales and marketing	\$ 188	\$ 448
General and administrative	860	1,423
Research and development	143	254
Cost of goods sold	20	72
Total stock-based compensation expense	<u>\$ 1,211</u>	<u>\$ 2,197</u>

**Note 5. Inventory**

Inventory as of March 31, 2025 and December 31, 2024 was comprised of the following (in thousands):

	March 31, 2025	December 31, 2024
Raw materials	\$ 329	\$ 440
Work in process	1,060	740
Finished goods	2,897	2,731
Total	<u>\$ 4,286</u>	<u>\$ 3,911</u>

**Note 6. Long-Term Debt**

On August 10, 2022, the Company entered into a senior secured term loan facility with SWK Funding LLC, as agent, and other lenders party thereto for an aggregate principal amount of \$25 million, and the Company amended the facility in May 2023, March 2024 and September 2024 (as amended, the “SWK Loan Facility”). An initial draw of \$21 million was made in August 2022, and an additional \$4 million was made on December 14, 2022. The SWK Loan Facility also allows for the establishment of a separate, new asset-based revolving loan facility of up to \$8 million, which has not been entered into to date. The SWK Loan Facility matures on August 10, 2027 and accrues interest, payable quarterly in arrears. Principal amortization of the SWK Loan Facility, as amended in September 2024, starts in November 2025. Principal payments during the amortization period will be limited based on revenue-based caps, although as of March 31, 2025, no such caps are applicable and quarterly principal payments will be in an amount equal to 5% of the aggregate principal amount funded with the balance paid at maturity. The SWK Loan Facility also includes both minimum revenue and liquidity covenants, restrictions as to payment of dividends, and is secured by all assets of the Company, subject to certain customary exceptions. As of March 31, 2025, Elutia was in compliance with its financial covenants under the agreement governing the SWK Loan Facility (“SWK Loan Facility Agreement”). See below for discussion of an amendment to the minimum liquidity covenant in May 2025.

All of the SWK Loan Facility borrowings take the form of Secured Overnight Financing Rate (“SOFR”) loans and bear interest at a rate per annum equal to the sum of an applicable margin of (i) 7.75% and the “Term SOFR Rate” (based upon an interest period of 3 months), or (ii) if the Company has elected the PIK Interest option (as defined below), 3.75% and the “Term SOFR Rate.” The Company may elect a portion of the interest due, to be paid in-kind at a rate per annum of 4.5% (“PIK Interest”), and such election may be made until November 15, 2025. The “Term SOFR Rate” is subject to a floor of 2.75%. The agreement governing the SWK Loan Facility also includes an exit fee equal to 6.5% of the aggregate principal amount funded prior to termination plus \$112,500. The weighted average interest rate on the SWK Loan Facility was 12.7% and 13.5% for the three months ended March 31, 2025 and 2024, respectively.

In May 2025, Elutia entered into an amendment to the SWK Loan Facility. This amendment, among other things: (i) allows for 100% of the interest payment due in May 2025 to be paid as PIK Interest, (ii) removed mandatory repayment

obligations related to non-ordinary course asset sales, (iii) allows the Company to request that SWK advance a new term loan in the amount of up to \$5.0 million, which advance will be in the sole and absolute discretion of SWK and (iv) fixed the amount of the minimum liquidity covenant to be \$8.0 million. In consideration for the amendment, the Company agreed to issue SWK 50,000 shares of its Class A Common Stock in a private placement.

On August 10, 2022 (the “Closing Date”), the Company issued to SWK Funding LLC a warrant (“SWK Warrant”) to purchase, in the aggregate, up to 187,969 shares of Class A common stock of the Company, \$0.001 par value per share at an exercise price of \$6.65 per share. The SWK Warrant is immediately exercisable for up to 187,969 shares of Class A common stock from time to time on or after the Closing Date. The exercise price and number of shares of Class A common stock issuable upon exercise of the SWK Warrant are subject to adjustment in the event of stock dividends, stock splits and certain other events affecting the SWK common stock. Unless earlier exercised or terminated in accordance with its terms, the SWK Warrant will expire on the seventh anniversary of the Closing Date. Upon issuance, the Company valued the SWK Warrant at approximately \$0.6 million using the Black-Scholes model. The recognition of the SWK Warrant as well as deferred financing costs of approximately \$0.5 million incurred in securing the SWK Loan Facility served to reduce the recorded value of the associated debt. The debt discount and deferred financing costs will be recognized as interest expense through the maturity of the loan.

Prior to the May 2025 amendment described above, the SWK Loan Facility Agreement required certain mandatory prepayments, subject to certain exceptions, with: (1) 100% of any net casualty proceeds in excess of \$250,000 and (2) for non-ordinary course asset sales, an amount equal to the difference between (x) the proportion of divested gross profit (as defined in the SWK Loan Facility Agreement) to the Company’s total gross profit (as defined in the SWK Loan Facility Agreement) multiplied by the outstanding loans under the SWK Loan Facility and (y) the difference between \$1,000,000 and the aggregate sale proceeds of any assets previously sold during the fiscal year. The closing of the divestiture of the Orthobiologics Business in November 2023 triggered a mandatory prepayment of \$4.0 million. Of such amount, \$2.0 million was paid shortly after closing of the divestiture in 2023 and the remainder was paid in February 2024 based on mutual agreement between the parties.

Long-term debt was comprised of the following (in thousands):

	March 31, 2025	December 31, 2024
Term Loan Facility, net of unamortized discount and deferred financing costs	\$ 24,262	\$ 23,853
Current Portion	(2,500)	(1,250)
Long-Term Debt	<u>\$ 21,762</u>	<u>\$ 22,603</u>

In addition to the above, the Company finances the annual premiums of certain insurance policies through short-term financing arrangements and includes the liabilities associated with such arrangements within accrued liabilities in accompanying consolidated balance sheets. The fair value of all debt instruments, which is based on inputs considered to be Level 2 under the fair value hierarchy, approximates the respective carrying values as of March 31, 2025 and December 31, 2024.

**Note 7. Revenue Interest Obligation**

On May 31, 2017, the Company completed an asset purchase agreement with CorMatrix Cardiovascular, Inc. (“CorMatrix”) and acquired all CorMatrix commercial assets and related intellectual property (the “CorMatrix Acquisition”). As part of the CorMatrix Acquisition, the Company assumed a restructured, long-term royalty obligation (the “Revenue Interest Obligation”) to Ligand Pharmaceuticals Incorporated (“Ligand”) with an estimated present value on the acquisition date of \$27.7 million. On January 10, 2024, the Company entered into an amendment to the Revenue Interest Obligation (the “Amended Revenue Interest Obligation”). Pursuant to the Amended Revenue Interest Obligation, subject to annual minimum payments of \$4.4 million per year, the terms of the Revenue Interest Obligation require Elutia to pay Ligand 5% of future sales of the products Elutia acquired from CorMatrix, including CanGaroo, ProxiCor, Tyke and VasCure, as well as products substantially similar to those products, such as EluPro. Furthermore, a \$5.0 million payment would be due to Ligand if cumulative sales exceed \$300 million during the ten-year term of the agreement which expires on May 31, 2027.

In connection with the execution of the Amended Revenue Interest Obligation, the Company made payments totaling \$3.0 million (50% paid in January 2024 and 50% paid in April 2024) in satisfaction of all royalty obligations for the first three fiscal quarters of 2023 and made a payment in February 2024 of \$1.1 million in satisfaction of the royalty obligations for the fourth quarter of 2023. Total payments to Ligand during the three months ended March 31, 2024 were \$2.6 million comprised of the aforementioned 2023 amounts due. No payments to Ligand were made in the three months ended March 31, 2025.

In May 2025, Elutia entered into a subscription agreement and further amendment to the Amended Revenue Interest Obligation with Ligand. Through such amendment, \$2.2 million in outstanding royalty obligations (royalty obligations for the fiscal quarters ended December 31, 2024 and March 31, 2025) owed by Elutia to Ligand under the Amended Revenue Interest Obligation was satisfied by the issuance of 1,105,528 shares of Elutia's Class A common stock to Ligand in a transaction registered with the Securities and Exchange Commission.

The Company records the present value of the estimated total future payments under both the Revenue Interest Obligation and Amended Revenue Interest Obligation as a long-term obligation, with the short-term portion being recorded as described below. At each reporting period, the value of the Revenue Interest Obligation is re-measured based on current estimates of future payments, with changes to be recorded in the condensed consolidated statements of operations using the catch-up method. The Amended Revenue Interest Obligation changed the timing and extent of future payments by the Company to Ligand and such change to the estimated future payments yielded a reduction to the total obligation of approximately \$1.4 million during the three months ended March 31, 2024. The resulting gain was recognized as other income in the accompanying condensed consolidated statement of operations. Interest expense related to the Revenue Interest Obligation of approximately \$0.3 million and \$0.5 million was recorded for the three months ended March 31, 2025 and 2024, respectively.

#### **Note 8. Common Stock and Warrants**

##### ***Registered Direct Offering of Common Stock and Warrants***

On February 4, 2025, the Company sold, in a registered direct offering ("2025 Registered Offering"), an aggregate of (i) 5,520,000 shares of our Class A common stock and (ii) prefunded warrants ("2025 Prefunded Warrants") to purchase up to an aggregate of 480,000 shares of Class A Common Stock. The public offering price for each share of Class A Common Stock was \$2.50, and the public offering price for each 2025 Prefunded Warrant was \$2.499, for aggregate gross proceeds of approximately \$15.0 million, before deducting offering expenses. The 2025 Prefunded Warrants have an exercise price of \$0.001 per share of Class A Common Stock, are exercisable immediately and will expire when exercised in full. The Company incurred transaction fees, including commissions and legal fees, of approximately \$1.3 million in connection with the 2025 Registered Offering, of which \$1.2 million were allocated to the issuance of the common stock.

On June 16, 2024, the Company sold, in a registered direct offering ("2024 Registered Offering"), an aggregate of (i) 3,175,000 shares of the Company's Class A common stock and (ii) prefunded warrants ("2024 Prefunded Warrants") to purchase up to an aggregate of 725,000 shares of Class A Common Stock. The public offering price for each share of Class A Common Stock was \$3.40, and the public offering price for each 2024 Prefunded Warrant was \$3.399, for aggregate gross proceeds of approximately \$13.3 million, before deducting offering expenses. The 2024 Prefunded Warrants have an exercise price of \$0.001 per share of Class A Common Stock, are exercisable immediately and will expire when exercised in full. The Company incurred transaction fees, including commissions and legal fees, of approximately \$1.4 million in connection with the 2024 Registered Offering, of which \$1.1 million were allocated to the issuance of the common stock.

##### ***Private Placement of Common Stock and Warrants***

On September 21, 2023, the Company sold, in a private offering ("Private Offering") an aggregate of (i) 6,852,811 units ("Common Units") each comprised of (a) one share of the Company's Class A common stock and (b) a warrant ("Common Warrant") to purchase one and one half shares of Class A Common Stock, and (ii) 503,058 units (the "Prefunded Units"), each comprised of (a) a prefunded warrant ("2023 Prefunded Warrant") to purchase one share of Class A Common Stock, and (b) a Common Warrant. The Common Units were sold at a purchase price of \$1.4275 per unit, and

the Prefunded Units were sold at a purchase price of \$1.4265 per unit, for aggregate gross proceeds of approximately \$10.5 million, before deducting offering expenses. Each Common Warrant was exercisable until July 31, 2024, the date which was 30 trading days after the clearance by the FDA of the Company's EluPro product, at an exercise price per share of \$1.4275. As discussed below, all Common Warrants were exercised before they expired. Each 2023 Prefunded Warrant is exercisable at any time at a nominal exercise price per share of \$0.001 (with the remainder of the exercise price per share of Class A Common Stock having been prefunded to the Company). The Company incurred transaction fees, including commissions and legal fees, of approximately \$1.1 million in connection with the Private Offering, of which \$0.4 million were allocated to the issuance of the common stock.

See below for discussion of the accounting for the warrants and the allocation of the remainder of the transaction fees from the 2025 Registered Offering, 2024 Registered Offering and Private Offering.

**Warrant Liabilities**

The Company has concluded that the outstanding 2025 Prefunded Warrants, 2024 Prefunded Warrants and 2023 Prefunded Warrants do not meet the equity contract scope exception under ASC 815-40 as in the event of a (i) fundamental transaction such as a merger and (ii) failure to timely deliver warrant shares upon exercise, certain provisions of which may require the Company to adjust the settlement value in a manner that is not consistent with a fixed-for-fixed option pricing model. As a result, the Company allocated a portion of the gross proceeds from the respective offerings to 2025 Prefunded Warrants, 2024 Prefunded Warrants and 2023 Prefunded Warrants based on their fair values and have recorded such amounts as a warrant liability in the accompanying condensed consolidated balance sheet as of March 31, 2025 and December 31, 2024. Additionally, the Company allocated a portion of the transaction fees from the 2024 Registered Offering, 2025 Registered Offering and the Private Offering to the respective warrants and recognized the expense within other expense (income), net. Such expenses totaled \$0.1 million for the three months ended March 31, 2025.

As noted above, the last exercise date for the Common Warrants was July 31, 2024. All Common Warrants outstanding were exercised by such date yielding exercise proceeds of \$13.8 million in July 2024. Certain of these exercises ultimately resulted in their conversion to 2023 Prefunded Warrants.

A summary of the warrant activity for the three months ended March 31, 2025 is as follows:

	2023 Prefunded Warrants	2024 Prefunded Warrants	2025 Prefunded Warrants
Outstanding, December 31, 2024	3,573,326	725,000	—
Issued	—	—	480,000
Exercised	—	—	—
Outstanding, March 31, 2025	<u>3,573,326</u>	<u>725,000</u>	<u>480,000</u>

The valuation of the warrants is adjusted to fair value (Level 3) at each subsequent balance sheet date until the warrants are settled. The following table provides a rollforward of the aggregate fair value of the warrant liability for the three months ended March 31, 2025 (in thousands):

	2023 Prefunded Warrants	2024 Prefunded Warrants	2025 Prefunded Warrants	Total Offering Warrants
Warrant liability, December 31, 2024	\$ 13,365	\$ 2,711	\$ -	\$ 16,076
Fair value upon issuance	-	-	1,200	1,200
Gain on revaluation of warrant liability	(4,324)	(877)	14	(5,187)
Exercised	-	-	-	-
Warrant liability, March 31, 2025	<u>\$ 9,041</u>	<u>\$ 1,834</u>	<u>\$ 1,214</u>	<u>\$ 12,089</u>

The Company has used the price of its Class A Common Stock to estimate the fair value of the 2025 Prefunded Warrants, 2024 Prefunded Warrants and 2023 Prefunded Warrants at each measurement date. The price of the Company's Class A Common Stock approximates fair value of the 2025 Prefunded Warrants, 2024 Prefunded Warrants and 2023

Prefunded Warrants due to the exercise price per share of \$0.001. The fair value adjustments have been recorded as (gain) loss on revaluation of warrant liability in the accompanying condensed consolidated statements of operations for the three months ended March 31, 2025.

The Company had previously calculated the fair value of the Common Warrants using the Black-Scholes option pricing model with the following inputs as of March 31, 2024:

Common stock price	\$	3.15
Expected term (years)		0.4
Risk-free interest rate		5.4 %
Volatility factor		105.5 %
Dividend yield		— %

## **Note 9. Commitments and Contingencies**

### ***Cook Biotech License and Supply Agreements***

Elutia has entered into a license agreement, as amended, with Cook Biotech (“Cook”), now owned by Evergen, for an exclusive, worldwide license to the porcine tissue for use in the Company’s Cardiac Patch and CanGaroo products, subject to certain co-exclusive rights retained by Cook (the “Cook License Agreement”). The term of such license is through the date of the last to expire of the licensed Cook patents, which is anticipated to be July 2031. Along with this license agreement, Elutia entered into a supply agreement whereby Cook would be the exclusive supplier to Elutia of licensed porcine tissue. Under certain limited circumstances, Elutia has the right to manufacture the licensed product and pay Cook a royalty of 3% of sales of the Elutia-manufactured tissue. The supply agreement expires on the same date as the related license agreement. No royalties were due or paid to Cook during the three months ended March 31, 2025 or 2024. The Cook License Agreement also provides for a worldwide exclusive license to the porcine tissue for use with neuromodulation devices in addition to cardiovascular devices and includes license fee payments of \$0.1 million per year in each of the years 2021 through 2026. Such license payments would accelerate if Elutia undergoes a change in control, as defined in the Cook License Agreement. The Company, in its sole discretion, can terminate the Cook License Agreement at any time.

### ***Legal Proceedings***

From time to time, the Company may be involved in claims and proceedings arising in the course of the Company’s business. The outcome of any such claims or proceedings, regardless of the merits, is inherently uncertain. The Company records accruals for contingencies when it is probable that a liability has been incurred and the amount can be reasonably estimated. Where the available information is only sufficient to establish a range of probable liability, and no point within the range is more likely than any other, the lower end of the range has been used. When a material loss contingency is reasonably possible, but not probable, the Company does not record a liability, but instead discloses the nature of the matter and an estimate of the loss or range of loss, to the extent such estimate can be made. Accruals recorded are adjusted periodically as assessments change or additional information becomes available, and management’s judgments may be materially different than the actual outcomes.

### ***FiberCel Litigation***

As previously disclosed, in June 2021, the Company announced a voluntary recall of a single lot of FiberCel fiber viable bone matrix (“FiberCel”). Since September 2021, 110 product liability lawsuits or claims have been filed or asserted against the Company involving FiberCel. As of March 31, 2025, there were 58 active lawsuits or claims against the Company, including 18 lawsuits or claims where settlements have been reached but had not yet been paid by quarter-end. The lawsuits, which have been filed against Elutia, certain Medtronic entities, and others, allege that the plaintiffs were exposed to and/or contracted tuberculosis and/or suffered substantial symptoms and complications following the implantation of FiberCel during orthopedic fusion operations. Such lawsuits were filed in various U.S. federal courts and in state courts in Indiana, Delaware, Florida, Maryland and Ohio. The Company refers to all of the aforementioned litigation, or claim notices, collectively as the “FiberCel Litigation.”

#### *Viable Bone Matrix Litigation*

As also previously disclosed, in July 2023, the Company announced a voluntary recall of a single lot of a certain viable bone matrix (“VBM”) product and the market withdrawal of all of its VBM products produced after a specified date (the “VBM Recall”). As of March 31, 2025, there were 12 active lawsuits or claims filed or asserted against the Company. The lawsuits, which have been filed against Elutia and others, allege that the plaintiffs were exposed to and/or contracted tuberculosis and/or suffered substantial symptoms and complications following the implantation of VBM during orthopedic fusion operations. Such lawsuits were filed in various U.S. federal courts and in the California state court. The Company refers to all of the aforementioned litigation, or claim notices, collectively as the “VBM Litigation.”

#### *Medtronic Litigation*

In June 2024, the Company filed an action against Medtronic Sofamor Danek USA, Inc. (“Medtronic”) in the Superior Court of the State of Delaware. The Company’s complaint alleges breach of the 2019 Tissue Product Supply Agreement (the “Supply Agreement”) between the Company and Medtronic. In particular, the complaint alleges that Medtronic did not honor its contractual obligations to obtain insurance coverage and to defend and indemnify the Company for over 100 lawsuits against the Company alleging claims arising from the use of FiberCel products distributed by Medtronic. The complaint does not specify the amount of damages owed by Medtronic for these breaches. On July 31, 2024, Medtronic responded to the complaint by denying Elutia’s claims and asserting a single counterclaim alleging that Elutia breached certain representations and warranties under the Supply Agreement and owes ongoing indemnity obligations to Medtronic. The counterclaim does not specify the amount of any alleged damages. On October 15, 2024, Medtronic filed a motion to dismiss Elutia’s claims. The court held a hearing on January 9, 2025, and a decision was rendered by the court on April 8, 2025. In its decision, the court dismissed the Company’s claim with respect to Medtronic’s failure to obtain insurance coverage, but allowed the Company to continue with its claim that Medtronic breached its indemnity obligations to Elutia. Given the early stages of this matter and the Company’s intention to vigorously defend Medtronic’s counterclaim, we do not consider a loss to be probable or estimable at this time.

#### *Contingent Liability for Legal Proceedings*

##### *FiberCel Litigation*

Since August 2022, the Company has engaged in a process to negotiate and attempt to resolve many of the cases in the FiberCel Litigation. In total, Elutia’s liability in 52 of the cases has been settled for a total cash outlay of \$17.5 million. For the remaining 58 cases, the Company estimated a probable loss related to each case and has recorded a liability at a total estimated amount of \$14.3 million at March 31, 2025, which is recorded as Contingent Liability for Legal Proceedings in the accompanying condensed consolidated balance sheets. Such liability includes \$6.7 million for which the settlements have been reached but had not yet been paid by quarter-end.

In order to reasonably estimate the liability for the unsettled FiberCel Litigation cases, the Company, along with outside legal counsel, has assessed a variety of factors, including (i) the extent of the injuries incurred, (ii) recent experience on the settled claims, (iii) settlement offers made to the other parties to the litigation and (iv) any other factors that may have a material effect on the FiberCel Litigation. While the Company believes its estimated liability to be reasonable, the actual loss amounts are highly variable and are dependent upon the relevant facts and case by case resolutions. As more information is learned about asserted claims and potential future trends, adjustments may be made to this Contingent Liability for Legal Proceedings as appropriate. Management believes that it is reasonably possible that the Company could incur liabilities in excess of amounts accrued and the ultimate liability could be material to the Company’s financial position, results of operations and cash flows in the period recognized. The Company, however, is unable to estimate the possible loss or range of loss in excess of the amount recognized at this time.

##### *VBM Litigation*

Since June 2023, the Company has also engaged in a process to negotiate and attempt to resolve many of the cases in the VBM Litigation. In total, Elutia’s liability in 12 of the cases has been settled for a total cash outlay of

approximately \$1.5 million. For the remaining 23 cases, which includes unasserted claims that the Company believes are probable of assertion, the Company estimated a probable loss at an estimated amount of \$3.6 million at March 31, 2025, which is recorded as Contingent Liability for Legal Proceedings in the accompanying consolidated balance sheets. The expense related to this estimate was recorded within Litigation costs, net in the accompanying consolidated statement of operations, with the entirety of such expense offset by insurance recoveries received or receivable as further described below.

In order to reasonably estimate the liability for the unsettled VBM Litigation cases and unasserted claims, the Company, along with outside legal counsel, has assessed a variety of factors, including (i) the extent of the injuries incurred, (ii) recent experience on the settled claims, (iii) settlement offers made to the other parties to the litigation and (iv) any other factors that may have a material effect on the VBM Litigation. While the Company believes its estimated liability to be reasonable, the actual loss amounts are highly variable and are dependent upon the relevant facts and case-by-case resolutions. As more information is learned about asserted and unasserted claims and potential future trends, adjustments may be made to this Contingent Liability for Legal Proceedings as appropriate. Management believes that it is reasonably possible that the Company could incur liabilities in excess of amounts accrued and the ultimate liability could be material to the Company's financial position, results of operations and cash flows in the period recognized. The Company, however, is unable to estimate the possible loss or range of loss in excess of the amount recognized at this time.

Defense costs for both the FiberCel Litigation and VBM Litigation are recognized in the accompanying condensed consolidated statements of operations as incurred, with the entirety of such expense related to the VBM Litigation offset by the insurance received or receivable as further described below.

#### *Receivables of Litigation Costs*

The Company has purchased insurance coverage that, subject to common contract exclusions, provided coverage for the FiberCel Litigation and VBM Litigation product liability losses as well as legal defense costs. When settlements are reached and/or amounts are recorded in the related Contingent Liability for Legal Proceedings, the Company calculates amounts due to be reimbursed pursuant to the terms of the coverage and related agreements, and pursuant to other indemnity or contribution claims, in respect of product liability losses and related defense costs. The amounts probable of reimbursement or recovery from this calculation are recorded as receivables. The determination that the recorded receivables are probable of collection is based on the terms of agreements reached in respect of indemnity and contribution claims as well as the advice of the Company's outside legal counsel. These receivables as of March 31, 2025 totaled \$3.9 million and are recorded as Insurance Receivables of Litigation Costs in the accompanying consolidated balance sheets.

As of March 31, 2025, all amounts recorded as Insurance Receivables of Litigation Costs related to the VBM Litigation, and additional insurance remains available to cover the future cost of the VBM Litigation and related defense costs. Conversely, the Company has no more insurance to cover the cost of the FiberCel Litigation and the related defense costs.

As of both March 31, 2025 and 2024, the Company was not a party to, or aware of, any legal matters or claims with material financial exposure, except for the FiberCel Litigation, VBM Litigation and Medtronic matter.

**Note 10. Net Income (Loss) Per Share**

(in thousands, except share and per share data)	Three Months Ended	
	March 31,	
	2025	2024
<b>Numerator:</b>		
Net loss	\$ (3,933)	\$ (17,994)
Less: dilutive gain on revaluation of warrant liability	(5,201)	—
Net loss for diluted earnings per share	<u>\$ (9,134)</u>	<u>\$ (17,994)</u>
<b>Denominator:</b>		
Weighted average number of common shares - basic	38,616,207	23,912,326
Effect of dilutive prefunded warrants	4,296,904	—
Weighted average number of common shares - diluted	<u>42,913,111</u>	<u>23,912,326</u>
Net loss per share - basic	<u>\$ (0.10)</u>	<u>\$ (0.75)</u>
Net loss per share - diluted	<u>\$ (0.21)</u>	<u>\$ (0.75)</u>

Certain of the Company's potential dilutive securities have been excluded from the computation of diluted net loss per share as the effect would be anti-dilutive. The Company excluded the following potential common shares, presented based on amounts outstanding at period end, from the computation of diluted net loss per share:

	Three Months Ended	
	March 31,	
	2025	2024
Options to purchase common stock	3,204,215	3,069,647
Restricted stock units	1,342,766	2,525,480
SWK Warrants	187,969	187,969
Common Warrants	—	10,219,443
2023 Prefunded Warrants	—	241,588
2024 Prefunded Warrants	—	—
2025 Prefunded Warrants	480,000	—
Total	<u>5,214,950</u>	<u>16,244,127</u>

**Note 11. Segment Information**

With the divestiture of the Orthobiologics Business, the Company now operates in three segments. The Company determined its operating and reportable segments to be consistent with its major product groupings – Device Protection, Women's Health and Cardiovascular. The accounting policies of the segments are the same as those described in the summary of significant accounting policies.

The Chief Operating Decision Maker ("CODM") is the Chief Executive Officer. The CODM evaluates the performance of our segments based upon, among other things, segment net sales and segment gross profit, excluding intangible asset amortization ("segment gross profit"). Segment gross profit is what the CODM uses in evaluating our results of operations and the financial measure that provides insight into our overall performance and financial position. The CODM considers budget-to-actual variances and variances against prior years using segment gross profit when making decisions about allocating resources to the segments. Asset information is not provided as the Company's CODM does not regularly review or utilize detailed asset data to assess segment performance.

For the three months ended March 31, 2025, the Company's segment gross profit was comprised of the following (in thousands):

	Device Protection	Women's Health	Cardiovascular	Total
Net sales	\$ 3,079	\$ 2,625	\$ 326	\$ 6,030
Cost of goods sold, excluding intangible asset amortization	1,424	1,173	127	
Segment gross profit	<u>\$ 1,655</u>	<u>\$ 1,452</u>	<u>\$ 199</u>	<u>\$ 3,306</u>

The net sales for the three months ended March 31, 2025 include the revenues derived from one customer which represents 15% of total net sales. Such customer is included within the Women's Health segment.

For the three months ended March 31, 2024, the Company's segment gross profit was comprised of the following (in thousands):

	Device Protection	Women's Health	Cardiovascular	Total
Net sales	\$ 2,357	\$ 3,567	\$ 770	\$ 6,694
Cost of goods sold, excluding intangible asset amortization	729	2,000	273	
Segment gross profit	<u>\$ 1,628</u>	<u>\$ 1,567</u>	<u>\$ 497</u>	<u>\$ 3,692</u>

The net sales for the three months ended March 31, 2024 include the revenues derived from one customer which represents 17% of total net sales. Such customer is included within the Women's Health segment.

The following table is a reconciliation of segment gross profit to the consolidated loss before provision for income taxes for the three months ended March 31, 2025 and 2024, (in thousands):

	Three Months Ended March 31,	
	2025	2024
Segment Gross Profit	\$ 3,306	\$ 3,692
Adjustments:		
Intangible asset amortization expense	(849)	(849)
Sales and marketing	(3,031)	(3,309)
General and administrative	(3,871)	(5,056)
Research and development	(905)	(1,172)
Litigation costs, net	(2,572)	(1,785)
Loss from operations	(7,922)	(8,479)
Interest expense, net	1,085	1,313
(Gain) loss on revaluation of warrant liability	(5,187)	9,637
Other expense (income), net	105	(1,443)
Loss before provision for income taxes	<u>\$ (3,925)</u>	<u>\$ (17,986)</u>

During the three months ended March 31, 2025 and 2024, the Company did not have any material international product sales, and the Company did not own any long-lived assets outside the United States.

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

*The following discussion and analysis should be read in conjunction with our unaudited condensed consolidated financial statements and the related notes included elsewhere in this Quarterly Report, as well as the audited financial statements and the related notes thereto, and the discussion under Part II, Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our Annual Report. This discussion contains forward-looking statements reflecting our current expectations, estimates, plans and assumptions concerning events and financial trends that involve risks and may affect our future operating results and financial position. Actual results and the timing of events may differ materially from those contained in these forward-looking statements due to a number of factors, including those discussed in the sections entitled “Forward-Looking Statements” and Part II, Item 1A. “Risk Factors” of this Quarterly Report and in the section entitled “Risk Factor Summary” and in Part I, Item 1A. “Risk Factors” of our Annual Report.*

**Overview**

At Elutia, our mission is to humanize medicine so that patients can thrive without compromise. As a commercial-stage company, we seek to leverage our unique understanding of biologics combined with local drug delivery to improve the interaction between implanted medical devices and patients by reducing complications associated with these surgeries. These complications include infection, device migration, erosion, implant rejection, non-union of implants, fibrosis and scar formation.

We estimate that in 2024, more than 700,000 surgical procedures were performed annually in the United States involving the implantation of medical devices such as pacemakers, defibrillators, neurostimulators or tissue expanders for breast reconstruction. This number has been driven by advances in medical device technologies, reimbursement models focused on patient outcomes, and an aging population with a growing incidence of comorbidities, including diabetes, obesity and cardiovascular and peripheral vascular diseases. These comorbidities can exacerbate various immune responses and contribute to other complications upon device implant.

Our products are targeted to address unmet clinical needs with the goal of promoting healthy tissue formation and avoiding complications associated with medical device implants, such as scar tissue formation, capsular contraction, erosion, migration and infection. We currently focus on two priority markets – Device Protection and Women’s Health.

In Device Protection, we sell EluPro, a unique bioenvelope designed to mitigate cardiac implantable electronic device complications including infection, device migration and erosion. The bioenvelope features a biomatrix comprised of extracellular matrix, which supports healthy wound healing and may facilitate re-operative procedures by reducing scar formation and fibrosis. Additionally, EluPro is embedded with the powerful antibiotics rifampin and minocycline, which are gradually released into the surrounding tissue over several weeks post-implantation to provide antimicrobial protection. Currently, EluPro is the only drug-eluting biomatrix (“DEB”) offering in the U.S. implantable electronic device protection market. Alongside EluPro, we market the CanGaroo bioenvelope, our first generation product, which uses the same biomatrix but does not contain antibiotics.

In Women’s Health, we have developed both patented and proprietary technologies, culminating in the creation of SimpliDerm—a novel biological matrix that leverages the inherent science of natural healing processes. SimpliDerm’s design uses human-based hydrated acellular dermal matrix (“ADM”) with heightened structural integrity and superior handling capabilities, which may mitigate inflammation and enhance tissue incorporation, leading to a better healing experience as compared to other ADM products. We believe that these acellular dermal matrices represent an ideal choice for tissue repair and reconstruction, finding applications in fields such as breast reconstruction, sports medicine, hernia repair and trauma reconstruction.

With respect to pipeline products, we plan to expand our DEB offerings beyond EluPro and are pioneering DEBs to help solve problems unaddressed by available options. We also intend to leverage our DEB platform technology by developing and commercializing products for markets with similar unmet needs, including breast reconstruction and neurostimulation.

We sell EluPro and CanGaroo in the United States using our direct sales force and our commercial partner, Boston Scientific, which acts as a sales agent and gives us access to approximately 900 sales representatives and clinical specialists to further expand our footprint and accelerate our sales. Our primary customers are electrophysiologists, cardiac surgeons and neurosurgeons. Our direct sales force is focused on gaining additional market access and driving market penetration, not only by selling our products, but also, where appropriate, by managing our commercial partners and providing technical assistance for selling our products. Our sales team provides the critical knowledge of the advantages that EluPro and CanGaroo provide for patients over those of our competitors. We ship the product directly to hospitals.

We sell SimpliDerm through independent sales agents to plastic and reconstructive surgeons. Additionally, in March 2023, we entered into an agreement with Sientra, a medical aesthetics company uniquely focused on plastic surgery, to expand the distribution of SimpliDerm. In April 2024, the agreement was acquired by Tiger Aesthetics Medical (“Tiger”) in connection with their asset acquisition of Sientra. Under the agreement terms, Elutia has granted Tiger certain non-exclusive rights in the United States to market, sell and distribute SimpliDerm. This agreement with Tiger gives us access to approximately 50 sales representatives to further expand our footprint and accelerate our sales.

We also sell legacy products into the Cardiovascular market. In Cardiovascular, we sell our specialized porcine small intestine submucosa, which is based on the same the biomatrix used to make EluPro and CanGaroo, for use as an intracardiac and vascular patch as well as for pericardial reconstruction. In addition, our TYKE product is designed for use in the neonatal patient population. From May 2017 through March 2023, we sold these products directly to hospitals and other healthcare facilities primarily through our sales force and independent sales agents. In April 2023, we entered into an exclusive distribution agreement with LeMaitre Vascular through which we sold these products in the United States. On May 1, 2025, the exclusive distribution agreement terminated and we began selling these products directly to hospitals and other healthcare facilities through independent sales agents.

We produce all of our EluPro, CanGaroo and cardiovascular products at our manufacturing facility in Roswell, Georgia and stock inventory of raw materials, supplies and finished goods at this location. We rely on a single or limited number of suppliers for certain raw materials and supplies. We have a long-term supply agreement with Cook Biotech, now owned by Evergen, the porcine tissue supplier of our raw materials for EluPro, CanGaroo and our cardiovascular products. SimpliDerm was historically processed by us at our Richmond, California facility; however, that facility was included with the divestiture of the Orthobiologics Business, and SimpliDerm is now provided to us through a long-term supply agreement with the purchaser of the Orthobiologics Business, Berkeley Biologics, LLC (“Berkeley”). We intend to develop our own in-house capability for the production of certain components of EluPro as well as the potential internal production of current and future Women’s Health products. To this end, in March 2025, we signed a lease for 26,598 square feet in Gaithersburg, Maryland and expect to commence operations there in the second quarter of 2025. We anticipate being able to internally produce certain components of EluPro in the fourth quarter of 2025.

We have focused much of our attention recently on EluPro, which was cleared for marketing by the FDA in June 2024 and is indicated for use with implantable electronic devices including cardiac and neurostimulator devices. We believe the Company’s success is highly dependent on the successful commercialization, marketing and sale of EluPro, as well as the extension of our DEB technology into potential adjacent applications. Furthermore, we believe the commercialization and marketing efforts with respect to EluPro will require significant investments in time and resources. However, there can be no assurance that we will have or be able to obtain sufficient resources to make the necessary investments in order to increase the sales and market penetration of EluPro, or that if made, such investments will yield the results sought.

#### **Discontinued Operations – Sale of Orthobiologics Business**

On November 8, 2023, we completed the sale of substantially all of the assets relating to our former Orthobiologics Business to Berkeley. The Orthobiologics Business was comprised of assets relating to researching, developing, administering, insuring, operating, commercializing, manufacturing, selling and marketing our Orthobiologics products, and the business of contract manufacturing of particulate bone, precision milled bone, cellular bone matrix, acellular dermis, soft tissue and other products. The assets sold represent the entirety of our Orthobiologics segment. In the sale, we received \$14.6 million, and we may earn up to an additional \$20 million, in the aggregate, in the form of earn-out payments. The earn-out payments are equal to 10% of the actual revenue earned by Berkeley in each of the five years

after the closing of the sale from sales of specified Orthobiologics products under the purchase agreement (including improvements, modifications, derivatives and enhancements related to those products). There have been no earn-out payments made to date. Additionally, the purchase agreement provides for a customary indemnity holdback in the amount of \$1.5 million to be retained by Berkeley for 24 months after close. The indemnity holdback is available as a source of recovery for Berkeley for claims of indemnification under the purchase agreement, and some or all of the holdback may be retained by Berkeley if Berkeley is successful in asserting a claim or claims for indemnification against us. In the purchase agreement, the Company has retained the liabilities arising out of the viable bone matrix (“VBM”) and FiberCel matters, as described in Note 9, both of which products were part of the Orthobiologics Business. We recognized a gain of \$6.0 million on the sale of the Orthobiologics Business in 2023 and an additional gain of \$0.2 million in 2024 from an adjustment payment related to the final working capital received by Berkeley at the sale date. Should we receive incremental proceeds in the future through an earn-out payment or payment of the holdback amount, an additional gain will be recorded upon the receipt of such amounts.

#### **Product Recalls**

In June 2021, we issued a voluntary recall pertaining to a single donor lot of our FiberCel Fiber Viable Bone Matrix, a bone repair product formerly manufactured under a contract with Medtronic PLC, which also distributed the product. The recall was issued after learning of postsurgical infections reported in several patients treated with the product, including some patients that tested positive for tuberculosis. Additionally, in July 2023, we announced a voluntary recall of a single lot of one of our viable bone matrix (“VBM”) products and the market withdrawal of all of our VBM products produced after a specified date. Notice of the voluntary recall was issued to centers after we learned of post-surgical tuberculosis infections in two patients treated with product from a single donor lot of our VBM product. Both of these products were part of our Orthobiologics Business, which we have fully divested as described above. For information about legal proceedings in which we are involved and the possible future financial implications, see Note 9 to the condensed consolidated financial statements included elsewhere in this Quarterly Report.

#### **Components of Our Results of Operations**

##### *Net Sales*

We recognize revenue on the sale of our products. Our Device Protection products are sold to hospitals and other healthcare facilities primarily through our direct sales force, commercial partners or independent sales agents. Our Women’s Health products are sold directly to hospitals and other healthcare facilities through independent sales agents or through our distribution agreement with Tiger. From April 2023 through April 2025, our cardiovascular products were sold through a distribution agreement with LeMaitre Vascular. In May 2025, we began selling these products directly to hospitals and other healthcare facilities through independent sales agents.

##### *Expenses*

In recent years, we have incurred significant costs in the operation of our business. We expect that our recurring operating costs will largely stabilize, or increase at modest rates, in the near future through the identification of efficiencies as we grow. We may, however, still experience more significant expense increases to the extent we expand our sales and marketing, product development and clinical and research activities. As a result, we will need to generate significant net sales in order to achieve profitability. Below is a breakdown of our main expense categories and the related expenses incurred in each category:

##### *Cost of Goods Sold*

Our cost of goods sold relate to purchased raw materials and the processing and conversion costs of such raw materials consisting primarily of salaries and benefits, supplies, quality control testing and the manufacturing overhead incurred at our processing facility in Roswell, Georgia. The Roswell facility has additional capacity, which if utilized, would further leverage our fixed overhead. Cost of goods sold also includes the amortization of intangibles generated from the CorMatrix Acquisition in 2017.

*Sales and Marketing Expenses*

Sales and marketing expenses are primarily related to our direct sales force, consisting of salaries, commission compensation, fringe benefits, meals and other expenses. Auto and travel costs also contribute to sales and marketing expenses. Outside of our direct sales force, we incur significant expenses relating to commissions to our CanGaroo and SimpliDerm commercial partners and independent sales agents. Additionally, this expense category includes distribution costs as well as market research, trade show attendance, advertising and public relations related to our products, and customer service expenses.

*General and Administrative Expenses*

General and administrative (“G&A”) expenses consist primarily of compensation, consulting, legal, human resources, information technology, accounting, insurance and general business expenses. Our G&A expenses have increased as a result of operating as a public company, especially as a result of hiring additional personnel and incurring greater director and officer insurance premiums, greater investor relations costs, and additional costs associated with accounting, legal, tax-related and other services associated with maintaining compliance with exchange listing and SEC requirements.

*Research and Development Expenses*

Research and development (“R&D”) expenses consist primarily of salaries and fringe benefits, laboratory supplies, clinical studies and outside service costs. Over the last several years, our product development efforts have primarily related to activities associated with the development of EluPro, our initial DEB product offering which gained FDA clearance in June 2024. Future development efforts are expected to focus on (i) expanding our EluPro offering with additional sizes and product features, (ii) developing new products within the DEB product portfolio and (iii) conducting clinical studies to validate the performance characteristics of our products and to capture patient data necessary to support our commercial efforts.

*Litigation Costs, net*

Litigation costs, net consist primarily of legal fees and the estimated and actual costs to resolve the outstanding FiberCel and VBM litigation cases offset by the estimated and actual amounts recoverable or recovered under insurance, indemnity and contribution agreements for such costs.

**Results of Operations**

*Comparison of the Three Months Ended March 31, 2025 and 2024*

(in thousands, except percentages)	Three Months Ended March 31,				Change 2024 / 2025	
	2025		2024		\$	%
	Amount	% of Net Sales	Amount	% of Net Sales		
Net sales	\$ 6,030	100.0 %	\$ 6,694	100.0 %	\$ (664)	(9.9)%
Cost of goods sold	3,573	59.3 %	3,851	57.5 %	(278)	(7.2)%
Gross profit	2,457	40.7 %	2,843	42.5 %	(386)	(13.6)%
Sales and marketing	3,031	50.3 %	3,309	49.4 %	(278)	(8.4)%
General and administrative	3,871	64.2 %	5,056	75.5 %	(1,185)	(23.4)%
Research and development	905	15.0 %	1,172	17.5 %	(267)	(22.8)%
Litigation costs, net	2,572	42.7 %	1,785	26.7 %	787	44.1 %
Total operating expenses	10,379	172.1 %	11,322	169.1 %	(943)	(8.3)%
Loss from operations	(7,922)	(131.4)%	(8,479)	(126.7)%	557	(6.6)%
Interest expense, net	1,085	18.0 %	1,313	19.6 %	(228)	(17.4)%
Gain on revaluation of warrant liability	(5,187)	(86.0)%	9,637	144.0 %	(14,824)	NM
Other expense (income), net	105	1.7 %	(1,443)	(21.6)%	1,548	NM
Loss before provision for income taxes	(3,925)	(65.1)%	(17,986)	(268.7)%	14,061	(78.2)%
Income tax expense	8	0.1 %	8	0.1 %	—	— %
<b>Net income (loss)</b>	<b>\$ (3,933)</b>	<b>(65.2)%</b>	<b>\$ (17,994)</b>	<b>(268.8)%</b>	<b>\$ 14,061</b>	<b>78.1 %</b>

NM = not meaningful

**Net Sales**

Net sales information for our products is summarized as follows:

(in thousands, except percentages)	Three Months Ended March 31,				Change 2024 / 2025	
	2025		2024		\$	%
	Amount	% of Net Sales	Amount	% of Net Sales		
Products:						
Device Protection	\$ 3,079	51.1 %	\$ 2,357	35.2 %	\$ 722	30.6 %
Women's Health	2,625	43.5 %	3,567	53.3 %	(942)	(26.4)%
Cardiovascular	326	5.4 %	770	11.5 %	(444)	(57.7)%
<b>Total Net Sales</b>	<b>\$ 6,030</b>	<b>100.0 %</b>	<b>\$ 6,694</b>	<b>100.0 %</b>	<b>\$ (664)</b>	<b>(9.9)%</b>

Total net sales decreased \$0.7 million, or 9.9%, to \$6.0 million in the three months ended March 31, 2025 compared to \$6.7 million in the three months ended March 31, 2024. Revenues from Device Protection increased compared to the prior year's first quarter due to volume growth from EluPro whose full commercial launch commenced in January 2025 after FDA clearance in June 2024. Such increase, however, was offset by volume declines in Women's Health and Cardiovascular. The decline in Women's Health was caused by case volume reductions at certain hospital customers, and various physician users of SimpliDerm who transferred to hospitals where SimpliDerm is not yet available. With respect to Cardiovascular, as noted above, the exclusive distribution agreement with LeMaitre Vascular terminated in April 2025 and we recommenced selling these products directly in May 2025. We anticipate Cardiovascular sales will increase in future quarters of 2025 both through volume growth and higher unit prices as such sales will be at end-user pricing versus contracted prices.

**Cost of Goods Sold**

Cost of goods sold and gross margin percentage information for our products is summarized as follows:

(in thousands, except percentages)	Three Months Ended March 31,					
	2025		2024		Change 2024 / 2025	
	Amount	Gross Margin %	Amount	Gross Margin %	\$	%
<b>Products:</b>						
Device Protection	\$ 1,424	53.8 %	\$ 729	69.1 %	\$ 695	95.3 %
Women's Health	1,173	55.3 %	2,000	43.9 %	(827)	(41.4)%
Cardiovascular	127	61.0 %	273	64.5 %	(146)	(53.5)%
Cost of goods sold, excluding intangible asset amortization	2,724	54.8 %	3,002	55.2 %	(278)	(9.3)%
Intangible asset amortization expense	849	(14.1)%	849	(12.7)%	—	— %
<b>Total Cost of Goods Sold</b>	<b>\$ 3,573</b>	<b>40.7 %</b>	<b>\$ 3,851</b>	<b>42.5 %</b>	<b>\$ (278)</b>	<b>(7.2)%</b>

Total cost of goods sold decreased \$0.3 million to \$3.6 million in the three months ended March 31, 2025 compared to \$3.9 million in the three months ended March 31, 2024. Gross margin was 40.7% in the three months ended March 31, 2025 compared to 42.5% in the three months ended March 31, 2024. Gross margin, excluding intangible asset amortization, was 54.8% in the three months ended March 31, 2025 consistent with 55.2% in the three months ended March 31, 2024. While the overall changes between years in the gross margin measures were modest, it included increases to the Women's Health gross margin due to certain non-recurring write-offs in the prior year quarter, and declines to the Device Protection gross margin due to the addition of EluPro in 2025 which currently carries a lower gross margin than CanGaroo. We expect the Device Protection gross margin to improve over the course of calendar year 2025 as we increase production volumes and further production efficiencies are achieved.

**Operating Expenses**

*Sales and Marketing*

Sales and marketing expenses decreased \$0.3 million, or 8.4%, to \$3.0 million in the three months ended March 31, 2025 compared to \$3.3 million in the three months ended March 31, 2024. As a percentage of sales, sales and marketing expenses increased to 50.3% in the three months ended March 31, 2025 from 49.4% in the three months ended March 31, 2024. The modest decrease in expense was largely attributable to lower non-cash equity compensation in the 2025 period.

*General and Administrative*

G&A expenses decreased \$1.2 million, or 23.4%, to \$3.9 million in the three months ended March 31, 2025 compared to \$5.1 million in the three months ended March 31, 2024. As a percentage of net sales, G&A expenses decreased to 64.2% in the three months ended March 31, 2025 from 75.5% in the three months ended March 31, 2024. The decrease in expense was primarily driven by lower non-cash equity compensation and legal fees in the 2025 period.

*Research and Development*

R&D expenses decreased \$0.3 million, or 22.8% to \$0.9 million in the three months ended March 31, 2025 compared to \$1.2 million in the three months ended March 31, 2024. The decrease in expense was largely attributable to lower non-cash equity compensation in the 2025 period along with reductions in outside testing services after the FDA's clearance of EluPro in June 2024. Our future development efforts are focused on expanding our EluPro offering with additional sizes and product features, (ii) developing new products within the DEB product portfolio and (iii) conducting clinical studies to validate the performance characteristics of our products and to capture patient data necessary to support our commercial efforts.

*Litigation Costs, net*

Litigation costs, net increased to \$2.6 million in the three months ended March 31, 2025 compared to \$1.8 million in the three months ended March 31, 2024. The current year increase was due to the availability of insurance coverage on the FiberCel Litigation in the 2024 period which allowed for the full recovery of legal defense costs in the prior year's quarter. As of March 31, 2025, insurance remains available to cover the cost of the VBM Litigation and related defense costs; however, we have no more insurance to cover the cost of the FiberCel Litigation and the related defense costs. See further discussion in Note 9 to the condensed consolidated financial statements.

*Interest Expense*

Interest expense was approximately \$1.1 million in the three months ended March 31, 2025 compared to \$1.3 million in the three months ended March 31, 2024. The decrease was primarily due to lower principal outstanding on the SWK debt in the current year period as a result of mandatory repayments in connection with our sale of the Orthobiologics Business in November 2023.

*Other Expense (Income), net*

Other expense (income), net was an expense of \$0.1 million in the three months ended March 31, 2025 and was attributable to the transaction fees incurred in connection with the 2025 Registered Offering which were allocated to the 2025 Prefunded Warrants (defined below). See Note 8 to the condensed consolidated financial statements included elsewhere in this Quarterly Report for additional information.

Other expense (income), net was income of \$1.4 million in the three months ended March 31, 2024 attributable to the \$1.4 million gain on the revaluation of our Revenue Interest Obligation to Ligand. See Note 7 to the condensed consolidated financial statements included elsewhere in this Quarterly Report for additional information.

**Non-GAAP Financial Measures**

This Quarterly Report presents our gross margin, excluding intangible asset amortization, for the three months ended March 31, 2025 and 2024. We calculate gross margin, excluding intangible asset amortization, as gross profit, excluding amortization expense relating to intangible assets we acquired in the CorMatrix Acquisition, divided by net sales. Gross margin, excluding intangible asset amortization, is a supplemental measure of our performance, is not defined by or presented in accordance with U.S. generally accepted accounting principles ("GAAP"), has limitations as an analytical tool and should not be considered in isolation or as an alternative to our GAAP gross margin, gross profit or any other financial performance measure presented in accordance with GAAP. We present gross margin, excluding intangible asset amortization, because we believe that it provides meaningful supplemental information regarding our operating performance by removing the impact of amortization expense, which is not indicative of our overall operating performance. We believe this provides our management and investors with useful information to facilitate period-to-period comparisons of our operating results. Our management uses this metric and the results of the segments in assessing the health of our business and our operating performance, and we believe investors' understanding of our operating performance is similarly enhanced by our presentation of this metric.

Although we use gross margin, excluding intangible asset amortization, as described above, this metric has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. In addition, other companies, including companies in our industry, may use other measures to evaluate their performance, which could reduce the usefulness of this non-GAAP financial measure as a tool for comparison.

The following table presents a reconciliation of our gross margin, excluding intangible asset amortization, for the three months ended March 31, 2025 and 2024, to the most directly comparable GAAP financial measure, which is our GAAP gross margin (in thousands).

	Three Months Ended	
	March 31,	
	2025	2024
Net sales	\$ 6,030	\$ 6,694
Cost of goods sold	3,573	3,851
Gross profit	2,457	2,843
Intangible asset amortization expense	849	849
Gross profit, excluding intangible asset amortization	\$ 3,306	\$ 3,692
Gross margin	40.7 %	42.5 %
Gross margin, excluding intangible asset amortization	54.8 %	55.2 %

### Seasonality

Historically, we have experienced seasonality in our first and fourth quarters, and we generally expect this trend to continue but may also see quarter-to-quarter fluctuations that are inconsistent with this trend. We have experienced and may in the future experience higher sales in the fourth quarter as a result of hospitals in the United States increasing their purchases of our products to coincide with the end of their budget cycles. Satisfaction of patient deductibles throughout the course of the year also results in increased sales later in the year, once patients have paid their annual insurance deductibles in full, which reduces their out-of-pocket costs. Conversely, our first quarter generally has lower sales than the preceding fourth quarter as patient deductibles are re-established with the new year, which increases their out-of-pocket costs.

### Liquidity and Capital Resources

As of March 31, 2025, we had cash of approximately \$17.4 million. Since inception, we have financed our operations primarily through amounts borrowed under our credit facilities, proceeds from our initial public offering (“IPO”), sales of our products and more recently, the sale of our Orthobiologics Business, proceeds from a follow-on offerings and private placements of our common stock and warrants and substitution of certain cash payment obligations with stock issuances. Our historical cash outflows have primarily been associated with acquisitions and integration, manufacturing and administrative costs, general and marketing, research and development, clinical activity, purchase of property and equipment used in our production activities, litigation defense and settlement costs and investing in our commercial infrastructure through our direct sales force and our commercial partners in order to expand our presence and to promote awareness and adoption of our products. Such commercial infrastructure costs are likely to become more significant in the future as we further commercialize the newly approved EluPro product. As of March 31, 2025, our accumulated deficit was \$233.5 million.

On February 4, 2025, we sold, in a registered direct offering (“2025 Registered Offering”) an aggregate of (i) 5,520,000 shares of our Class A common stock and (ii) prefunded warrants (“2025 Prefunded Warrants”) to purchase up to an aggregate of 480,000 shares of Class A Common Stock. The public offering price for each share of Class A Common Stock was \$2.50, and the public offering price for each 2025 Prefunded Warrant was \$2.499, for aggregate gross proceeds of approximately \$15.0 million, before deducting offering expenses. The 2025 Prefunded Warrants have an exercise price of \$0.001 per share of Class A Common Stock, are exercisable immediately and will expire when exercised in full.

On June 18, 2024, we sold, in a registered direct offering (“2024 Registered Offering”) an aggregate of (i) 3,175,000 shares of our Class A common stock and (ii) prefunded warrants (“2024 Prefunded Warrants”) to purchase up to an aggregate of 725,000 shares of Class A Common Stock. The public offering price for each share of Class A Common Stock was \$3.40, and the public offering price for each 2024 Prefunded Warrant was \$3.399, for aggregate gross proceeds of approximately \$13.3 million, before deducting offering expenses. The 2024 Prefunded Warrants have an exercise price of \$0.001 per share of Class A Common Stock, are exercisable immediately and will expire when exercised in full.

On September 21, 2023, we sold, in a private offering (“Private Offering”) an aggregate of (i) 6,852,811 units (“Common Units”), each comprised of (a) one share of our Class A common stock and (b) a warrant (“Common Warrant”) to purchase one and one half shares of Class A Common Stock, and (ii) 503,058 units (the “Prefunded Units”), each comprised of (a) a prefunded warrant (“2023 Prefunded Warrant”) to purchase one share of Class A Common Stock, and

(b) a Common Warrant. The Common Units were sold at a purchase price of \$1.4275 per unit, and the 2023 Prefunded Units were sold at a purchase price of \$1.4265 per unit, for aggregate gross proceeds of approximately \$10.5 million, before deducting offering expenses. Each Common Warrant was exercisable until July 31, 2024, the date which was 30 trading days after the clearance by the FDA of the Company's EluPro product, at an exercise price per share of \$1.4275. All Common Warrants were exercised by such date yielding exercise proceeds of \$15.7 million in 2024. Certain of these exercises ultimately resulted in their conversion to 2023 Prefunded Warrants. Each 2023 Prefunded Warrant is exercisable at any time at a nominal exercise price per share of \$0.001 (with the remainder of the exercise price per share of Class A Common Stock having been prefunded to us).

We expect our losses to continue for the foreseeable future and these losses will continue to have an adverse effect on our financial position. Because of the numerous risks and uncertainties associated with our commercialization and development efforts, including our ability to successfully commercialize our new EluPro product, we are unable to predict when we will become profitable, and we may never become profitable. Our inability to achieve and then maintain profitability would negatively affect our business, financial condition, results of operations and cash flows.

In order to mitigate the current and potential future liquidity issues caused by the matters noted above, we may seek to raise capital through the issuance of equity or debt securities, as we did in the 2025 Registered Offering, 2024 Registered Offering and Private Offering described above, issue common stock to satisfy certain obligations in lieu of cash, as we did in the Ligand amendment described below or pursue asset sale or other transactions, such as the sale of the Orthobiologics Business described above. However, such transactions may not be successful, and we may not be able to raise additional equity, refinance our debt instruments, or sell assets on acceptable terms, or at all. As such, based on our current operating plans, we believe there is uncertainty as to whether our future cash flows along with our existing cash, issuances of additional equity and cash generated from expected future sales will be sufficient to meet our anticipated operating needs through twelve months from the financial statement issuance date. Due to these factors, there is substantial doubt about our ability to continue as a going concern within one year after the issuance of the financial statements.

#### *Cash Flows for the Three Months ended March 31, 2025 and 2024*

	Three Months Ended March 31,	
	2025	2024
	(in thousands)	
Net cash provided by (used in):		
Operating activities	\$ (8,881)	\$ (2,641)
Investing activities	(278)	(15)
Financing activities	13,278	(4,069)
<b>Net decrease in cash</b>	<b>\$ 4,119</b>	<b>\$ (6,725)</b>

#### *Cash Flows From Operating Activities*

Net cash used in operating activities for the three months ended March 31, 2025 was \$8.9 million compared to \$2.6 million for the three months ended March 31, 2024. The year-over-year increase was primarily due to higher paydowns of current trade obligations in the 2025 quarter as well as FiberCel settlement payments of \$3.0 million in the current quarter.

#### *Cash Flows From Investing Activities*

Net cash provided by investing activities for the three months ended March 31, 2025 was \$0.3 million compared to net cash used in investing activities of \$0.02 million for the three months ended March 31, 2024. Both periods reflect purchases of property and equipment primarily for our production facilities.

### *Cash Flows From Financing Activities*

Net cash provided by financing activities for the three months ended March 31, 2025 was \$13.3 million compared to cash used in financing activities of \$4.1 million for the three months ended March 31, 2024. The current year's cash generation was primarily through the 2025 Registered Offering which yielded net proceeds of \$13.8 million. The cash used in the 2024 period was caused largely by repayments totaling \$4.6 million of our long-term debt and revenue interest obligation offset by the proceeds from Common Warrant and Prefunded Warrant exercises of \$1.1 million.

### ***Credit Facilities***

#### *General*

As of March 31, 2025, we had \$24.3 million of indebtedness outstanding, consisting of \$23.8 million outstanding under our SWK Loan Facility described below and \$1.0 million of exit fee liabilities, net of \$0.5 million of unamortized discount and deferred financing costs. Such indebtedness currently has a principal payment commencement date of November 15, 2025, with quarterly principal payments in an amount equal to 5% of the outstanding principal.

On August 10, 2022 (the "Closing Date"), we entered into a senior secured term loan facility with SWK Funding LLC ("SWK"), as agent, and other lenders party thereto (as amended and modified subsequent to the Closing Date, the "SWK Loan Facility") for an aggregate principal amount of \$25 million. An initial draw of \$21 million was made on the Closing Date with the additional \$4 million drawn on December 14, 2022. The SWK Loan Facility also allows for the establishment of a separate, new asset-based revolving loan facility of up to \$8 million, which has not been entered into to date. As of March 31, 2025, we had \$23.8 million of indebtedness outstanding under our SWK Loan Facility and an exit fee liability to SWK of \$1.0 million, with such balances being net of \$0.5 million of unamortized discount and deferred financing costs.

#### *Interest Rates*

All of the SWK Loan Facility borrowings take the form of Secured Overnight Financing Rate ("SOFR") loans and bear interest at a rate per annum equal to the sum of an applicable margin of (i) 7.75% and the "Term SOFR Rate" (based upon an interest period of 3 months), or (ii) if we have elected the PIK Interest option (as defined below), 3.75% and the "Term SOFR Rate." We may elect a portion of the interest due, to be paid in-kind at a rate per annum of 4.5% ("PIK Interest"), and such election may be made until November 15, 2025. The "Term SOFR Rate" is subject to a floor of 2.75%.

#### *Mandatory Prepayments*

Prior to the May 2025 amendment described below, the SWK Loan Facility Agreement required certain mandatory prepayments, subject to certain exceptions, with: (1) 100% of any net casualty proceeds in excess of \$250,000 and (2) for non-ordinary course asset sales, an amount equal to the difference between (x) the proportion of divested gross profit (as defined in the SWK Loan Facility) to the Company's total gross profit (as defined in the SWK Loan Facility) multiplied by the outstanding loans under the SWK Loan Facility, and (y) the difference between \$1,000,000 and the aggregate sale proceeds of any assets previously sold during the fiscal year. The closing of the sale of the Orthobiologics Business in November 2023 triggered the mandatory prepayment of \$4.0 million. Of such amount, \$2.0 million was paid shortly after closing of the divestiture of the Orthobiologics Business in 2023 and the remainder was paid on February 15, 2024 based on mutual agreement between the parties. No such mandatory prepayments were required in the three months ended March 31, 2025.

#### *Optional Prepayment*

The agreement, as amended, governing the SWK Loan Facility also includes an exit fee equal to 6.5% of the aggregate principal amount funded prior to termination plus \$112,500.

*Amortization and Final Maturity*

The SWK Loan Facility matures on August 10, 2027 and accrues interest, payable quarterly in arrears. Principal amortization of the SWK Loan Facility starts on November 15, 2025. Principal payments during the amortization period will be limited based on revenue-based caps. As of March 31, 2025, quarterly principal payments will be in an amount equal to 5% of the aggregate principal amount funded with the balance paid at maturity.

*Security*

All obligations under the SWK Loan Facility are, and any future guarantees of those obligations will be, secured by, among other things, and in each case subject to certain exceptions, a first priority lien on and security interest in, upon, and to all of our assets, whether now owned or hereafter acquired, wherever located.

*Covenants and Other Matters*

The SWK Loan Facility Agreement that governs the SWK Loan Facility contains a number of covenants that, among other things and subject to certain exceptions, restrict our ability to:

- incur additional indebtedness;
- incur certain liens;
- pay dividends or make other distributions on equity interests;
- redeem, repurchase or refinance subordinated indebtedness;
- consolidate, merge or sell or otherwise dispose of assets;
- make investments, loans, advances, guarantees and acquisitions;
- enter into transactions with affiliates;
- amend or modify our governing documents;
- amend or modify certain material agreements; and
- alter the business conducted by us and our subsidiaries.

In addition, the SWK Loan Facility Agreement contains two financial covenants. The first covenant, which is measured quarterly, requires us to achieve a specified Minimum Aggregate Revenue (as defined in the SWK Loan Facility) for the preceding 12-month period or, alternatively, to maintain Consolidated Unencumbered Liquid Assets (as defined in the SWK Loan Facility) greater than either (i) the outstanding principal balance of the loan, or (ii) the aggregate operating cash burn (as defined in the SWK Loan Facility) for the preceding 12-month period. The second covenant requires us to maintain a minimum liquidity (as defined in the SWK Loan Facility) of the greater of (a) \$5.0 million and (b) the sum of the operating cash burn for the two prior consecutive fiscal quarters then ended (the "Liquidity Covenant"). See below for discussion of amendment to the Liquidity Covenant in May 2025.

The SWK Loan Facility Agreement contains events of default, including, most significantly, a failure to timely pay interest or principal, insolvency, or an action by the FDA or such other material adverse event impacting the operations of Elutia. As of March 31, 2025, we were in compliance with the financial covenants and all other covenants.

*May 2025 Amendment*

In May 2025, we entered into an amendment to the SWK Loan Facility. The amendment, among other things: (i) allows for 100% of the interest payment due and owing in May 2025 to be paid as PIK interest, (ii) removed mandatory repayment obligations related to non-ordinary course asset sales, (iii) allows us to request that SWK advance a new term loan in the amount of up to \$5.0 million, which advance will be in the sole and absolute discretion of SWK and (iv) fixed the amount of the minimum liquidity covenant to be \$8.0 million. In consideration for the amendment, the Company agreed to issue SWK 50,000 shares of its Class A Common Stock in a private placement.

***Ligand Revenue Interest Obligation***

We are also a party to a royalty agreement with Ligand Pharmaceuticals Incorporated (“Ligand”) pursuant to which we have incurred a long-term obligation to Ligand (the “Revenue Interest Obligation”). The Revenue Interest Obligation, as amended in January 2024, requires us to pay Ligand 5.0% of future sales of our CanGaroo, ProxiCor, Tyke and VasCure products, and substantially similar products, such as EluPro, through May 31, 2027, subject to annual minimum payments of \$4.4 million.

Effective May 8, 2025, we entered into a subscription agreement and further amendment to the Revenue Interest Obligation with Ligand. Through the amendment, \$2.2 million in outstanding royalty obligations (royalty obligations for the fiscal quarters ended December 31, 2024 and March 31, 2025) owed by Elutia to Ligand under the Revenue Interest Obligation as amended was satisfied by the issuance of 1,105,528 shares of Elutia’s Class A common stock to Ligand in a transaction registered with the Securities and Exchange Commission.

***Funding Requirements***

We expect to continue to incur significant expenses and operating losses for the foreseeable future as we further commercialize EluPro and expand our product development and clinical and research activities. In addition, we expect to continue to incur significant costs and expenses associated with operating as a public company.

If our available cash balances and cash flow from operations are insufficient to satisfy our liquidity requirements, we may seek to raise additional capital through equity offerings, debt financings, substitution of cash payment obligations with equity or asset sale or other transactions. However, such transactions may not be successful and we may not be able to raise additional equity or debt, or sell or license assets on acceptable terms, or at all. We may also consider raising additional capital in the future to expand our business, pursue strategic investments or take advantage of financing opportunities. Our present and future funding requirements will depend on many factors, including, among other things:

- the cost of fully commercializing our EluPro product;
- the costs of defending against or the damages payable in connection with the FiberCel Litigation and VBM Litigation, associated litigation related to indemnity claims by other defendants to the FiberCel Litigation and any future litigation that we may be subject to (to the extent above the applicable insurance coverage);
- continued patient, physician and market acceptance of our products;
- the scope, rate of progress and cost of our current and future pre-clinical and clinical studies;
- the cost of our research and development activities and the cost and timing of commercializing new products or technologies;
- the cost and timing of expanding our sales and marketing capabilities;
- the cost of filing and prosecuting patent applications and maintaining, defending and enforcing our patent or other intellectual property rights;

- the cost of defending, in litigation or otherwise, any claims that we infringe, misappropriate or otherwise violate third-party patents or other intellectual property rights;
- the cost and timing of additional regulatory approvals;
- costs associated with any product recall that may occur;
- the effect of competing technological and market developments;
- the expenses we incur in manufacturing and selling our products;
- the extent to which we acquire or invest in products, technologies and businesses in the future, although we may currently have no commitments or agreements relating to any of these types of transactions;
- the costs of operating as a public company;
- unanticipated general, legal and administrative expenses; and
- the effects on any of the above from any pandemic, epidemic or outbreak of infectious disease or any other public health crisis.

In addition, our operating plans may change as a result of any number of factors, including those set forth above and other factors currently unknown to us, and we may need additional funds sooner than anticipated. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest may be materially diluted, and the terms of such securities could include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing, if available, may involve agreements that include restrictive covenants that limit our ability to take specific actions, such as incurring additional debt, making capital expenditures, creating liens, redeeming shares of our common stock and/or declaring dividends. If we raise funds through collaborations, licensing agreements or other strategic alliances, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates, or grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings or other arrangements when needed, we may be required to delay the development or commercialization of our products, license to third parties the rights to commercialize products or technologies that we would otherwise seek to commercialize and reduce marketing, customer support or other resources devoted to our products or cease operations. See our Annual Report, Part I, Item 1A. “Risk Factors — Risks Related to Our Business — *Our future capital needs are uncertain and we may need to raise funds in the future, and such funds may not be available on acceptable terms or at all.*”

Based on our current operating plans, we believe there is uncertainty as to whether our future cash flows along with our existing cash, issuances of additional equity, cash saved through substitution of cash payment obligations with equity issuances and cash generated from expected future sales will be sufficient to meet our anticipated operating needs through twelve months from the financial statement issuance date. Due to these factors, there is substantial doubt about our ability to continue as a going concern within one year after the issuance of the financial statements.

#### **Critical Accounting Policies and Estimates**

The preparation of our unaudited condensed consolidated financial statements in accordance with GAAP requires us to make estimates and assumptions that affect reported amounts and related disclosures. We have discussed the policies and estimates that we believe are critical and require the use of complex judgment in their application in our Annual Report, and, during the three months ended March 31, 2025, there were no material changes to those previously disclosed other than those outlined in Note 2, “Summary of Significant Accounting Policies.”

### **Recent Accounting Pronouncements**

See Note 3, “Recently Issued Accounting Standards,” to our condensed consolidated financial statements included elsewhere in this Quarterly Report for information regarding recently issued accounting pronouncements.

### **JOBS Act**

Section 107 of the JOBS Act permits us, as an “emerging growth company,” to take advantage of an extended transition period for adopting new or revised accounting standards until those standards would otherwise apply to private companies. We have elected to avail ourselves of this exemption and, as a result, for so long as we remain an emerging growth company, unless we subsequently choose to affirmatively and irrevocably opt out of the extended transition period, our financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies. Section 107 of the JOBS Act provides that we can elect to opt out of the extended transition period at any time, which election is irrevocable.

We will remain an emerging growth company, and will be able to take advantage of the foregoing exemptions, until the earliest of: (i) the last day of the first fiscal year in which our annual gross revenues are \$1.235 billion or more; (ii) the last day of 2025; (iii) the date that we become a “large accelerated filer” as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common equity held by non-affiliates is \$700 million or more as of the last business day of our most recently completed second fiscal quarter; or (iv) the date on which we have issued more than \$1.0 billion in non-convertible debt securities during the previous three years.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

We are exposed to market risks in the ordinary course of our business, including risks relating to changes in interest rates, foreign currency and inflation. The following discussion provides additional information regarding these risks.

#### ***Interest Rate Risk***

Our primary exposure to market risk relates to changes in interest rates. Borrowings under our SWK Loan Facility bear interest at variable rates, subject to an interest rate floor. Interest rate risk is highly sensitive due to many factors, including U.S. monetary and tax policies, U.S. and international economic factors and other factors beyond our control. A hypothetical 10% relative change in interest rates on our variable rate indebtedness outstanding at March 31, 2025 would not have had a material effect on our financial statements. We do not currently engage in hedging transactions to manage our exposure to interest rate risk.

#### ***Credit Risk***

As of March 31, 2025, our cash was maintained with two financial institutions in the United States. While our deposit accounts are insured up to the legal limit, the balances we maintain may, at times, exceed this insured limit. We believe these financial institutions have sufficient assets and liquidity to conduct their operations in the ordinary course of business with little or no credit risk to us.

#### ***Foreign Currency Risk***

Our business is primarily conducted in U.S. dollars. Any transactions that may be conducted in foreign currencies are not expected to have a material effect on our financial condition, results of operations or cash flows. As we grow our operations, our exposure to foreign currency risk could become more significant.

**Item 4. Controls and Procedures.**

**Limitations on Effectiveness of Controls and Procedures**

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

**Evaluation of Disclosure Controls and Procedures**

The Company's management has evaluated, with the participation of the Chief Executive Officer and the Chief Financial Officer, the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of March 31, 2025.

**Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three months ended March 31, 2025 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II – OTHER INFORMATION**

**Item 1. Legal Proceedings.**

From time to time, we may be involved in claims and proceedings arising in the course of our business. The outcome of any such claims or proceedings, regardless of the merits, is inherently uncertain. For information about legal proceedings in which we are involved, see Note 9 to the condensed consolidated financial statements included elsewhere in this Quarterly Report.

**Item 1A. Risk Factors.**

Our business, financial condition and operating results can be affected by a number of factors, whether currently known or unknown, including but not limited to those described as risk factors, any one or more of which could, directly or indirectly, cause our actual operating results and financial condition to vary materially from past, or anticipated future, operating results and financial condition. For a discussion of these potential risks and uncertainties, see Part I, Item 1A. "Risk Factors" of our Annual Report. Any of these factors, in whole or in part, could materially and adversely affect our business, financial condition, operating results and the price of our common stock. There have been no material changes in our risk factors to those included in our Annual Report.

**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.**

During the three months ended March 31, 2025, none of our directors or officers (as defined in Rule 16a-1 under the Exchange Act) adopted or terminated any contract, instruction, or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any "non-Rule 10b5-1 trading arrangement" (as defined in Item 408 of Regulation S-K).

**Item 6. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit</b>	<b>Filing Date</b>	<b>Filed/ Furnished Herewith</b>
2.1	<a href="#">Asset Purchase Agreement, dated September 17, 2023, by and among Elutia Inc., Berkeley Biologics, LLC, and GNI Group, Ltd. (solely with respect to Section 11.18)</a>	8-K	<a href="#">001-39577</a>	<a href="#">10.1</a>	<a href="#">9/19/2023</a>	
3.1a	<a href="#">Restated Certificate of Incorporation of Elutia Inc.</a>	8-K	<a href="#">001-39577</a>	<a href="#">3.1</a>	<a href="#">10/13/2020</a>	
3.1b	<a href="#">Certificate of Amendment to the Restated Certificate of Incorporation of Elutia Inc.</a>	8-K	<a href="#">001-39577</a>	<a href="#">3.1</a>	<a href="#">09/07/2023</a>	
3.2	<a href="#">Amended and Restated Bylaws of Elutia Inc.</a>	8-K	<a href="#">001-39577</a>	<a href="#">3.2</a>	<a href="#">10/13/2020</a>	
4.1	<a href="#">Second Amended and Restated Investor Rights Agreement, dated as of September 14, 2020, among the Registrant and the investors named therein</a>	S-1	<a href="#">333-248788</a>	<a href="#">4.1</a>	<a href="#">09/14/2020</a>	
4.2	<a href="#">Specimen stock certificate evidencing the shares of Class A common stock</a>	S-1	<a href="#">333-248788</a>	<a href="#">4.2</a>	<a href="#">09/14/2020</a>	
4.3	<a href="#">Specimen stock certificate evidencing the shares of Class B common stock</a>	S-1/A	<a href="#">333-248788</a>	<a href="#">4.3</a>	<a href="#">09/30/2020</a>	
4.4	<a href="#">Warrant to Purchase Stock, issued on August 10, 2022, by Elutia Inc. to SWK Funding LLC.</a>	8-K	<a href="#">001-39577</a>	<a href="#">4.1</a>	<a href="#">8/15/2022</a>	
4.5	<a href="#">Form of Common Warrant</a>	8-K	<a href="#">001-39577</a>	<a href="#">4.1</a>	<a href="#">9/21/2023</a>	
4.6	<a href="#">2023 Form of Prefunded Warrant</a>	8-K	<a href="#">001-39577</a>	<a href="#">4.2</a>	<a href="#">9/21/2023</a>	
4.7	<a href="#">Registration Rights Agreement, dated September 21, 2023, by and among Elutia Inc. and the Investors named therein</a>	8-K	<a href="#">001-39577</a>	<a href="#">10.2</a>	<a href="#">9/21/2023</a>	
4.8	<a href="#">2024 Form of Prefunded Warrant</a>	8-K	<a href="#">001-39577</a>	<a href="#">4.1</a>	<a href="#">6/18/2024</a>	
4.10	<a href="#">2025 Form of Prefunded Warrant</a>	8-K	<a href="#">001-39577</a>	<a href="#">4.1</a>	<a href="#">2/4/2025</a>	
10.35	<a href="#">2025 Form of Placement Agency Agreement dated February 3, 2025 between Lake Streek Capital Markets, LLC and Elutia In.</a>	8-K	<a href="#">001-39577</a>	<a href="#">10.1</a>	<a href="#">2/4/2025</a>	
10.36	<a href="#">2025 Form of Securities Purchase Agreement Agreement dated February 3, 2025 between Elutia Inc. and the purchasers named therein</a>	8-K	<a href="#">001-39577</a>	<a href="#">10.2</a>	<a href="#">2/4/2025</a>	
10.37	<a href="#">Subscription Agreement and Amendment No. 2 to Royalty Agreement dated May 8, 2025 between Elutia Inc., Elutia Med LLC and Ligand Pharmaceuticals Incorporation</a>					*

[Table of Contents](#)

10.38	<a href="#">Fourth Amendment to Credit Agreement dated May 7, 2025 by and among Elutia Inc., SWK Funding LLC as Agent and the lenders from time to time party thereto</a>	*
31.1	<a href="#">Certification of Principal Executive Officer 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.</a>	*
31.2	<a href="#">Certification of Principal Financial Officer 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.</a>	*
32.1	<a href="#">Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	**
32.2	<a href="#">Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	**
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	*
101.SCH	Inline XBRL Taxonomy Extension Schema Document	*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	*
101.DEF	Inline XBRL 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)	*

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\* Filed herewith.

\*\* Furnished herewith.

**SIGNATURES**

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

ELUTIA INC.

Date: May 13, 2025

By: /s/ C. Randal Mills, Ph.D.  
C. Randal Mills, Ph.D.  
President and Chief Executive Officer  
*(principal executive officer)*

Date: May 13, 2025

By: /s/ Matthew Ferguson  
Matthew Ferguson  
Chief Financial Officer  
*(principal financial officer and principal accounting officer)*

**SUBSCRIPTION AGREEMENT  
AND AMENDMENT NO. 2 TO ROYALTY AGREEMENT**

May 8, 2025

WHEREAS, Elutia Med LLC. (formerly known as Aziyo Med, LLC), a Delaware limited liability company ("Elutia Med"), and Ligand Pharmaceuticals Incorporated, a Delaware corporation ("Ligand"), are parties to that certain Royalty Agreement dated as of May 31, 2017, as amended by Amendment No. 1 thereto effective as of January 10, 2024 (as so amended, the "Royalty Agreement");

WHEREAS, Elutia Med is a wholly owned subsidiary of Elutia Inc., a Delaware corporation (the "Issuer"); and

WHEREAS, the parties desire to satisfy certain obligations of Elutia Med to Ligand under the Royalty Agreement by the issuance of shares of the Issuer's Class A Common Stock, par value \$0.001 per share (the "Common Stock"), by the Issuer to Ligand in an offering registered with the U.S. Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act").

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained in this Subscription Agreement and Amendment No. 2 to Royalty Agreement (this "Agreement"), the parties agree as follows:

1. Subscription: Consideration. (a) Subject to the terms and conditions hereof, Ligand hereby irrevocably (subject to the terms and conditions of this Agreement and applicable law) subscribes for the number of shares of Common Stock set forth in Appendix A hereto (the "Shares") in full satisfaction of the Royalty Payments (as defined in Appendix A hereto).

(b) Without limiting the foregoing, in consideration of the Issuer's issuance of the Shares to Ligand and the other covenants, agreements and undertakings herein, Ligand, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, managers, members, successors and assigns (collectively, "Releasors"), hereby releases, waives and forever discharges Elutia Med, the Issuer and their respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, managers, members, agents, representatives, permitted successors and permitted assigns (collectively, "Releasees") of and from the Royalty Payments and any and all actions, causes of action, claims and demands for payment of the Royalty Payments, including related to or arising out of late or delinquent payment of such payments (collectively, "Claims"), which any of such Releasors have or may have against any of such Releasees. In consideration of the Issuer's issuance of the Shares to Ligand and the other covenants, agreements and undertakings herein, the Releasors shall not commence or institute any legal actions, including litigation, arbitration or any other legal proceedings of any kind whatsoever, in

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law or equity, or assert any claim, demand, action or cause of action concerning the payment of the Royalty Payments, including any action under the Royalty Agreement.

2. The Closing. The consummation of the transactions contemplated hereby (the "Closing") shall take place no later than the third trading day following execution of this Agreement (the "Closing Date"), subject to the satisfaction, or waiver if applicable, of the conditions precedent described below. On the Closing Date, the Issuer shall deliver the Shares registered in the name of Ligand through the Issuer's transfer agent via book-entry procedure or, if elected by Ligand on its signature page hereto, to Ligand's broker, bank or other nominee via The Depository Trust Company ("DTC") Deposit or Withdrawal at Custodian system ("DWAC") for Ligand's account. Ligand shall provide, in a sufficiently timely fashion, all customary information reasonably requested by the Issuer's transfer agent in connection with the issuance of the Shares, and shall be solely responsible for any instructions needed to be given to Ligand's broker, bank or other nominee for receipt of the Shares in the case of delivery via DWAC. The obligations of the parties to consummate the Closing are subject to the satisfaction at or prior to the Closing of the following conditions precedent: the parties shall have performed their agreements and covenants that are to be performed at or prior to the Closing in all material respects, and the representations and warranties contained herein shall be true and correct as of the Closing in all respects with the same effect as though such representations and warranties had been made on and as of the Closing.

3. Representations and Warranties of the Issuer. The Issuer represents and warrants, as of the date hereof and as of the Closing, that:

(a) The Issuer is duly incorporated and is validly existing under the laws of Delaware, with full power and authority to carry out its obligations under this Agreement.

(b) The Shares have been duly authorized and, when issued, delivered and paid for in the manner set forth in this Agreement, will be validly issued, fully paid and nonassessable.

(c) The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of the Issuer and no further action is required by the Issuer, its Board of Directors or its stockholders in connection herewith. This Agreement has been duly executed by the Issuer and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) The Issuer has filed a registration statement on Form S-3 (File No. 333-285870) (the "Registration Statement") with the SEC registering the issuance of the Shares to Ligand. The Registration Statement has become effective under the Securities Act and, to the Issuer's knowledge, no "stop order" is in effect with respect to the Registration Statement. The Issuer has filed with the SEC, or will file by the Closing, a prospectus supplement and accompanying "base" prospectus relating to the offering of the Shares to Ligand (the "Prospectus").

4. Representations and Warranties of Elutia Med. Elutia Med represents and warrants, as of the date hereof and as of the Closing, that:

(a) Elutia Med is duly organized and is validly existing under the laws of Delaware, with full power and authority to carry out its obligations under this Agreement.

(b) The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of Elutia Med and no further action is required by Elutia Med, its managers or its members in connection herewith. This Agreement has been duly executed by Elutia Med and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of Elutia Med enforceable against Elutia Med in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

5. Representations and Warranties of Ligand. Ligand represents and warrants, as of the date hereof and as of the Closing, that:

(a) Ligand is duly incorporated and is validly existing under the laws of Delaware, with full power and authority to carry out its obligations under this Agreement.

(b) The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of Ligand and no further action is required by Ligand, its Board of Directors or its stockholders in connection herewith. This Agreement has been duly executed by Ligand and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of Ligand enforceable against Ligand in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(c) To its knowledge, Ligand is not an “affiliate” of the Issuer under Rule 144 under the Securities Act.

(d) Information Concerning the Issuer.

(i) Ligand has received a copy of the Prospectus in pre-filing, draft form, and Ligand has had access to the Registration Statement and the reports and other information the Issuer has publicly filed with the SEC, and has relied only on the information contained in the Prospectus and the documents incorporated by reference therein in connection with its acquisition of the Shares hereunder.

(ii) The undersigned confirms that it is not relying on any communication (written or oral) of the Issuer, Elutia Med or any of their respective affiliates as investment or tax advice or as a recommendation to acquire the Shares. Ligand confirms that none of the Issuer, Elutia Med or any of their respective affiliates have given any guarantee or representation as to the potential success, return, effect or benefit (either legal, regulatory, tax, financial, accounting or otherwise) of the acquisition of the Shares. In deciding to acquire the Shares, Ligand is not relying on the advice or recommendations of the Issuer, Elutia Med or their respective affiliates, and Ligand has made its own independent decision regarding such acquisition.

(iii) Ligand understands and accepts that the acquisition of the Shares involves various risks, including the risks outlined in the Prospectus and the documents incorporated by reference therein.

(iv) Ligand understands that no federal or state agency has passed upon the merits or risks of acquisition of the Shares or made any finding or determination concerning the fairness or advisability of this acquisition.

6. Amendment to Royalty Agreement. This Agreement shall be deemed an amendment to the Royalty Agreement to the extent necessary to provide for the discharge of the Royalty Payments in consideration of the issuance of the Shares as set forth in Section 1. All other terms and conditions of the Royalty Agreement remain unchanged, and the Royalty Agreement, as amended by this Agreement, shall remain in full force and effect according to its terms. This Agreement and the Royalty Agreement contains the entire agreement between the parties with respect to Ligand’s acquisition of the Shares. Section 5.03 and Article VII of the Royalty Agreement shall apply, *mutatis mutandis*, to this Agreement, provided that:

(a) the address for notices for Elutia Med in Section 7.02 of the Royalty Agreement shall also apply to notices to the Issuer;  
and

(b) the “copy” address following Elutia Med’s notice address in Section 7.02 of the Royalty Agreement shall be replaced with the following (and such “copy” address shall also apply to notices to the Issuer):

Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street, NE  
Suite 2800  
Atlanta, GA 30309  
Attn.: Michael J. Cochran  
David M. Eaton  
MCochran@ktslaw.com  
DEaton@ktslaw.com

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

8. Counterparts. This Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. Delivery of counterpart signature pages hereof via facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," and words of like import in this letter agreement shall be deemed to include electronic signatures 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 or any other similar state laws based on the Uniform Electronic Transactions Act.

9. Notification of Changes. The parties hereby covenant and agree to notify each other upon the occurrence of any event prior to the Closing which would cause any representation, warranty, agreement or covenant contained in this Agreement to be false or incorrect.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

LIGAND:

LIGAND PHARMACEUTICALS INCORPORATED

By: /s/ Octavio Espinoza

Name: Octavio Espinoza

Title: Chief Financial Officer

If Shares Are To Be Delivered ByDWAC:

DTC Account No.: 0235

*[Signature Page to Subscription Agreement and Amendment No. 2 to Royalty Agreement]*

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ELUTIA MED:

ELUTIA MED LLC

By: ELUTIA INC., its Sole Member

By: /s/ Matthew Ferguson

Name: Matthew Ferguson

Title: Chief Financial Officer

*[Signature Page to Subscription Agreement and Amendment No. 2 to Royalty Agreement]*

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ISSUER:

ELUTIA INC.

By: /s/ Matthew Ferguson

Name: Matthew Ferguson

Title: Chief Financial Officer

*[Signature Page to Subscription Agreement and Amendment No. 2 to Royalty Agreement]*

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APPENDIX A

Shares and Royalty Payments

<u>Shares to be Acquired in Satisfaction of Royalty Payments</u>	<u>Aggregate Dollar Amount of Royalty Payments Satisfied in Consideration of Issuance of Shares:</u>
1,105,528 shares of Common Stock (Number of shares has been determined by <i>dividing</i> (i) the dollar amount of the Royalty Payments set forth in the column to the right <i>by</i> (ii) the average Nasdaq Official Closing Price of the Common Stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of this Agreement.)	US\$2,200,000.00

“Royalty Payments” means all unpaid royalty obligations that have accrued under Article II of the Royalty Agreement as of the date of this Agreement with respect to the fiscal quarters ending December 31, 2024 and March 31, 2025, and any prior periods (including without limitation, any accrued Monthly Royalties, Minimum Quarterly Royalties or Minimum Annual Royalties, as such terms are defined in the Royalty Agreement) which the parties agree are equal to the amount set forth in the column to the right of the table above. To the extent that any such royalty obligations accrued under Article II of the Royalty Agreement as of the date hereof actually exceed the amount set forth in the column to the right of the table above, the Releasors hereby release, waive and forever discharge the Releasees from such excess amount in consideration of the issuance of the Shares and the mutual agreements and covenants contained in this Agreement, without any payment of additional consideration or issuance of additional Shares in respect of such excess amount. For the avoidance of doubt, nothing in this Agreement shall amend, modify or otherwise affect Elutia Med’s royalty obligations under the Royalty Agreement with respect to the fiscal quarters ending June 30, 2025 and thereafter.

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**FOURTH AMENDMENT TO  
CREDIT AGREEMENT**

THIS FOURTH AMENDMENT TO CREDIT AGREEMENT (this “**Amendment**”), dated as of May 7, 2025, is entered into by and among **ELUTIA INC.**, a Delaware corporation (f/k/a Aziyo Biologics, Inc.) (“**Borrower**”), each of the undersigned financial institutions (individually each a “**Lender**” and collectively “**Lenders**”) and **SWK FUNDING LLC**, a Delaware limited liability company, in its capacity as administrative agent for the other Lenders (in such capacity, “**Agent**”).

**RECITALS**

WHEREAS, Borrower, Agent and Lenders entered into that certain Credit Agreement dated as of August 10, 2022 (as the same may be amended, modified or restated from time to time, being hereinafter referred to as the “**Credit Agreement**”); and

WHEREAS, Borrower, Agent and Lenders have agreed to amend certain provisions of the Credit Agreement as more fully set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**ARTICLE I**

**Definitions**

- 1.1 Capitalized terms used in this Amendment are defined in the Credit Agreement, as amended hereby, unless otherwise stated.

**ARTICLE II**

**Amendments to Credit Agreement**

2.1 Effective as of the date hereof, the Credit Agreement (including the annexes, exhibits and schedules attached thereto and made a part thereof) is hereby amended (a) to delete the red or green stricken text (indicated textually in the same manner as the following examples: **stricken text** and **stricken text**) and (b) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: **double-underlined text** and **double-underlined text**), in each case, as set forth in the changed-page, marked copy of the Credit Agreement, attached as **Exhibit A** hereto and made a part hereof for all purposes.

2.2 Effective as of the date hereof, **Exhibit B** hereto contains the conformed Credit Agreement incorporating all changes set forth in **Exhibit A** and all prior amendments to the Credit Agreement.

[Elutia] Fourth Amendment

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### ARTICLE III

#### Conditions

**3.1 Conditions Precedent.** The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent in a manner satisfactory to Agent, unless specifically waived in writing by Agent in its sole discretion:

- (A). Agent shall have received this Amendment duly executed by Borrower.
- (B). The representations and warranties contained herein and in the Credit Agreement and the other Loan Documents, as each is amended hereby, shall be true and correct in all material respects as of the date hereof, as if made on the date hereof, except for such representations and warranties as are by their express terms limited to a specific date.
- (C). No Default or Event of Default under the Credit Agreement, as amended hereby, shall have occurred and be continuing, unless such Default or Event of Default has been otherwise specifically waived in writing by Agent.

**3.2 Condition Subsequent.** At any time on or before June 6, 2025, Borrower shall issue 50,000 shares of its common stock to Agent for the benefit of Lenders pursuant to a private placement of such shares together with such ancillary agreements related thereto, which shall be satisfactory to the Agent in its sole discretion.

### ARTICLE IV

#### No Waiver, Ratifications, Representations and Warranties

**4.1 No Waiver.** Nothing contained in this Amendment or any other communication between Agent, any Lender, Borrower or any other Loan Party shall be a waiver of any past, present or future non-compliance, violation, Default or Event of Default of Borrower under the Credit Agreement or any Loan Document. Agent and each Lender hereby expressly reserves any rights, privileges and remedies under the Credit Agreement and each Loan Document that Lender may have with respect to any non-compliance, violation, Default or Event of Default, and any failure by Agent or any Lender to exercise any right, privilege or remedy as a result of the violations set forth above shall not directly or indirectly in any way whatsoever either (i) impair, prejudice or otherwise adversely affect the rights of Agent or any Lender, except as set forth herein, at any time to exercise any right, privilege or remedy in connection with the Credit Agreement or any Loan Document, (ii) amend or alter any provision of the Credit Agreement or any Loan Document or any other contract or instrument or (iii) constitute any course of dealing or other basis for altering any obligation of Borrower or any rights, privilege or remedy of Agent or any Lender under the Credit Agreement or any Loan Document or any other contract or instrument. Nothing in this Amendment shall be construed to be a consent by Agent or any Lender to any prior, existing or future violations of the Credit Agreement or any Loan Document

**4.2 Ratifications.** The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Credit Agreement and the other Loan Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Borrower, Lenders and Agent agree that the Credit Agreement and the other Loan Documents, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms. Borrower agrees that this Amendment is not intended to and shall not cause a novation with respect to any or all of the Obligations.

**4.3 Representations and Warranties.** Borrower hereby represents and warrants to Agent and Lenders that (a) the execution, delivery and performance of this Amendment, any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite action (as applicable) on the part of Borrower and will not violate the organizational documents of Borrower; (b) Borrower's directors and/or managers have authorized the execution, delivery and performance of this Amendment any and all other Loan Documents executed and/or delivered in connection herewith; (c) the representations and warranties contained in the Credit Agreement, as amended hereby, and any other Loan Document are true and correct in all material respects on and as of the date hereof and on and as of the date of execution hereof as though made on and as of each such date (except to the extent such representations and warranties expressly relate to an earlier date); and (d) no Default or Event of Default under the Credit Agreement, as amended hereby, has occurred and is continuing.

## ARTICLE V

### Miscellaneous Provisions

**5.1 Survival of Representations and Warranties.** All representations and warranties made in the Credit Agreement or any other Loan Document, including, without limitation, any document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Agent or any Lender or any closing shall affect the representations and warranties or the right of Agent and each Lender to rely upon them.

**5.2 Reference to Credit Agreement.** Each of the Credit Agreement and the other Loan Documents, and any and all other Loan Documents, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in the Credit Agreement and such other Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

**5.3 Expenses of Agent.** As provided in the Credit Agreement, Borrower agrees to pay on demand all costs and expenses incurred by Agent, or its Affiliates, in connection with the preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the reasonable fees and costs of legal counsel, and all costs and

expenses incurred by Agent and each Lender in connection with the enforcement or preservation of any rights under the Credit Agreement, as amended hereby, or any other Loan Documents, including, without, limitation, the reasonable fees and costs of legal counsel.

**5.4 Severability.** Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

**5.5 Successors and Assigns.** This Amendment is binding upon and shall inure to the benefit of Agent and each Lender and Borrower and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of Agent.

**5.6 Counterparts.** This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Amendment may be executed by facsimile or electronic (.pdf) transmission, which facsimile or electronic (.pdf) signatures shall be considered original executed counterparts for purposes of this Section 5.6, and each party to this Amendment agrees that it will be bound by its own facsimile or electronic (.pdf) signature and that it accepts the facsimile or electronic (.pdf) signature of each other party to this Amendment.

**5.7 Effect of Waiver.** No consent or waiver, express or implied, by Agent to or for any breach of or deviation from any covenant or condition by Borrower shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

**5.8 Headings.** The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

**5.9 Applicable Law.** THE TERMS AND PROVISIONS OF SECTIONS 10.17 (GOVERNING LAW) AND 10.18 (FORUM SELECTION; CONSENT TO JURISDICTION) OF THE CREDIT AGREEMENT ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS AMENDMENT *MUTATIS MUTANDIS* AS IF FULLY SET FORTH HEREIN.

**5.10 Final Agreement.** THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, EACH AS AMENDED HEREBY, REPRESENT THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AMENDMENT IS EXECUTED. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED HEREBY, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AMENDMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BORROWER AND AGENT.

**5.11 Potential Additional Amendments to Payment Mechanics.** Agent and Borrower agree to work together in good faith following the consummation of any material issuance of Subordinated Debt and/or Equity Interests by Borrower (in each case upon terms reasonably acceptable to Agent) to modify and extend the Term Loan repayment provisions set forth in the Credit Agreement including, for the avoidance of doubt, potentially (i) extending the PIK Interests repayment mechanics in Section 2.6.2 of the Credit Agreement, (ii) extending the interest-only period provided pursuant to Section 2.9.1(b) of the Credit Agreement and/or extending the Term Loan Maturity Date. Nothing set forth in this Amendment shall be deemed to obligate Agent or Lenders to agree to any specific, modification, deferral or waiver.

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IN WITNESS WHEREOF, this Amendment has been executed and is effective as of the date first written above.

**BORROWER:**

**ELUTIA INC.,**  
a Delaware corporation (f/k/a Aziyo Biologics, Inc.)

By: /s/ Jeff Hamet  
Name: Jeff Hamet  
Title: Senior Vice President, Finance

[Elutia] Fourth Amendment

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**AGENT AND LENDER:**

SWK FUNDING LLC,  
as Agent and a Lender

By: SWK Holdings Corporation,  
its sole Manager

By: /s/ Joe D. Staggs

Name: Joe D. Staggs

Title: President and CEO

[Elutia] Fourth Amendment

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EXHIBIT A

Amendments to Credit Agreement

(See attached)

[Elutia] Fourth Amendment

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**CREDIT AGREEMENT**  
among  
ELUTIA INC.,  
as Borrower,  
SWK FUNDING LLC,  
as Agent, Sole Lead Arranger and Sole Bookrunner,  
and  
the financial institutions party hereto from time to time as Lenders  
Dated as of August 10, 2022

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[Aziyo] Credit Agreement

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Responsible Officer means the chief executive officer, chief operating officer, or chief financial officer of a Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, the chief technology officer, the chief information officer, the treasurer or the controller of a Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance acceptable to Agent in its sole discretion.

Revenue-Based-Payment Amount has the meaning set forth in [Section 2.9.1\(a\)](#).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Loan Parties with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

Services means services provided by Borrower or any Affiliate of Borrower to un-Affiliated Persons, including without limitation any sales, consulting, marketing, commercialization and any other healthcare-related services.

SOFR shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

Solvent means, as to any Person at any time, that (a) the fair value of the tangible and intangible property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the tangible and intangible property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party that is subordinated to the Obligations pursuant to a subordination agreement entered into between Agent, any applicable Loan Party and the subordinated creditor(s) upon terms acceptable to Agent in its sole discretion.

Subsequent Term Loan A has the meaning set forth in [Section 2.2\(b\)](#).

Subsequent Term Loan B has the meaning set forth in [Section 2.2\(c\)](#).

shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 2 Credit Facility.

2.1 [Reserved].

2.2 Loan Procedures.

(a) The Lenders, severally and for themselves alone, made (i) a term loan (the "Closing Date Term Loan") on the Closing Date in the original principal amount of \$21,000,000.00.

(b) On or about December 14, 2022, the Lenders, severally and for themselves alone, made an additional term loan in the original principal amount of \$4,000,000.00, (the "Subsequent Term Loan A").

(c) In addition to the forgoing, Borrower may request, in writing (a "Subsequent Term Loan B Notice"), a third advance of the Term Loan in amount up to Five Million and No/100 Dollars (\$5,000,000) (the "Subsequent Term Loan B"). Notwithstanding anything set forth herein or in any other Loan Document to the contrary, the decision by Agent and Lenders to make the Subsequent Term Loan B available to Borrower shall be made by Agent and Lenders in their sole, and absolute discretion. The Agent on behalf of the Lenders shall advise the Borrower of its decision as to whether or not to advance the Subsequent Term Loan B within (10) Business Days of its receipt of the Subsequent Term Loan B Notice and if the Agent on behalf of the Lenders decides to advance the Subsequent Term Loan B, the Subsequent Term Loan B will be advanced to the Borrower within (15) Business Days of its receipt of the Subsequent Term Loan B Notice.

(d) (c) The Closing Date Term Loan, the Subsequent Term Loan A and the Subsequent Term Loan B (if any) have and shall continue to be deemed a single term loan (each such loan individually and collectively, the "Term Loan"). The Term Loan is not a revolving credit facility, and therefore, any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.3 Commitments Several.

The failure of any Lender to make any advance of the Term Loan shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder (if applicable), together with all charges payable in respect of the Loan, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest (if any) and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest (if any) and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

#### 2.6.2 Payments of Interest and Principal.

Borrower shall pay to Lenders all accrued interest on the Loan in arrears on each Payment Date (subject to Borrower's rights in relation to PIK Interest in relation to any Payment Date as set forth in this [Section 2.6.2](#)), upon a prepayment of such Loan in accordance with [Section 2.8](#) and at maturity in cash. So long as no Event of Default shall have occurred and be continuing on any Payment Date occurring prior to the Payment Date in November 2025, Borrower, at its option, may elect, upon not less than ten (10) Business Days' prior written notice to Agent to pay to Agent, for the benefit of Lenders, a portion of the interest due on such Payment Date in-kind ("PIK Interest") at a rate per annum of four and one-half of one percent (4.5%). [Notwithstanding the forgoing, 100% of the interest due and owing on the Payment Date in May 2025 shall be converted to PIK Interest on such Payment Date.](#) For the avoidance of doubt, any such PIK Interest shall be added to the outstanding principal balance of the Term Loan effective as of the applicable Payment Date. Any partial prepayment of the Loan shall be applied in inverse order of maturity and so shall not reduce the amount of any quarterly principal amortization payment required pursuant to [Section 2.9.1](#) (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

#### 2.7 Fees.

(a) Exit Fee. Upon the Termination Date, Borrower shall pay an exit fee (the "Exit Fee") to Agent, for the benefit of Lenders, in an amount equal to (i) six and one half of one percent (6.50%) multiplied by the aggregate amount of the Term Loan funded hereunder on or prior to such date plus (ii) \$112,500, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

#### 2.8 Prepayment.

##### 2.8.1 Mandatory Prepayment.

(a) Borrower shall prepay the Obligations, or any portion thereof, as applicable, (which shall include the amounts due and payable under [Section 2.7\(b\)](#) hereof to the extent such prepayment results in a prepayment in full of the Term Loan) until paid in full within two (2) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

(b) In connection with any prepayment of the Term Loan made pursuant to this [Section 2.8.1](#), Borrower shall pay to Agent, for the benefit of Lenders, any amounts that would otherwise

be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.82 (in addition to any such prepayment of the Term Loan and related Obligations).

(c) To the extent the aggregate consideration of all assets sold or otherwise disposed of in any Fiscal Year pursuant to such Section 7.4(b) (iii) exceeds \$1,000,000 in such Fiscal Year, Borrower shall, within five (5) Business Days of such sale or disposition, make a mandatory Term Loan prepayment in an amount equal to the difference between (i) the product of (a) the outstanding principal balance of the Loan immediately prior to such sale or disposition, and (b) the quotient of (x) the Cash Gross Profit of Borrower generated by the assets sold or otherwise disposed of during the twelve (12) month period most-recently ended immediately prior to such sale or disposition, and (y) the Cash Gross Profit of Borrower for the twelve (12) month period most-recently ended immediately prior to such sale or disposition, and (ii) the difference between (i) \$1,000,000 and (ii) the aggregate consideration of all assets sold and or otherwise disposed of pursuant to Section 7.4(b)(iii) within such Fiscal Year. For the avoidance of doubt, any Net Cash Proceeds received in excess of the payment required pursuant to this Section 2.8.1(c) shall be retained by the Borrower.

#### 2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below, Borrower may, on at least five (5) Business Days' written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 12:00 noon Dallas time on such day, prepay the Term Loan and all related Obligations in whole (but not in part) at any time prior to the Term Loan Maturity Date. Such notice to Agent shall specify the amount and proposed date of such prepayment, and the application of such amounts to be prepaid shall be applied in accordance with Section 2.9.1(b) or 2.10.2 (as applicable).

(b) If Borrower makes a prepayment of the Term Loan under Section 2.8.2(a), it shall pay to Agent, for the benefit of Lenders, the following amounts (in addition to any such prepayment of the Term Loan and related Obligations) on the date of such prepayment: (i) if such prepayment is made prior to the first anniversary of the Closing Date, an amount equal to (A) two percent (2.0%) of the aggregate amount of the Term Loan so prepaid plus (B) an amount equal to the aggregate interest that would have accrued pursuant to this Agreement in relation to the aggregate amount of the Term Loan so prepaid from the date of such prepayment through the first anniversary of the Closing Date assuming a static Contract Rate equal to the Contract Rate in effect on such date of prepayment, (ii) if such prepayment is made on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, two percent (2.0%) of the aggregate amount of the Term Loan so prepaid, and (iii) if such prepayment is made on or after the second anniversary of the Closing Date, zero percent (0%) of the aggregate amount of the Term Loan so prepaid.

(c) For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based-Payment Amounts that are credited toward the principal of the Loans under Section 2.9.1(b). Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans other than via the application of Revenue- Based-Payment Amounts made pursuant to Section 2.9.1 or Section 2.10.2, as applicable, shall be limited and governed by this Section 2.8.2.

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date pursuant to Sections 2.6 under this Agreement, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iv) FOURTH, as it relates to each Payment Date on or after the Payment Date occurring in November 2025, to the payment of all principal of the outstanding Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in an amount equal to five percent (5.0%) multiplied by the aggregate amount of the Term Loan funded hereunder and outstanding as of such date of determination; and

(v) (iv) FIFTH, all remaining amounts to be retained by Borrower.

In the event that the Revenue-Based-Payment Amount in relation to any Payment Date is insufficient for payment of the amounts set forth in clauses (b)(i) through (b)(iii) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency, in immediately available funds, within five (5) Business Days of request by Agent.

(c) In the event that Borrower makes any adjustment to Aggregate Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based-Payment Amount due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based-Payment Amount hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based-Payment Amounts.

#### 2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing shall be Paid in Full on the Termination Date.

#### 2.10 Payment.

##### 2.10.1 Making of Payments.

All payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based-Payment Amount for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

##### 2.10.2 Application of Payments and Proceeds Following an Event of Default.

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds

Closing Date; provided, that the costs, fees, and expenses of Agent and any Lender, as of the Closing Date, inclusive of Legal Costs, shall not exceed \$150,000.

#### 4.4 Representations, Warranties, Defaults.

As of the Closing Date, after giving effect to the making of the Loans, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all respects as of such earlier date) and (b) no Event of Default shall exist. The acceptance of the Term Loan by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.4 have been satisfied.

#### 4.5 Diligence.

Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be satisfactory in form and substance to Lenders, including, without limitation, (i) an examination of (A) Borrower's projected Aggregate Revenue for such periods as required by Lenders, (B) such valuations of Borrower and its assets as Lenders shall require, and (C) the terms and conditions of all material obligations owed by Borrower, the results of which shall be satisfactory in form and substance to Lenders; (ii) an examination of the Collateral, the financial statements and the books, records, business, obligations, financial condition and operational state of Borrower, and Borrower shall have demonstrated to Agent's satisfaction, in its sole discretion, that (x) no operations of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could result in any expenditure or liability deemed material by Lenders, and (y) Borrower has no liabilities or obligations (whether contingent or otherwise) that are deemed material by Lenders.

#### 4.6 Corporate Matters.

All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those relating to corporate and capital structures of Borrower) shall be satisfactory to Lenders in their sole discretion.

#### 4.7 Closing Date Warrant.

Agent shall have received the fully executed Closing Date Warrant.

#### 4.8 [Reserved].

### Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date and the date of the Subsequent Term Loan A and the Subsequent Term Loan B (if any) made by Lenders pursuant to Section 2.2.2, that:

#### 5.1 Organization.

Each Loan Party is duly incorporated, validly existing and (if applicable) in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly

with respect to deposit accounts maintained at such deposit banks or which are contained in standard agreements for the opening of an account with a bank;

(j) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by a Loan Party in the ordinary course of business;

(k) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(l) Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(m) Liens to secure obligations of a Loan Party to another Loan Party;

(n) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums; and

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods.

### 7.3 Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, other than dividends or distributions declared, paid or made to a Loan Party or in the form of Equity Interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof; provided, that (1) any Subsidiary may make dividends or distributions to any Loan Party, and (2) Loan Parties may make payments to holders of Subordinated Debt in accordance with the terms of the applicable subordination agreement.

### 7.4 Mergers; Consolidations; Asset Sales.

(a) Not be a party to any amalgamation or any other form of Division, merger or consolidation, unless agreed to by Agent in its sole discretion, nor permit any other Loan Party to be a party to any Division, amalgamation or any other form of merger or consolidation, unless agreed to by Agent in its reasonable discretion.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests, except for (i) sales of Inventory in the ordinary course of business for at least fair market value, and (ii) transfers, destruction or other disposition of obsolete or worn-out assets in the ordinary course of business and, (iii) at all times subject to Section 2.8.1(c), any other sales and dispositions of assets (excluding (A) any Equity Interests

of Borrower or any Subsidiary or (B) sales of Inventory described in clause (i) above) for at least fair market value (as determined by the Board),[reserved], (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, “eminent domain” or similar proceeding, (xiii) sales and dispositions among Subsidiaries of Borrower, and (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with (a) licenses of patent rights granted by Elutia Med LLC to CorMatrix pursuant to the Cross License Agreement, or (b) the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party’s business, (ii) on an arms-length basis and (iii) prior to the occurrence of an Event of Default.

#### 7.5 Modification of Organizational Documents.

Not permit the charter, articles, by-laws or other organizational documents of Borrower or any other Loan Party to be amended or modified in any way which would reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower’s certificate of incorporation to increase Borrower’s authorized capital stock shall not be deemed to adversely affect the interests of Agent or any Lender.

#### 7.6 Use of Proceeds.

Use the proceeds of the Loans solely to refinance the Prior Debt, if any, and otherwise for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, and for other general business purposes of Borrower and its Subsidiaries.

#### 7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties, (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7, and (iv) such transactions in which the value of such arrangements, transactions, and contracts in the aggregate do not exceed \$250,000 on an annual basis.

7.13 Financial Covenants

7.13.1 Minimum Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets, to be less than (a) \$5,000,000 at any time on or before August 15, 2023 (provided, however, that Agent may, in its commercially-reasonable discretion, elect to extend such transition date to November 15, 2023) and (b) the greater of (i) \$5,000,000, or (ii) the sum of the Operating Burn for the two (2) prior, consecutive Fiscal Quarters then ended at any time thereafter 8,000,000 as of any date of determination.

7.13.2 Minimum Aggregate Revenue.

Not permit the Aggregate Revenue for the twelve (12) month period ending on the last Business Day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below) to be less than the applicable amount set forth in the table below for such twelve (12) month period.

Minimum as of the end of:	
Q1 2024 and each Fiscal Quarter thereafter	\$20,000,000

; provided that, Borrower shall be deemed to be in compliance with this Section 7.13.2 as it relates to any period of measure if, as of the applicable date of determination, Borrower has Consolidated Unencumbered Liquid Assets greater than either (i) the outstanding principal balance of the Loan, or (ii) the aggregate Operating Burn for the twelve (12) month period ending on such date of determination.

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. Upon the request of Agent at any time following the occurrence of a Material Adverse Effect, Default or Event of Default, Borrower or such other applicable Loan Party shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, in relation to the Deposit Account(s) selected by Agent.

7.15 Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) within thirty (30) days following such formation or acquisition of any new Subsidiary, such Subsidiary shall have assumed and joined each Loan Document as a Loan Party pursuant to documentation acceptable to Agent in its reasonable discretion and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all

EXHIBIT B

Conformed Credit Agreement

(See attached)

[Elutia] Fourth Amendment

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**CREDIT AGREEMENT**

among

ELUTIA INC.,  
as Borrower,

SWK FUNDING LLC,  
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of August 10, 2022

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[Aziyo] Credit Agreement

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## Table of Contents

	<b>Page</b>
Section 1 Definitions; Interpretation	1
1.1 Definitions	1
1.2 Interpretation	15
Section 2 Credit Facility	15
2.1 [Reserved]	15
2.2 Loan Procedures	16
2.3 Commitments Several	16
2.4 Indebtedness Absolute; No Offset; Waiver	16
2.5 Loan Accounting	17
2.5.1 Recordkeeping	17
2.5.2 Notes	17
2.6 Payment of Interest	17
2.6.1 Interest Rates	17
2.6.2 Payments of Interest and Principal	18
2.7 Fees	19
2.8 Prepayment	19
2.8.1 Mandatory Prepayment	19
2.8.2 Voluntary Prepayment	19
2.9 Repayment of Term Loan	20
2.9.1 Revenue-Based-Payment	20
2.9.2 Principal	21
2.10 Payment	21
2.10.1 Making of Payments	21
2.10.2 Application of Payments and Proceeds	21
2.10.3 Set-off	21
2.10.4 Proration of Payments	22
Section 3 Yield Protection	22
3.1 Taxes	22
3.2 Increased Cost	22
3.3 [Reserved]	25
3.4 Manner of Funding; Alternate Funding Offices	26
3.5 Conclusiveness of Statements; Survival	27
Section 4 Conditions Precedent	27
4.1 Prior Debt	27
4.2 General	27
4.3 Fees	27
4.4 Representations, Warranties, Defaults	28
4.5 Diligence	28
4.6 Corporate Matters	29
4.7 Closing Date Warrant	29
4.8 [Reserved]	29
Section 5 Representations and Warranties	29
5.1 Organization	29

[Aziyo] Credit Agreement

---

5.2	Authorization; No Conflict	30
5.3	Validity; Binding Nature	30
5.4	Financial Condition	30
5.5	No Material Adverse Effect	30
5.6	Litigation	30
5.7	Ownership of Properties; Liens	31
5.8	Capitalization	31
5.9	Pension Plans	31
5.10	Investment Company Act	31
5.11	No Default	31
5.12	Margin Stock	31
5.13	Taxes	31
5.14	Solvency	32
5.15	Environmental Matters	32
5.16	Insurance	32
5.17	Information	32
5.18	Intellectual Property; Products and Services	32
5.19	Restrictive Provisions	33
5.20	Labor Matters	33
5.21	Material Contracts; Leased Real Estate	33
5.22	Compliance with Laws; Health Care Laws	34
5.23	Existing Indebtedness; Investments, Guarantees and Certain Contracts	35
5.24	Affiliated Agreements	35
5.25	Names; Locations of Offices, Records and Collateral; Deposit Accounts	35
5.26	Non-Subordination	36
5.27	Broker's or Finder's Commissions	36
5.28	Anti-Terrorism; OFAC	36
5.29	Security Interest	36
5.30	Survival	37
Section 6	Affirmative Covenants	37
6.1	Information	37
6.1.1	Annual Report	37
6.1.2	Interim Reports	37
6.1.3	Quarterly Review Meeting	38
6.1.4	Revenue-Based-Payment Amount Reconciliation	38
6.1.5	Compliance Certificate	38
6.1.6	[Reserved]	38
6.1.7	Notice of Default; Litigation	38
6.1.8	FiberCel Net Liability Amount	39
6.1.9	[Reserved]	40
6.1.10	Projections	40
6.1.11	Updated Schedules to Guarantee and Collateral Agreement	40
6.1.12	Other Information	40
6.2	Books; Records; Inspections	41
6.3	Conduct of Business; Maintenance of Property; Insurance	41
6.4	Compliance with Laws; Payment of Taxes and Liabilities	42
6.5	Maintenance of Existence	42
6.6	Employee Benefit Plans	43
6.7	Environmental Matters	43

6.8	Further Assurances	44
6.9	Compliance with Health Care Laws	45
6.10	Cure of Violations	45
6.11	Corporate Compliance Program	46
6.12	Payment of Debt	46
Section 7	Negative Covenants	47
7.1	Debt	48
7.2	Liens	49
7.3	Dividends; Redemption of Equity Interests	49
7.4	Mergers; Consolidations; Asset Sales	49
7.5	Modification of Organizational Documents	49
7.6	Use of Proceeds	50
7.7	Transactions with Affiliates	50
7.8	Inconsistent Agreements	50
7.9	Business Activities	51
7.10	Investments	51
7.11	Restriction of Amendments to Certain Documents	52
7.12	Fiscal Year	52
7.13	Financial Covenants	52
7.13.1	Minimum Consolidated Unencumbered Liquid Assets	52
7.13.2	Minimum Aggregate Revenue	53
7.14	Deposit Accounts	53
7.15	Subsidiaries	53
7.16	Regulatory Matters	53
7.17	Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names; Location of Assets; Change of Chief Executive Office	53
7.18	Truth of Statements	53
Section 8	Events of Default; Remedies	53
8.1	Events of Default	53
8.1.1	Non-Payment of Credit	54
8.1.2	Default Under Other Debt	54
8.1.3	Bankruptcy; Insolvency	54
8.1.4	Non-Compliance with Loan Documents	54
8.1.5	Representations; Warranties	55
8.1.6	Pension Plans	55
8.1.7	Judgments	55
8.1.8	Invalidity of Loan Documents or Liens	55
8.1.9	Invalidity of Subordination Provisions	55
8.1.10	Change of Control	56
8.1.11	Certificate Withdrawals, Adverse Audit Results, and Other Matters	56
8.1.12	Material Adverse Effect	56
8.2	Remedies	56
Section 9	Agent	57
9.1	Appointment; Authorization	57
9.2	Delegation of Duties	57
9.3	Limited Liability	58
9.4	Reliance	58
9.5	Notice of Default	58

9.6	Credit Decision	58
9.7	Indemnification	59
9.8	Agent Individually	59
9.9	Successor Agent	59
9.10	Collateral and Guarantee Matters	60
9.11	Intercreditor and Subordination Agreements	61
9.12	Actions in Concert	61
Section 10	Miscellaneous	61
10.1	Waiver; Amendments	61
10.2	Notices	62
10.3	Computations	62
10.4	Costs; Expenses	62
10.5	Indemnification by Borrower	63
10.6	Marshaling; Payments Set Aside	63
10.7	Non-liability of Lenders	64
10.8	Assignments	64
10.8.1	Assignments	64
10.9	Participations	65
10.10	Confidentiality	66
10.11	Captions	67
10.12	Nature of Remedies	67
10.13	Counterparts; Electronic Signatures	67
10.14	Severability	67
10.15	Entire Agreement	67
10.16	Successors; Assigns	68
10.17	Governing Law	68
10.18	Forum Selection; Consent to Jurisdiction	68
10.19	Waiver of Jury Trial	68
10.20	Patriot Act	69
10.21	Independent Nature of Relationship	69
10.22	Approved AR Loan Facility	69

[Aziyo] Credit Agreement

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Annexes

Annex I Commitments and Pro Rata Term Loan Shares  
Annex II Notice Addresses

Exhibits

Exhibit A Form of Assignment Agreement  
Exhibit B Form of Compliance Certificate  
Exhibit C Form of Note

Schedules

Schedule 1.1 Pending Acquisitions as of the Closing Date  
Schedule 4.1 Prior Debt  
Schedule 5.1 Jurisdictions of Qualification  
Schedule 5.7 Ownership of Properties; Liens  
Schedule 5.8 Capitalization  
Schedule 5.16 Insurance  
Schedule 5.18(a) Borrower's Registered Intellectual Property  
Schedule 5.18(b) Products and Required Permits  
Schedule 5.21 Material Contracts  
Schedule 5.25A Names  
Schedule 5.25B Places of Business  
Schedule 5.27 Broker's Commissions  
Schedule 7.7 Transactions with Affiliates  
Schedule 7.14 Deposit Accounts

[Aziyo] Credit Agreement

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time, this "Agreement") dated as of August 10, 2022 (the "Closing Date"), among ELUTIA INC., a Delaware corporation (f/k/a Aziyo Biologics, Inc.) ("Borrower"), the financial institutions party hereto from time to time as lenders (each a "Lender" and collectively, the "Lenders") and SWK FUNDING LLC, a Delaware limited liability company (in its individual capacity, "SWK"), as Agent for all Lenders.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

### Section 1 Definitions: Interpretation.

#### 1.1 Definitions.

When used herein the following terms shall have the following meanings:

Account Control Agreement means, individually and collectively, any account control or similar agreement(s) entered into from time to time at Agent's request, among a Loan Party, Agent and any third party bank or financial institution at which such Loan Party maintains a Deposit Account.

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 all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line (excluding, for purposes of Section 7.10 hereof, any pending Acquisitions as of the Closing Date as set forth on Schedule 1.1 hereto), or (d) a merger, amalgamation or consolidation or any other combination (other than a merger, amalgamation, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary).

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, manager, officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. For purposes of the definition of the term "Affiliate", a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower, any Loan Party or any Affiliate thereof.

Agent means SWK in its capacity as administrative and collateral agent for all Lenders hereunder and any successor thereto in such capacity.

Aggregate Revenue shall have the meaning set forth in Section 2.9.1(a).

Agreement shall have the meaning set forth in the Preamble.

Approved AR Loan Facility shall have the meaning set forth in Section 10.22.

Approved Fund means (a) any fund, trust or similar entity that invests in commercial loans in the ordinary course of business and is advised or managed by (i) a Lender, (ii) an Affiliate of a Lender, (iii) the same investment advisor that manages a Lender or (iv) an Affiliate of an investment advisor that manages a Lender or (b) any finance company, insurance company or other financial institution which temporarily warehouses loans for any Lender or any Person described in clause (a) above.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Authorization shall have the meaning set forth in Section 5.22(b).

Board means Borrower's board of directors or such similar governing body.

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in Dallas, Texas.

CanGaroo RM Product means the version of Borrower's CanGaroo Envelope product embedded with the antibiotics rifampin and minocycline.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease and as a liability on the balance sheet of such Person.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-1" by Standard & Poor's Ratings Group or "P-1" by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than \$500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in clause (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder, (e) money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements, (f) cash, and (g) other short term liquid investments approved in writing by Agent.

Cash Gross Profit means, for any applicable period, the sum of (i) Gross Profit for such period, plus (ii) Intangible Asset Amortization Expense, for such period, each as determined in accordance with GAAP and/or consistent with past practices.

Change of Control means the occurrence of any of the following, unless such action has been consented to in advance in writing by Agent in its sole discretion:

- (i) any Person acquires the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding total combined voting Equity Interests of Borrower;

(ii) Borrower shall at any time fail to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each of its Subsidiaries;

(iii) any "change in/of control" or "sale" or "disposition" or "merger" or "amalgamation" or similar event as defined in any certificate of incorporation or formation or statement of designations or bylaws or operating agreement, as applicable, of Borrower or in the Approved AR Loan Facility; or

(iv) the sale of all or substantially all of the assets of Borrower or any of its Subsidiaries, or any merger, amalgamation, consolidation or acquisition by Borrower or any of its Subsidiaries which does not result in such Person being the sole surviving entity.

Closing Date shall have the meaning set forth in the Preamble.

Closing Date Term Loan has the meaning set forth in Section 2.2(a).

Closing Date Warrant means that certain warrant issued to SWK by Borrower on the Closing Date.

CMS means the Centers for Medicare and Medicaid Services of the United States of America.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a mortgagee or lessor of real property on which Collateral (or any books and records) is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, the IP Security Agreement, any Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, any Account Control Agreement and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a Lien in any Collateral to Agent for the benefit of Agent and Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender's Pro Rata Term Loan Share.

Compliance Certificate means a certificate substantially in the form of Exhibit B.

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) any cash and Cash Equivalent Investment owned by Loan Parties, on a consolidated basis, which are not the subject of any Lien or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Borrower and such Subsidiaries other than Liens permitted under Section 7.2 hereof, minus (ii) the aggregate amount of Borrower's accounts payable which are unpaid more than one hundred eighty (180) days beyond trade terms consistent with Borrower's past practice, plus (iii) any unused availability under the Approved AR Loan Facility, minus (iv) the FiberCel Net Liability Amount.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means, as it relates to the calculation of interest due and owing on any Payment Date, a rate per annum equal to (a) the Term SOFR Rate, plus (b)(i) eight and three-quarters of one percent (8.75%) if Borrower has not elected the PIK Interest option in accordance with Section 2.6.2 hereof in relation to such Payment Date, or (ii) four and three-quarters of one percent (4.75%) if Borrower has elected the PIK Interest option in accordance with Section 2.6.2 hereof in relation to such Payment Date (the "**Applicable Margin**"), provided, however, the Applicable Margin shall decrease to (x) seven and three-quarters of one percent (7.75%) for purposes of clause (b)(i) above and (y) three and three-quarters of one percent (3.75%) for purposes of clause (b)(ii) above (aa) permanently for any Fiscal Quarter immediately following a Fiscal Quarter during which Borrower has issued Subordinated Debt on terms reasonably satisfactory to Agent (including the execution of a subordination agreement in favor of Agent, if applicable) or Equity Interests in a transaction or series of transactions, resulting in net cash proceeds to Borrower of at least \$10,000,000, in excess of the net cash proceeds required pursuant to Section 6.1.8(a)(i) hereof, or prior to the final determination of the FiberCel Net Liability Amount, subject to the Borrower's election pursuant to Section 6.1.8(a)(ii) (the "**Subsequent Capital Raise**"), and each Fiscal Quarter thereafter, and (bb) for any one (1) full Fiscal Quarter immediately following any Fiscal Quarter during which Borrower has achieved Consolidated Unencumbered Liquid Assets of at least the sum of the Operating Burn for the four (4) consecutive Fiscal Quarters immediately prior to such Quarter then ended.

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Copyrights has the meaning set forth in the Guarantee and Collateral Agreement.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), other than royalty payments or cash milestone payments made or to be made by such Person from time to time in connection with an Acquisition, (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of (x) the aggregate unpaid amount of such indebtedness and (y) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for Tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

Debtor Relief Law means, collectively: (a) Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., as amended from time to time, and (b) all other United States or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

Default means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

Default Rate means a rate per annum equal to the lesser of (i) three percent (3%) over the Contract Rate, or (ii) the maximum rate of interest permitted to be charged by applicable laws, directives or regulations governing this Agreement until paid.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party.

Disposition means, as to any asset or right of any Loan Party, (a) any sale, lease, assignment or other transfer (other than to any other Loan Party), but specifically excluding any license or sublicense, (b) any loss, destruction or damage thereof or (c) any condemnation, expropriation, confiscation, requisition, seizure or taking thereof, in each case excluding (i) the sale of inventory or Product in the ordinary course of business, (ii) any issuance of Equity Interests by Borrower, (iii) any Disposition of obsolete or unused equipment and (iv) any other Disposition where the Net Cash Proceeds of any sale, lease, assignment, transfer, condemnation, expropriation, confiscation, requisition, seizure or taking do not in the aggregate exceed \$250,000 in any Fiscal Year.

Division means, with respect to any Person which is an entity, the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies 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. The word "Divide," when capitalized, shall have a correlative meaning.

Dollar and \$ mean lawful money of the United States of America.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in

such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, SAFE's or similar instruments, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.

ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes has the meaning set forth in Section 3.1(a).

Exempt Accounts means any Deposit Accounts, securities accounts or other similar accounts (i) into which there are deposited no funds other than those intended solely to cover compensation to employees of the Loan Parties (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for compensation and such contributions from prior periods; (ii) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the Tax obligations of such Person or its employees, or (iii) into which there are deposited no funds other than those received in trust or in escrow, or as cash collateral to secure performance.

Exit Fee has the meaning set forth in Section 2.7(a).

FATCA means Sections 1471 through 1474 of the IRC, 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) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC, any fiscal, Tax or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing Sections 1471 through 1474 of the IRC.

FD&C Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as amended, and all applicable regulations promulgated by the FDA.

FDA means the Food and Drug Administration of the United States of America.

FDA Law and Regulation means the provisions of the FD&C Act and all applicable regulations promulgated by the FDA.

FDA Products means any finished products sold by Borrower or any of the other Loan Parties for itself or for a third party that are subject to applicable Health Care Laws.

Federal Funds Effective Rate means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding day on which commercial banks are open for commercial banking business in New York, New York, by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 1.00%.

FiberCel Litigation means any pending, threatened or future claims against Borrower or any Affiliate related to or arising from Borrower's June 2021 recall of a single lot of Borrower's product FiberCel.

FiberCel Net Liability Amount means the amount equal to (i) the aggregate amount required to be paid by Borrower pursuant to a legally binding and enforceable settlement or similar agreement pertaining to the FiberCel Litigation and any legal costs associated therewith (in each case net of

(a) any insurance proceeds, third party reimbursements or third party indemnity payments received by or on behalf of Borrower in connection with the FiberCel Litigation and (b) without duplication of clause (a), any such amounts described in clause (a) not yet paid by the applicable insurance provider or third party to or for the benefit of Borrower that have otherwise been specifically acknowledged in writing by such insurance provider or third party), minus (ii) the amount by which (a) the Consolidated Unencumbered Liquid Assets (without giving effect to clause (iv) in the definition thereof) as of the applicable date of determination of the FiberCel Net Liability Amount exceeded the (b) Operating Burn for the four (4) prior, consecutive Fiscal Quarters then ended.

Fiscal Quarter means a calendar quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower, which period shall be the twelve (12) month period ending on December 31 of each year.

Foreign Lender means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

GAAP means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign. Governmental Authority shall include any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Health Care Laws.

Gross Profit means, for any applicable period, (i) Aggregate Revenue, for such period, minus (ii) costs of goods sold, for such period, determined in accordance with GAAP and consistent with past practices.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date executed by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

Hazardous Substances means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, chemical or other substance regulated by any Environmental Law.

Health Care Laws mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, in each case, as applicable, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b))), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated thereunder; (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable regulations issued thereunder by the FDA (including FDA Law and Regulation); (vi) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws, directives, regulations or regulatory bodies, in each case, as applicable; (vii) all applicable licensure laws, directives and regulations; (viii) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, and (ix) any and all other applicable health care laws (whether foreign or domestic), regulations, directives, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, in each case, as applicable, and each of clauses (i) through (ix) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Taxes has the meaning set forth in Section 3.1(a).

Intangible Asset Amortization Expense means, for any applicable period, amortization expense relating to intangible assets Borrower acquired in its acquisition of all of the commercial assets of CorMatrix Cardiovascular, Inc. in 2017, or any other amortizable intangible assets acquired subsequent to the Closing Date, each determined in accordance with GAAP and consistent with past practices.

Intercreditor Agreement means individually and collectively, (i) that certain Intercreditor Agreement, dated as of the Closing Date, by and among the Borrower, Ligand Pharmaceuticals Incorporated, any revolving loan lender with respect to an Approved AR Loan Facility in effect from time to time, and the Agent and (ii) any other intercreditor agreement that may be executed from time to time in connection with any Approved AR Loan Facility, in form and substance acceptable to Agent in its sole discretion.

Intellectual Property has the meaning set forth in the Guarantee and Collateral Agreement.

Interest Expense means for any Person and its Subsidiaries for any period the consolidated interest expense of such Person and its Subsidiaries for such period (including all imputed interest on Capital Leases).

Inventory has the meaning set forth in the Guarantee and Collateral Agreement.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition.

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses.

Lenders has the meaning set forth in the Preamble.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage (whether legal or equitable), lien, encumbrance, charge, pledge, assignment by way of security or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Ligand Royalty Agreement means that certain Royalty Agreement, dated as of May 31, 2017, by and between Elutia Med LLC, a Delaware limited liability company and Ligand Pharmaceuticals Incorporated, a Delaware corporation, as amended, restated, supplemented or otherwise modified from time to time in accordance with the Intercreditor Agreement, and any related documents executed in connection therewith, including but not limited to the guaranty agreement by and between Borrower and Ligand Pharmaceuticals Incorporated.

Ligand Royalty Payments means the regularly scheduled payments by Elutia Med LLC, a Delaware limited liability company, to Ligand on a non-accelerated basis pursuant to Section 2.02 of the Ligand Royalty Agreement as in effect on the Closing Date (including adjustments for any one-time or extraordinary expenses as mutually agreed upon by Borrower and Agent). For the avoidance of doubt, payments subject to Section 2.03 of the Ligand Royalty Agreement do not constitute Ligand Royalty Payments.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, Intercreditor Agreement, any subordination agreements, the Collateral Documents, the Post-Closing Agreement and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries, if any.

Margin Stock means any "margin stock" as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material and adverse effect upon, the financial condition of Loan Parties taken as a whole, (b) a material impairment of

the ability of any Loan Party to perform any of its payment Obligations under any Loan Document or (c) a material and adverse effect upon any material portion of the Collateral under the Collateral Documents or upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document.

Material Contract has the meaning assigned in Section 5.21 hereof.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which Borrower or any member of the Controlled Group may have any liability.

Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Loan Party pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (*provided* that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) Taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (*provided* that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi)(A) with respect to any Disposition described in clauses (a), (b) or (c) of the definition thereof, all money actually applied within one-hundred eighty (180) days to replace such assets to be used in the business of Loan Parties, and (B) with respect to any Disposition, all money actually applied within one-hundred eighty (180) days to repair or replace the assets in question or to repair or reconstruct damaged property or property affected by loss, destruction, damage, condemnation, expropriation, confiscation, requisition, seizure or taking.

Net Sales means the gross amount billed or invoiced by Loan Parties for Services and for the sale of Products (including products and services ancillary thereto) to independent customers, less deductions for (a) quantity, trade, cash or other discounts, allowances, credits or rebates (including customer rebates) actually allowed or taken, (b) amounts deducted, repaid or credited by reason of rejections or returns of goods and government mandated rebates, or because of chargebacks or retroactive price reductions, and (c) Taxes, tariffs, duties or other governmental charges or assessments (including any sales, value added or similar taxes other than an income tax) levied, absorbed or otherwise imposed on or with respect to the production, sale, transportation, delivery or use of Products. A Product or Service shall be considered sold and/or provided when billed or invoiced. To the extent applicable, components of Net Sales shall be determined in the ordinary course of business in accordance with historical practice and using the accrual method of accounting in accordance with GAAP. For the purposes of calculating Net Sales, Lenders and Agent understand and agree that (i) Affiliates of Borrower shall not be regarded as independent customers and (ii) Net Sales shall not include Products distributed for product development purposes, including for use in pre-clinical trials.

Note means a promissory note substantially in the form of Exhibit C.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement, any other Loan Document or any other document or instrument executed in connection herewith or therewith which are owed to any Lender or Affiliate of a Lender, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. For the avoidance of doubt, "Obligations" shall include Borrower's obligation to pay any amounts due under Sections 2.7 and 2.8.2 and payable on such date of determination. Notwithstanding the foregoing, Obligations shall not include any obligations under the Closing Date Warrant or any other warrant or equity instrument.

OFAC means the U.S. Department of Treasury's Office of Foreign Asset Control.

Operating Burn means, for any period being measured, the product of (x) -1 and (y) the sum of (i) aggregate net cash used in operating activities from operations of Loan Parties, (ii) expenditures for property, plant and equipment, and (iii) any Ligand Royalty Payments, less (iv) any one-time or extraordinary expenses made within such measurement period, as mutually agreed upon by Agent and Borrower, in each case as determined from the cash flow statement provided by Borrower and in accordance with GAAP.

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations, which Obligations shall survive the Payment in Full of the Obligations).

Patents has the meaning set forth in the Guarantee and Collateral Agreement.

Payment Date means the fifteenth (15<sup>th</sup>) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15<sup>th</sup> day is not a Business Day), commencing with November 15, 2022.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a defined benefits "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, including without limitation all registrations with Governmental Authorities.

Permitted Liens means Liens permitted by Section 7.2.

Person means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

PIK Interest has the meaning set forth in Section 2.6.2.

Post-Closing Agreement means that certain Post-Closing Agreement, dated as of the Closing Date, and executed by Borrower, as the same may be modified, amended or restated from time to time.

Prior Debt means the Debt listed on Schedule 4.1.

Pro Rata Term Loan Share means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) specified opposite such Lender's name on Annex 1 which percentage represents the aggregate percentage of the Term Loan Commitment held by such Lender, which percentage shall be with respect to the outstanding balance of the Term Loan as of any date of determination after the Term Loan Commitment has terminated.

Product means any products manufactured, sold, developed, tested or marketed by Borrower or any of its Subsidiaries, including, without limitation, those products set forth on Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2); *provided, however*, that if Borrower shall fail to comply with the obligations under Section 6.1.2 to give notice to Agent and update Schedule 5.18(b) prior to manufacturing, selling, developing, testing or marketing any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition; and *provided, further*, that products manufactured by Borrower for unaffiliated third parties shall not be deemed "Products" hereunder.

Registered Intellectual Property means all applications, registrations and recordings for or of Patents, Trademarks or Copyrights filed by a Loan Party with any Governmental Authority, all internet domain name registrations owned by a Loan Party, and all proprietary software owned by a Loan Party.

Required Lenders means Lenders having an aggregate Pro Rata Term Loan Share in excess of fifty percent (50%), collectively.

Required Permit means a Permit (a) required under applicable law for the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under any laws applicable to the business of Borrower or any of its Subsidiaries (including, without limitation, any applicable Health Care Laws), and (b) required by any Person from which Borrower or any of its Subsidiaries have received an accreditation.

Responsible Officer means the chief executive officer, chief operating officer, or chief financial officer of a Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, the chief technology officer, the chief information officer, the treasurer or the controller of a Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance acceptable to Agent in its sole discretion.

Revenue-Based-Payment Amount has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Loan Parties with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based,

regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

Services means services provided by Borrower or any Affiliate of Borrower to un-Affiliated Persons, including without limitation any sales, consulting, marketing, commercialization and any other healthcare-related services.

SOFR shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator shall mean the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

Solvent means, as to any Person at any time, that (a) the fair value of the tangible and intangible property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the tangible and intangible property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party that is subordinated to the Obligations pursuant to a subordination agreement entered into between Agent, any applicable Loan Party and the subordinated creditor(s) upon terms acceptable to Agent in its sole discretion.

Subsequent Term Loan A has the meaning set forth in Section 2.2(b).

Subsequent Term Loan B has the meaning set forth in Section 2.2(c).

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

SWK has the meaning set forth in the Preamble.

Tax or Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.2(c).

Term Loan Commitment means \$25,000,000.

Term Loan Maturity Date means August 10, 2027.

Term SOFR Administrator shall mean the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Lender in its reasonable discretion).

Term SOFR Rate shall mean the Term SOFR Reference Rate for a three (3) month period that is two (2) Business Days prior to each Payment Date (such day, the **Periodic Term SOFR Determination Day**), and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such three (3) month period, as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate was published by the Term SOFR Administrator. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the Term SOFR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent shall, in consultation with Borrower, endeavor to establish an alternate rate of interest to the Term SOFR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United

States at such time, and, if requested by Agent, Agent and Lenders at such time party hereto and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (including, for the avoidance of doubt, any amendments to the definition of "Contract Rate" to ensure that the interest rate payable by Borrower hereunder is substantially similar to the interest rate that would otherwise be paid prior to the selection of such alternate rate of interest), and (ii) in no event shall the "Term SOFR Rate" or any such alternate rate of interest to the Term SOFR Rate ever be less than two and three-quarters of one percent (2.75%)

Term SOFR Reference Rate shall mean the forward-looking term rate based on SOFR.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through any other mandatory or voluntary prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Trademarks has the meaning set forth in the Guarantee and Collateral Agreement.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the Equity Interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2 Interpretation.

(a) In the case of this Agreement and each other Loan Document, (i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (ii) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (iii) the term “including” is not limiting and means “including but not limited to”; (iv) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including”; (v) unless otherwise expressly provided in such Loan Document, (A) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (B) references to any statute, directive or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute, directive or regulation; (vi) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (vii) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower’s, Agent’s or Lenders’ involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent’s judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (x) within the sole and absolute discretion of Agent and/or Lenders; and (y) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 2 Credit Facility.

2.1 [Reserved].

## 2.2 Loan Procedures.

(a) The Lenders, severally and for themselves alone, made (i) a term loan (the "Closing Date Term Loan") on the Closing Date in the original principal amount of \$21,000,000.00.

(b) On or about December 14, 2022, the Lenders, severally and for themselves alone, made an additional term loan in the original principal amount of \$4,000,000.00, (the "Subsequent Term Loan A").

(c) In addition to the forgoing, Borrower may request, in writing (a "Subsequent Term Loan B Notice"), a third advance of the Term Loan in amount up to Five Million and No/100 Dollars (\$5,000,000) (the "Subsequent Term Loan B"). Notwithstanding anything set forth herein or in any other Loan Document to the contrary, the decision by Agent and Lenders to make the Subsequent Term Loan B available to Borrower shall be made by Agent and Lenders in their sole, and absolute discretion. The Agent on behalf of the Lenders shall advise the Borrower of its decision as to whether or not to advance the Subsequent Term Loan B within (10) Business Days of its receipt of the Subsequent Term Loan B Notice and if the Agent on behalf of the Lenders decides to advance the Subsequent Term Loan B, the Subsequent Term Loan B will be advanced to the Borrower within (15) Business Days of its receipt of the Subsequent Term Loan B Notice.

(d) The Closing Date Term Loan, the Subsequent Term Loan A and the Subsequent Term Loan B (if any) have and shall continue to be deemed a single term loan (each such loan individually and collectively, the "Term Loan"). The Term Loan is not a revolving credit facility, and therefore, any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

## 2.3 Commitments Several.

The failure of any Lender to make any advance of the Term Loan shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

## 2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, set-off, counterclaim or defense for any reason against Agent and Lenders to the maximum extent permitted by applicable law. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, set-off, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension, satisfaction, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshaling of assets or to require foreclosure sales in a

particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) the pleading of any statute of limitations as a defense to any demand under any Loan Document and (h) any defense to the obligation to make any payments required under the Loan Documents, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the “Obligors”), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its liability for payment of the Loan shall not be affected or impaired by any determination that any security interest or lien taken by Agent for the benefit of Agent and Lenders to secure the Loan is invalid or unperfected. Borrower acknowledges, warrants and represents in connection with each waiver of any right or remedy of Borrower contained in any Loan Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

## 2.5 Loan Accounting.

### 2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

### 2.5.2 Notes.

At the request of any Lender, the Loan of such Lender shall be evidenced by a Note, with appropriate insertions, payable to such Lender in a face principal amount equal to such Lender’s Pro Rata Term Loan Share and payable in such amounts and on such dates as are set forth herein.

## 2.6 Payment of Interest.

### 2.6.1 Interest Rates.

(a) The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate (as may be adjusted from time to time in accordance with this [Section 2.6.1](#)). Whenever, subsequent to the date hereof, the Term SOFR Rate is increased or decreased (as determined on the date that is two (2) Business Days prior to each Payment Date), the Contract Rate, as set forth herein, shall be similarly changed effective as of such subsequent Payment Date, without notice or demand of any kind by an amount equal to the amount of such change in the Term SOFR Rate on the date that is two (2) Business Days prior to each such Payment Date. The interest due on the principal balance of the Loan outstanding as of any Payment Date shall be computed for the actual number

of days elapsed during the period in question on the basis of a year consisting of three hundred sixty (360) days and shall be calculated by determining the daily principal balance outstanding for each day of such period in question. The daily rate shall be equal to 1/360th times the Contract Rate. If any statement furnished by Agent for the amount of a payment due exceeded the actual amount that should have been paid because the Term SOFR Rate decreased and such decrease was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall receive a credit for the overpayment, which credit shall be applied towards the next subsequent payment due hereunder. If any statement furnished by Agent for the amount of a payment due was less than the actual amount that should have been paid because the Term SOFR Rate increased and such increase was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder.

(b) Borrower recognizes and acknowledges that any default on any payment, or portion thereof, due hereunder or to be made under any of the other Loan Documents, will result in losses and additional expenses to Agent in servicing the Loan, and in losses due to Lenders' loss of the use of funds not timely received. Borrower further acknowledges and agrees that in the event of any such Default, Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon the Term Loan Maturity Date and/or upon the occurrence and during the existence of an Event of Default (or upon any acceleration), interest shall automatically accrue hereunder, without notice to Borrower, at the Default Rate. The Default Rate shall be calculated and due from the date that the Default occurred which led to the Event of Default without regard to any grace or cure period as may be applicable and shall be payable upon demand.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate for any Loan (if applicable), together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder (if applicable), together with all charges payable in respect of the Loan, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest (if any) and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest (if any) and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

#### 2.6.2 Payments of Interest and Principal.

Borrower shall pay to Lenders all accrued interest on the Loan in arrears on each Payment Date (subject to Borrower's rights in relation to PIK Interest in relation to any Payment Date as set forth in this Section 2.6.2), upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. So long as no Event of Default shall have occurred and be continuing on any Payment Date occurring prior to the Payment Date in November 2025, Borrower, at its option, may elect, upon not less than ten (10) Business Days' prior written notice to Agent to pay to Agent, for the benefit of Lenders, a portion of the interest due on such Payment Date in-kind ("**PIK Interest**") at a rate per annum of four and one-half of one percent (4.5%). Notwithstanding the forgoing, 100% of the interest due and owing on

the Payment Date in May 2025 shall be converted to PIK Interest on such Payment Date. For the avoidance of doubt, any such PIK Interest shall be added to the outstanding principal balance of the Term Loan effective as of the applicable Payment Date. Any partial prepayment of the Loan shall be applied in inverse order of maturity and so shall not reduce the amount of any quarterly principal amortization payment required pursuant to Section 2.9.1 (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

2.7 Fees.

(a) Exit Fee. Upon the Termination Date, Borrower shall pay an exit fee (the “**Exit Fee**”) to Agent, for the benefit of Lenders, in an amount equal to (i) six and one half of one percent (6.50%) multiplied by the aggregate amount of the Term Loan funded hereunder on or prior to such date plus (ii) \$112,500, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

2.8 Prepayment.

2.8.1 Mandatory Prepayment.

(a) Borrower shall prepay the Obligations, or any portion thereof, as applicable, (which shall include the amounts due and payable under Section 2.7(b) hereof to the extent such prepayment results in a prepayment in full of the Term Loan) until paid in full within two (2) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

(b) In connection with any prepayment of the Term Loan made pursuant to this Section 2.8.1, Borrower shall pay to Agent, for the benefit of Lenders, any amounts that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.8.2 (in addition to any such prepayment of the Term Loan and related Obligations).

2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below, Borrower may, on at least five (5) Business Days’ written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 12:00 noon Dallas time on such day, prepay the Term Loan and all related Obligations in whole (but not in part) at any time prior to the Term Loan Maturity Date. Such notice to Agent shall specify the amount and proposed date of such prepayment, and the application of such amounts to be prepaid shall be applied in accordance with Section 2.9.1(b) or 2.10.2 (as applicable).

(b) If Borrower makes a prepayment of the Term Loan under Section 2.8.2(a), it shall pay to Agent, for the benefit of Lenders, the following amounts (in addition to any such prepayment of the Term Loan and related Obligations) on the date of such prepayment: (i) if such prepayment is made prior to the first anniversary of the Closing Date, an amount equal to (A) two percent (2.0%) of the aggregate amount of the Term Loan so prepaid plus (B) an amount equal to the aggregate interest that would have accrued pursuant to this Agreement in relation to the aggregate amount of the Term Loan so prepaid from the date of such prepayment through the first anniversary of the Closing Date assuming a static Contract Rate equal to the Contract Rate in effect on such date of prepayment, (ii) if such prepayment is made on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, two percent (2.0%) of the aggregate amount of the Term Loan so prepaid, and (iii) if such prepayment is made on or after the second anniversary of the Closing Date, zero percent (0%) of the aggregate amount of the Term Loan so prepaid.

(c) For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based-Payment Amounts that are credited toward the principal of the Loans under Section 2.9.1(b). Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans other than via the application of Revenue-Based-Payment Amounts made pursuant to Section 2.9.1 or Section 2.10.2, as applicable, shall be limited and governed by this Section 2.8.2.

2.9 Repayment of Term Loan.

2.9.1 Revenue-Based-Payment Amount.

(a) During the period commencing on the date hereof until the Obligations are Paid in Full, Borrower promises to pay to Agent, for the account of each Lender according to its Pro Rata Term Loan Share, an amount based on a percentage of the aggregate of the Net Sales, Royalties and any other income or revenue realized by Borrower and/or its Subsidiaries, on a consolidated basis, in accordance with GAAP (collectively, the "**Aggregate Revenue**") in each Fiscal Quarter (the "**Revenue-Based-Payment Amount**"), which will be applied to the Obligations as provided in clause (b) below. The Revenue-Based-Payment Amount with respect to each Fiscal Quarter shall be applied by Borrower on the Payment Date next following the end of such Fiscal Quarter in accordance with clause (b) below. Commencing with the Fiscal Quarter beginning January 1, 2022, the Revenue-Based-Payment Amount with respect to each Fiscal Quarter shall be equal to:

(i) the aggregate Revenue-Based-Payment Amounts payable during the period commencing as of January 1 of the Fiscal Year of which such Fiscal Quarter is part, through the end of such Fiscal Quarter (such elapsed portion of the Fiscal Year, the "Elapsed Period"), calculated as the sum of:

(A) One hundred percent (100%) of Aggregate Revenue during the Elapsed Period up to and including \$10,000,000; plus

(B) Seventy-five percent (75%) of Aggregate Revenue during the Elapsed Period greater than \$10,000,000; minus

(ii) the aggregate amount of Revenue-Based-Payment Amounts, if any, paid to Agent, for the benefit of Lenders, pursuant to this Section 2.9.1, with respect to each prior Fiscal Quarter in such Fiscal Year; *provided* that the Revenue-Based-Payment Amount is payable solely upon Aggregate Revenue in a given Fiscal Year, and will not be calculated on a cumulative, year-over-year basis.

(b) So long as no Event of Default has occurred and is continuing and until the Obligations have been Paid in Full, on each Payment Date the applicable Revenue Based Payment Amount will be applied in the following priority:

(i) FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to Agent pursuant to Sections 2.7, 3.1, 3.2, 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral;

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to

Sections 2.7, 3.1, 3.2, 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date pursuant to Sections 2.6 under this Agreement, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iv) FOURTH, as it relates to each Payment Date on or after the Payment Date occurring in November 2025, to the payment of all principal of the outstanding Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in an amount equal to five percent (5.0%) multiplied by the aggregate amount of the Term Loan funded hereunder and outstanding as of such date of determination; and

(v) FIFTH, all remaining amounts to be retained by Borrower.

In the event that the Revenue-Based-Payment Amount in relation to any Payment Date is insufficient for payment of the amounts set forth in clauses (b)(i) through (b)(iii) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency, in immediately available funds, within five (5) Business Days of request by Agent.

(c) In the event that Borrower makes any adjustment to Aggregate Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based-Payment Amount due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based-Payment Amount hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based-Payment Amounts.

#### 2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing shall be Paid in Full on the Termination Date.

#### 2.10 Payment.

##### 2.10.1 Making of Payments.

All payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based-Payment Amount for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

##### 2.10.2 Application of Payments and Proceeds Following an Event of Default

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in

accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds of Collateral, in each case as received by Agent, to the payment of the Obligations in the order and priority as determined by Agent in its sole discretion.

#### 2.10.3 Set-off

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

#### 2.10.4 Proration of Payments

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of principal of, interest on or fees in relation to any Loan, but excluding any payment pursuant to Section 3.1, 3.2, 10.5 or 10.8) in excess of its applicable Pro Rata Term Loan Share of payments and other recoveries obtained by all Lenders on account of principal of, interest on or fees in relation to such Term Loan then held by them, then such Lender shall purchase from the other Lenders such participations in the Loans held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided* that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

### Section 3 Yield Protection

#### 3.1 Taxes

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("Tax" or "Taxes"), excluding (i) taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise taxes, imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or, in the case of any Lender, in which its applicable lending office is located at the time such Lender acquires its initial interest in any Term Loan Commitment, (ii) any branch profit taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business; (iii) in the case of any Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office; (iv) any United States federal backup withholding tax; and (v) taxes imposed under FATCA; (vi) Taxes attributable to a Lender's failure to comply with Section 3.1(c) and (d) or a Foreign Lender's inability to provide the applicable IRS Form set forth in Section 3.1(c) to Borrower and Agent; (vii) with respect to Agent or any Lender, Taxes imposed as a result of a present or former connection between such Agent or Lender and the jurisdiction imposing such Tax (other than connections arising from such Agent or Lender 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); and (viii) in the case of a Lender, U.S. federal withholding Taxes, if any and not otherwise included in clauses (i) through (vii), imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender acquires such interest in the Loan or Commitment or changes its lending office (items in clauses (i) through (viii), “Excluded Taxes”, and all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document, “Indemnified Taxes”). If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (w) make such withholding or deduction; (x) pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted; (y) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (z) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required.

(b) Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party’s own fraud, gross negligence or willful misconduct. Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided, however*, that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c) 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 the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the 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 the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the 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 paragraphs (c)(i), (c)(ii) and (d) of this Section) shall not be required if in the 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.

(i) Each Foreign Lender that is a party hereto on the Closing Date or becomes an assignee of an interest under this Agreement under Section 10.8.1 after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

- (1) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;
- (2) two duly completed and executed originals of IRS Form W-8ECI;
- (3) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (w) a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulation 1.881-3, (x) a “bank” within the meaning of Section 881(c)(3)(A) of the IRC, (y) a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (z) a “controlled foreign corporation” described in Sections 881(c)(3)(C) and 864(d)(4) of the IRC (a “U.S. Tax Compliance Certificate”), together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or
- (4) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BENE), IRS Form W-9 or a U.S. Tax Compliance Certificate from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes; 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 on behalf of each such direct and indirect partner.

Each Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent.

(ii) Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding.

Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Indemnified Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c) and clause (d), or (B) if such Lender shall fail to comply with the

certification requirements of this clause (c) and clause (d). For the avoidance of doubt, all references to IRS Forms in this clause (c) shall include, in each case, any successor form.

(d) Without limiting the foregoing, each Lender shall timely comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any documentation reasonably requested by Borrower or Agent sufficient for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements.

(e) If Agent or a Lender determines that it is entitled to or has received a refund or credit of any Taxes for which it has been indemnified by Borrower (or another Loan Party) or with respect to which Borrower (or another Loan Party) shall have paid additional amounts pursuant to this Section 3.1, it shall promptly notify Borrower of such refund or credit, and promptly make an appropriate claim to the relevant Governmental Authority for such refund or credit (if it has not previously done so). If Agent or a Lender receives a refund or credit (whether or not pursuant to such claim) of such Taxes, it shall promptly pay over such refund or credit to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section 3.1 with respect to the Taxes giving rise to such refund or credit), net of all reasonable out-of-pocket and documented third-party expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or credit); *provided* that Borrower, upon the request of Agent or such Lender, agrees to repay to Agent or such Lender the amount paid over to Borrower in the event Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.1(e) shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to Borrower or any other Person or to alter its internal practices or procedures with respect to the administration of Taxes.

(f) Each party's obligations under this Section **Error! Reference source not found.** shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

### 3.2 Increased Cost.

(a) If, after the Closing Date, the adoption of, or any change in, any applicable law, rule, directive or regulation, or any change in the interpretation or administration of any applicable law, rule, directive or regulation by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), or compliance by any Lender with any request or directive (whether or not having the force of law) issued after the Closing Date of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender; or (ii) shall impose on any Lender any other condition affecting its ability to make loans based on the Term SOFR Rate or its obligation to make loans based on the Term SOFR Rate; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any loan based on the Term SOFR Rate, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount

thereof in reasonable detail, a copy of which shall be furnished to Agent), and without duplication of other payment obligations of Borrower hereunder (including pursuant to Section 3.1), Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. For the avoidance of doubt, Section 3.2(a) and (b) will not apply to any such increased costs or reductions resulting from Taxes, as to which Section 3.1 shall govern.

(b) If any Lender shall reasonably determine that any change after the Closing Date in, or the adoption or phase-in after the Closing Date of, any applicable law, rule, directive or regulation regarding capital adequacy, or any change after the Closing Date in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive issued after the Closing Date regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, within five (5) Business Days of demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect.

(c) Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under Section 3.1 or Section 3.2, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (i) make, issue, fund or maintain its Loans through another office of such Lender, or (ii) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 3.1 or Section 3.2 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this clause (c) unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this clause (c) (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Agent) shall be conclusive absent manifest error.

3.3 [Reserved].

3.4 Manner of Funding; Alternate Funding Offices

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it may determine at its sole discretion. Each Lender may, if it so elects, fulfill its commitment to make the Term Loan by causing any branch or Affiliate of such Lender to make such Loan; *provided* that in such event for the purposes of this Agreement (other than Section 3.1) such Loan shall be deemed to have been made by such Lender and the obligation of Borrower to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate.

3.5 Conclusiveness of Statements; Survival.

Determinations and statements of any Lender pursuant to Section 3.1, 3.2, 3.3 or 3.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2, and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4 Conditions Precedent.

The obligation of each Lender to make its Loan hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent.

4.1 Prior Debt.

The Prior Debt, if any, (i) has been (or substantially concurrently with the funding of the initial borrowing on the Closing Date will be) paid in full, (ii) Agent shall have received evidence that arrangements satisfactory to Agent have been made for the termination and release of all related Liens, if any, granted in connection with such Prior Debt, or (iii) otherwise subject to an intercreditor arrangement or subordination agreement acceptable to Agent in its reasonable discretion.

4.2 General.

Borrower shall have delivered the following documents in form and substance acceptable to Agent in its reasonable discretion (and, as applicable, duly executed):

(a) Loan Documents. The Loan Documents to which any Loan Party is a party, each duly executed by a Responsible Officer of each Loan Party and the other parties thereto (except Agent and the Lenders), and each other Person (except Agent and the Lenders) shall have delivered to Agent and Lenders the Loan Documents to which it is a party, each duly executed and delivered by such Person and the other parties thereto (except Agent and the Lenders).

(b) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide Agent, for the benefit of Lenders, perfected first priority Liens in the Collateral.

(c) Lien Searches. Copies of Uniform Commercial Code, foreign, state and county search reports listing all effective financing statements filed and other Liens of record against any Loan Party, with copies of any financing statements and applicable searches of the records of the U.S. Patent and Trademark Office and the U.S. Copyright Office performed with respect to each Loan Party, all in each jurisdiction reasonably determined by Agent.

(d) Collateral Access Agreements. Fully executed (except by Agent and the Lenders) Collateral Access Agreements reasonably requested by Agent with respect to the Collateral.

(e) Payoff; Release. Payoff letters with respect to the repayment in full of all Prior Debt (other than such Prior Debt to be subject to the Intercreditor Agreement), termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(f) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority, (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction where failure to maintain such good standing status would have a Material Adverse Effect, (iii) bylaws (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party, the Closing Date Warrant and the transactions contemplated thereby, and (v) signature and incumbency certificates of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

(g) Opinions of Counsel. Opinions of counsel for each Loan Party in form and substance acceptable to Agent regarding certain closing matters, and Borrower hereby requests such counsel to deliver such opinions and authorizes Agent and Lenders to rely thereon.

(h) Insurance. Certificates or other evidence of insurance in effect as required by Section 6.3(c) and (d), with endorsements naming Agent as lenders' loss payee and/or additional insured, as applicable.

(i) Financials. The financial statements, projections and pro forma balance sheet described in Section 5.4.

(j) Consents. Evidence that all necessary consents, permits and approvals (governmental or otherwise) required for the execution, delivery and performance by each Loan Party of the Loan Documents have been duly obtained and are in full force and effect.

(k) Other Documents. Such other certificates, documents and agreements as Agent or any Lender may reasonably request.

#### 4.3 Fees.

The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including Legal Costs), required to be paid under the Loan Documents on or before the Closing Date. All such amounts will be paid with proceeds of the initial advance of the Term Loan and any previous expense deposits made with Agent on or before the Closing Date and will be reflected in the funding instructions given by Borrower to Agent on or before the Closing Date; provided, that the costs, fees, and expenses of Agent and any Lender, as of the Closing Date, inclusive of Legal Costs, shall not exceed \$150,000.

#### 4.4 Representations, Warranties, Defaults.

As of the Closing Date, after giving effect to the making of the Loans, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all respects as of such earlier date) and (b) no Event of Default shall exist. The acceptance of the Term Loan by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.4 have been satisfied.

4.5 Diligence.

Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be satisfactory in form and substance to Lenders, including, without limitation, (i) an examination of (A) Borrower's projected Aggregate Revenue for such periods as required by Lenders, (B) such valuations of Borrower and its assets as Lenders shall require, and (C) the terms and conditions of all material obligations owed by Borrower, the results of which shall be satisfactory in form and substance to Lenders; (ii) an examination of the Collateral, the financial statements and the books, records, business, obligations, financial condition and operational state of Borrower, and Borrower shall have demonstrated to Agent's satisfaction, in its sole discretion, that (x) no operations of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could result in any expenditure or liability deemed material by Lenders, and (y) Borrower has no liabilities or obligations (whether contingent or otherwise) that are deemed material by Lenders.

4.6 Corporate Matters.

All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those relating to corporate and capital structures of Borrower) shall be satisfactory to Lenders in their sole discretion.

4.7 Closing Date Warrant.

Agent shall have received the fully executed Closing Date Warrant.

4.8 [Reserved].

Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date, the date of the Subsequent Term Loan A and the Subsequent Term Loan B (if any) made by Lenders pursuant to Section 2.2.2, that:

5.1 Organization.

Each Loan Party is duly incorporated, validly existing and (if applicable) in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly qualified to carry on its business in each jurisdiction set forth on Schedule 5.1, which are all of the jurisdictions in which failure to so qualify would reasonably be likely to have or result in a Material Adverse Effect. Each Loan Party has the power to own its assets and carry on its business as it is being conducted.

5.2 Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guaranty monies thereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of any material applicable law (including any applicable Health Care Law), (ii) the charter, articles, by-laws or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents).

5.3 Validity; Binding Nature.

Each of this Agreement and each other Loan Document to which any Loan Party is a party, as applicable, is the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

5.4 Financial Condition.

(a) The audited financial statements of Borrower for the Fiscal Year 2021 and the unaudited financial statements of Borrower for the Fiscal Quarter ended June 2022, copies of each of which have been delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower as at such dates and the results of its operations for the periods then ended.

(b) The consolidated financial projections (including an operating budget and a cash flow budget) of Borrower delivered to Agent and Lenders on or prior to the Closing Date (i) were prepared by Borrower in good faith and (ii) were prepared in accordance with assumptions for which Borrower believes it has a reasonable basis, and the accompanying consolidated and consolidating pro forma unaudited balance sheet of Borrower as at the Closing Date, adjusted to give effect to the financings contemplated hereby as if such transactions had occurred on such date, is consistent in all material respects with such projections (it being understood that the projections are not a guaranty of future performance and that actual results during the period covered by the projections may materially differ from the projected results therein).

5.5 No Material Adverse Effect.

Since December 31, 2021, there has been no material adverse change in the financial condition, operations, assets, business or properties of Loan Parties.

5.6 Litigation.

Other than the FiberCel Litigation, no litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to Borrower's knowledge, threatened against any Loan Party that would reasonably be expected to have, either individually or in the

aggregate, a Material Adverse Effect. As of the Closing Date, other than any liability incidental to such litigation or proceedings, no Loan Party has any material Contingent Obligations not disclosed in the financial statements specified in Section 5.4(a).

5.7 Ownership of Properties; Liens.

Borrower and each other Loan Party owns, or leases or licenses, as applicable, all of its material properties and assets, tangible and intangible, of any nature whatsoever that it purports to own, or lease, as applicable (including Intellectual Property), free and clear of all Liens and charges and claims (including infringement claims with respect to Intellectual Property), except Permitted Liens and as set forth on Schedule 5.7.

5.8 Capitalization.

All issued and outstanding Equity Interests of Loan Parties are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable state and federal laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests of each Loan Party as of the Closing Date as well as all Persons owning more than ten percent (10%) of the outstanding Equity Interests in each such Loan Party as of the Closing Date.

5.9 Pension Plans.

No Loan Party has, nor to Borrower's knowledge has any Loan Party ever had, a Pension Plan.

5.10 Investment Company Act.

No Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940.

5.11 No Default.

No Event of Default or Default exists or would result from the incurrence by Borrower of any Debt hereunder or under any other Loan Document or as a result of any Loan Party entering into the Loan Documents to which it is a party.

5.12 Margin Stock.

No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, no portion of the Obligations is secured directly or indirectly by Margin Stock.

5.13 Taxes.

Each Loan Party has filed, or caused to be filed, all income and other material federal, state and foreign tax returns and reports required by law to have been filed by it and has paid all federal and state and foreign income taxes and all other material taxes or governmental charges thereby shown to be owing, except any such taxes or charges (a) that are not delinquent or (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books.

5.14 Solvency.

On the Closing Date, and immediately prior to and after giving effect to the borrowing hereunder and the use of the proceeds hereof, Borrower is, and will be, Solvent.

5.15 Environmental Matters.

The on-going operations of Loan Parties comply in all respects with all applicable Environmental Laws, except for non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for its respective ordinary course operations, and each Loan Party is in compliance with all material terms and conditions thereof, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. No Loan Party nor any of their respective properties or operations is subject to any outstanding written order from or agreement with any federal, state, or local Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance. There are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of any Loan Party that would reasonably be expected to result in a Material Adverse Effect. No Loan Party has underground storage tanks.

5.16 Insurance.

Loan Parties and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate, as applicable. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth on Schedule 5.16.

5.17 Information.

All written information heretofore or contemporaneously herewith furnished in writing by Borrower to Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, is, and all written information hereafter furnished by or on behalf of Borrower to Agent or any Lender pursuant hereto or in connection herewith, taken as a whole, will be true and accurate in all material respects on the date as of which such information, taken as a whole, is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect in light of the circumstances under which made (it being recognized by Agent and Lenders that any projections and forecasts provided by Borrower are based on good faith estimates and assumptions believed by Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

5.18 Intellectual Property: Products and Services

(a) Schedule 5.18(a) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all of Loan Parties' Registered Intellectual Property. Each Loan Party owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of the business of such Loan Party, without any infringement upon the intellectual property rights of others, except as otherwise set forth on Schedule 5.18(a) hereto.

(b) Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all material Products and Services and all Required Permits in relation thereto.

(c) With respect to any Product or Service being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or the applicable, authorized third parties have received), and such Product or Service is the subject of, all Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of such Product or Service by or on behalf of Loan Parties as currently conducted, except where the failure to process any such Required Permit would not reasonably be expected to have a Material Adverse Effect. During the past five (5) years, no Loan Party has received any written notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than routine or ordinary-course inspections) of any Loan Party's (x) manufacturing facilities, or Product, or any related sales or marketing activities and/or the Required Permits related to such Product, and (y) laboratory facilities, the processes for such Services, or any related sales or marketing activities and/or the Required Permits related to such Services. There are no material deficiencies or violations of applicable Health Care Laws in relation to the manufacturing, processes, sales, marketing, or delivery of such Product or Services and/or the Required Permits related to such Product or Services, no Required Permit has been revoked or withdrawn, nor, to the best of Borrower's knowledge, has any such Governmental Authority issued any order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of such Product or Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable.

(d) Except as set forth on Schedule 5.18(b), (A) there have been no adverse clinical trial results in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product, and (B) there have been no product recalls or voluntary product withdrawals from any market in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product.

(e) No Loan Party has experienced any significant failures in its manufacturing of any Product which caused any reduction in Products sold.

#### 5.19 Restrictive Provisions.

No Loan Party is a party to any agreement or contract or subject to any restriction contained in its operative documents which would reasonably be expected to have a Material Adverse Effect.

#### 5.20 Labor Matters.

No Loan Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Loan Party are not in violation in any material respect of the Fair Labor Standards Act or any other applicable law, rule, directive or regulation dealing with such matters. Each Loan Party has fully and timely made any and all social benefits and pension contributions and payments required to be made by such Loan Party according to any applicable law or agreement.

#### 5.21 Material Contracts: Leased Real Estate.

(a) Material Contracts. Except for the agreements set forth on Schedule 5.21 (collectively, the "Material Contracts"), as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor

agreements covering any employees of any Loan Party, (iii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements regarding any Loan Party, its assets or operations or any investment therein to which such Loan Party and any of its equity holders are a party, (v) patent licenses, trademark licenses, copyright licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee (other than widely-available software subject to “shrink-wrap” or “click-through” software licenses), (vi) distribution, marketing or supply agreements to which any Loan Party is a party, (vii) customer agreements to which any Loan Party is a party, (viii) partnership agreements pursuant to which any Loan Party is a partner, limited liability company agreements pursuant to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party (in each case other than the applicable Loan Parties’ organizational documents), (ix) real estate leases, or (x) any other agreements or instruments to which any Loan Party is a party, in each case of clauses (i) through (x) above, the breach, nonperformance or cancellation of which, would reasonably be expected to have a Material Adverse Effect.

(b) Leased Real Estate. Schedule 5.21 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property.

(c) No Conflicts. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

#### 5.22 Compliance with Laws; Health Care Laws.

(a) Laws Generally. Each Loan Party is in compliance with, and is conducting and has conducted its business and operations in material compliance with the requirements of all applicable laws, rules, regulations, directives, decrees, orders, judgments, and Permits, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b) Health Care Laws. Without limiting the generality of clause (a) above:

(i) No Loan Party is in violation of any applicable Health Care Laws, except for any such violation which would not reasonably be expected (either individually and taken as a whole with any other violations) to have a Material Adverse Effect.

(ii) Each Loan Party (either directly or through one or more authorized third parties) has: (x) all licenses, consents, accreditations, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all applicable declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an “Authorization”) necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (y) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with all applicable Health Care Laws respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect would not reasonably be expected to have a Material Adverse Effect.

(iii) [Reserved].

(iv) Except where any of the following would not reasonably be expected to have a Material Adverse Effect, during the past five (5) years, no Loan Party has been, nor to the Borrower's best knowledge has been threatened to be, (i) excluded from U.S. health care programs pursuant to 42 U.S.C. §1320a-7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws, directives or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state, local or foreign laws, directives or regulations.

(v) During the past five (5) years, no Loan Party has received any written notice from the FDA, CMS, or any other Governmental Authority with respect to, nor to Borrower's best knowledge is there, any actual or threatened investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by the FDA, CMS, or any other Governmental Authority against any Loan Party regarding any violation of applicable law, except for such investigations, inquiries, or administrative or judicial actions, hearings, or enforcement proceedings which, individually and in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

#### 5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts

Except as otherwise permitted pursuant to Section 7.1, no Loan Party (a) has any outstanding Debt, except Debt under the Loan Documents, or (b) owns or holds any equity or long-term debt investments in, or has any outstanding advances to or any outstanding guarantees for the obligations of, or any outstanding borrowings from, any other Person.

#### 5.24 Affiliated Agreements.

Except as set forth on Schedule 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, (i) there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand, and (ii) to Borrower's knowledge, no manager, officer or director of any Loan Party is directly or indirectly, indebted to or has any direct or indirect ownership or voting interest in any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own equity interests in (but not exceeding five percent (5%) of the outstanding equity interests of) any publicly traded company that may compete with Loan Parties)).

#### 5.25 Names; Locations of Offices, Records and Collateral; Deposit Accounts

No Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business conducted and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains, and since its formation has maintained, respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Agent and Lenders, and (iii) other locations disclosed to Agent from time to time

in writing). Schedule 7.14 lists all of Loan Parties' Deposit Accounts as of the Closing Date. All of the tangible Collateral is located exclusively within the United States.

5.26 Non-Subordination.

Subject to the Intercreditor Agreement, the payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27 Broker's or Finder's Commissions.

Except as set forth in Schedule 5.27, no broker's, finder's or placement fee or commission will be payable to any broker or agent engaged by any Loan Party or any of its officers, directors or agents with respect to the Loan or the transactions contemplated by this Agreement except for fees payable to Agent and Lenders. Borrower agrees to indemnify Agent and each Lender and hold each harmless from and against any claim, demand or liability for broker's, finder's or placement fees or similar commissions, whether or not payable by Borrower, alleged to have been incurred in connection with such transactions, other than any broker's or finder's fees payable to Persons engaged by Agent and/or Lenders.

5.28 Anti-Terrorism; OFAC.

(a) No Loan Party nor any Person controlling or controlled by a Loan Party, nor, to Borrower's knowledge, any Person having a beneficial interest in a Loan Party, nor any Person for whom a Loan Party is acting as agent or nominee in connection with this transaction (1) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner that violates of Section 2 of such executive order, or (3) is a Person on the list of Specially Designated Nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b) No part of the proceeds of the Loan will be used, directly or indirectly, for any payments 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.

5.29 Security Interest.

Each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens) security interest and Lien on the Collateral pursuant to this Agreement and the other Loan Documents, as applicable, subject to the following sentence. Upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary financing statements and/or appropriate filings and/or delivery of the necessary certificates evidencing any equity interest, control and/or possession, as applicable, and delivery of any agreements necessary to grant "control" under the UCC with respect to any assets which the priority or perfection of such security interest requires such control, without any further action, Agent will have a good, valid and first priority (subject to Permitted Liens) perfected Lien and security interest in the Collateral, for the benefit of Lenders. Borrower is not party to any agreement, document or instrument that conflicts with this Section 5.29.

5.30 Survival.

Borrower hereby makes the representations and warranties contained herein with the knowledge and intention that Agent and Lenders are relying and will rely thereon. All such representations and warranties will survive the execution and delivery of this Agreement, the closing and the making of the Loan.

Section 6 Affirmative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, it will:

6.1 Information.

Furnish to Agent (which shall furnish to each Lender):

6.1.1 Annual Report

Promptly when available and in any event within one hundred fifty (150) days after the close of each Fiscal Year: (a) a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a consolidated and consolidating balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for any qualification as to going concern, and qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants) by independent auditors of recognized standing selected by Borrower and reasonably acceptable to Agent, and (ii) a comparison with the previous Fiscal Year; and (b) upon Agent's reasonable request, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flows for Borrower and its Subsidiaries for such Fiscal Year, together with a comparison of actual results for such Fiscal Year with the budget for such Fiscal Year, each certified by the chief financial officer or another executive officer of Borrower; provided, that Agent shall be deemed to be in receipt of the information under this Section 6.1.1 once such information is uploaded to the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"), the SEC's public database.

6.1.2 Interim Reports

(a) Promptly when available and in any event within forty-five (45) days after the end of each Fiscal Quarter, unaudited consolidated balance sheets of Loan Parties as of the end of such Fiscal Quarter, together with consolidated statements of earnings and cash flows for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by the chief financial officer or other executive officer of Borrower; provided, that Agent shall be deemed to be in receipt of the information under this Section 6.1.2(a) once such information is uploaded to EDGAR, the SEC's public database.

(b) Together with each such quarterly report to be delivered pursuant to clause (a) above, Borrower shall provide to Agent (i) a written statement of Borrower's management in setting forth a summary discussion of Borrower's financial condition, changes in financial condition and results of operations, and (ii) updated Schedules to this Agreement, as applicable, setting forth any material changes to the disclosures set forth in such schedules as most recently provided to Agent or, as applicable, a written

statement of Borrower's management stating that there have been no changes to such disclosures as most recently provided to Agent; provided, that Agent shall be deemed to be in receipt of the information under this Section 6.1.2(b) once such information is uploaded to EDGAR, the SEC's public database.

(c) Promptly when available and in any event within ten (10) days after the end of each Fiscal Quarter, a statement of prior Fiscal Quarter Consolidated Unencumbered Liquid Assets of Loan Parties, in form and substance reasonably acceptable to Agent.

6.1.3 Quarterly Review Meeting.

Borrower as reasonably requested by Agent shall be available via teleconference as and when requested by Agent and no more frequently than quarterly for a review meeting.

6.1.4 Revenue-Based-Payment Amount Reconciliation.

Upon Agent's request Borrower shall furnish to Agent, a report, in form acceptable to Agent, reconciling the Net Sales, Royalties, and all other revenue reported by Borrower to Agent during any reporting period to the Aggregate Revenue reported by Borrower hereunder for such period and the amount of Revenue-Based-Payment Amounts applied by Borrower in connection with such period(s).

6.1.5 Compliance Certificate.

Contemporaneously with the furnishing of a copy of each annual audit report pursuant to Section 6.1.1 and each set of quarterly statements pursuant to Section 6.1.2 (including, for the avoidance of doubt the quarterly statements delivered for the Fiscal Quarter ending December 31<sup>st</sup> of each year), a duly completed Compliance Certificate, with appropriate insertions, dated the date of delivery and corresponding to such annual report or such quarterly statements, and signed by the chief financial officer (or other executive officer) of Borrower, containing computations, if applicable, showing compliance with Section 7.13 and a statement to the effect that such officer has not become aware of any Event of Default or Default that exists or, if there is any such event, describing it and the steps, if any, being taken to cure it.

6.1.6 [Reserved].

6.1.7 Notice of Default; Litigation.

Promptly upon becoming aware of any of the following, written notice describing the same and summarizing the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

- (a) the occurrence of an Event of Default;
- (b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in each case would reasonably be expected to have a Material Adverse Effect;
- (c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond

or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise Tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent;

(d) [reserved];

(e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule or regulation) which would reasonably be expected to have a Material Adverse Effect; or

(f) to the extent, in each case, that it would reasonably be expected to result in a Material Adverse Effect: (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with any applicable Health Care Law, (iv) the occurrence of any violation of any applicable Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that would reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer, employee or agent of Borrower or any of the other Loan Parties is convicted or accused in writing of any crime for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted or accused in writing of any crime for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

#### 6.1.8 FiberCel Net Liability Amount.

(a) (i) Promptly, upon becoming aware of the final FiberCel Net Liability Amount, notify Agent thereof, and within ninety (90) days of the final determination of such FiberCel Net Liability Amount, issue Subordinated Debt on terms and conditions reasonably satisfactory to Agent (including the execution of a subordination agreement in favor of Agent) or Equity Interests in a transaction or series of transactions, resulting in net cash proceeds to Borrower of at least the FiberCel Net Liability Amount (with any amount raised in excess of such FiberCel Net Liability Amount to be counted towards the Subsequent Capital Raise); and (ii) notwithstanding anything set forth in this Agreement to the contrary, if prior to the final determination of the FiberCel Net Liability Amount, Borrower receives net cash proceeds from issuing Equity Interest or Subordinated Debt in an amount sufficient to satisfy the Subsequent Capital Raise, then Borrower, at its option, may allocate the amount of such net cash proceeds received to be applied pursuant to clause (a)(i) of this Section 6.1.8 instead of the Subsequent Capital Raise, and upon the final determination of each of (x) the FiberCel Net Liability Amount and (y) satisfaction of

the requirements of clause (a)(i) of this Section 6.1.8, any excess thereof shall count toward the Subsequent Capital Raise.

(b) On an ongoing basis, promptly upon becoming aware of any new material information, provide Agent with any such material updates to the FiberCel Litigation, in each case subject to attorney-client privilege and confidentiality.

6.1.9 [Reserved].

6.1.10 Projections.

As soon as practicable, and in any event not later than sixty (60) days after the commencement of each Fiscal Year, financial projections on a monthly basis for Loan Parties for such Fiscal Year prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a chief financial officer (or other executive officer) of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections, (c) such projections have been prepared in accordance with such assumptions and (d) such projections have been approved in writing by the Board as the operating plan for the subsequent Fiscal Year.

6.1.11 Updated Schedules to Guarantee and Collateral Agreement

Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Guarantee and Collateral Agreement).

6.1.12 Other Information.

Promptly, from time to time as Agent reasonably requests, Borrower shall deliver or shall cause to be delivered to Agent:

(a) copies of any reports, statements or written materials (other than routine communications (electronic or otherwise) between Borrower or its Affiliates and such entities that are not material in nature) in relation to any Material Contract;

(b) such other information concerning Borrower and any other Loan Party as Agent may reasonably request;

(c) copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, or any other Governmental Authority; and

(d) copies of (x) any notices or other communications relating to any breach, default, or event of default with respect to any Subordinated Debt, Approved AR Loan Facility, or Ligand Royalty Agreement and (y) any other modifications or amendments entered into in relation to any Subordinated Debt, Approved AR Loan Facility, or Ligand Royalty Agreement.

6.2 Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to, no more often than once on an annual basis prior to the occurrence of an Event of Default, inspect the properties and operations of Borrower or any other Loan Party; and permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof), and to examine (and photocopy extracts from) any of its books or other records; and permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, to perform appraisals of the equipment of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral.

6.3 Conduct of Business; Maintenance of Property; Insurance.

(a) Borrower shall, and shall cause each other Loan Party to, (i) conduct its business substantially in accordance with its current business practices, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted and lines of business ancillary thereto, (iii) collect the Royalties in the ordinary course of business, (iv) maintain all of its Collateral used or useful in its business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral; (vi) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all Intellectual Property and Permits necessary to conduct its business, except in each case where the failure to maintain, comply with or keep in full force and effect could not reasonably be expected to be, have or result in a Material Adverse Effect.

(b) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is (i) customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent in its reasonable discretion), and (ii) otherwise in form, substance, and amounts acceptable to Agent in its reasonable discretion; *provided* that in any event, such insurance shall, unless the Agent otherwise agrees, insure against all risks and liabilities of the type insured against as of the Closing Date and shall have insured amounts no less than, and deductibles no higher than, those amounts provided for as of the Closing Date. Upon request of Agent or any Lender, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each

other Loan Party. Borrower shall cause each issuer of an insurance policy to provide Agent with an endorsement (x) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (y) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice with respect to nonpayment of premium or if the Agent consents to such shorter notice) before the termination or cancellation of the policy prior to the expiration thereof and (z) reasonably acceptable in all other respects to Agent.

(c) Unless Borrower provides Agent with evidence of the continuing insurance coverage required by this Agreement, Agent (upon reasonable advance notice to Borrower) may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Collateral. This insurance shall protect Borrower's and each other Loan Party's interests. The coverage that Agent purchases shall pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the reasonable costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs of the insurance may be added to the principal amount of the Loans owing hereunder.

#### 6.4 Compliance with Laws; Payment of Taxes and Liabilities

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations, (d) file, or cause to be filed, all federal income and material state and foreign Tax returns and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all federal income and material state and foreign Taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; *provided* that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP. For purposes of this Section 6.4, "Control" shall mean, when used with respect to any Person, (x) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (y) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

#### 6.5 Maintenance of Existence

Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes

such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

6.6 Employee Benefit Plans.

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of \$500,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law and regulations.

6.7 Environmental Matters.

Except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, if any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply in all material respects with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, Borrower shall, and shall cause each other Loan Party to, comply with each valid federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance.

6.8 Further Assurances.

Take, and cause each other Loan Party to take, such actions as are necessary or as Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower and each Subsidiary of Borrower (as well as all equity interests of each Subsidiary of Borrower) and guaranteed by all of the Subsidiaries of Borrower (including, promptly upon the acquisition or creation thereof, any Subsidiary of Borrower acquired or created after the Closing Date), in each case including (a) the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time.

6.9 Compliance with Health Care Laws.

(a) Without limiting or qualifying [Section 6.4](#) or any other provision of this Agreement, Borrower will comply, and will cause each other Loan Party to comply, in all material respects with all applicable Health Care Laws relating to the operation of such Person's business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower will, and will cause each other Loan Party to:

(i) Keep in full force and effect all Authorizations required to operate such Person's business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii) Promptly furnish or cause to be furnished to the Agent, to the extent such matters would reasonably be expected to have a Material Adverse Effect, (w) copies of all reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's business, (x) copies of all FDA Form-483s and comparable inspectional observations and reports issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority, (y) copies of all material warning letters and material untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, or any other Governmental Authority relating to or arising out of the conduct applicable to the business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law, directive or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, CMS, or any other Governmental Authority (other than routine audits conducted in the ordinary course of business).

(iii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that would reasonably be expected to have a Material Adverse Effect, (in such form as may be reasonably required by Agent) copies of all non-privileged, reports, correspondence, pleadings and other communications relating to any matter that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of any Loan Party or Subsidiary; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv) Promptly furnish or cause to be furnished to the Agent notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against any Loan Party or any of its Subsidiaries.

(v) Promptly furnish or cause to be furnished to the Agent notice of all material allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of any Loan Party or any of its Subsidiaries in relation to the provision of clinical research or related services.

Notwithstanding anything to the contrary in any Loan Document, no Loan Party or any of its Subsidiaries shall be required to furnish to Agent or any Lender patient-related or other information, the disclosure of which to Agent or such Lender is prohibited by any applicable law.

#### 6.10 Cure of Violations.

If there shall occur any breach of Section 6.9, Borrower shall take such commercially reasonable action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Health Care Laws, and shall thereafter diligently pursue the same.

6.11 Corporate Compliance Program.

Maintain, and will cause each other Loan Party to maintain on its behalf, a corporate compliance program reasonably acceptable to Agent to attempt to ensure continuing compliance in all material respects with all applicable Health Care Laws. Until the Obligations have been Paid in Full, Borrower will modify such corporate compliance program from time to time (and cause the other Loan Parties and their Subsidiaries to modify their respective corporate compliance programs) as may be reasonable to attempt to ensure continuing compliance in all material respects with all applicable Health Care Laws. Borrower will permit Agent and/or any of its outside consultants to review such corporate compliance programs from time to time upon reasonable notice and during normal business hours of Borrower. Notwithstanding anything to the contrary contained herein, the Agent acknowledges that the corporate compliance program of the Borrower in effect as of the Closing Date is reasonably acceptable to the Agent.

6.12 Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of payment practices) all of its material obligations and liabilities, except when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied.

6.13 Additional Subsidiaries.

(a) Additional Subsidiaries. Promptly after the creation or acquisition of any Subsidiary (and, in any event, within thirty (30) days after such creation or acquisition, as such time period may be extended by Agent in its sole discretion), cause such Person to (i) become a Loan Party by delivering to Agent a duly executed supplement to the Guarantee and Collateral Agreement or such other document as Agent shall approve for such purpose, (ii) grant a security interest in all Collateral (but not any Excluded Collateral as defined in the Guarantee and Collateral Agreement) owned by such Subsidiary by delivering to Agent a duly executed supplement to each applicable Collateral Document or such other document as Agent shall reasonably deem appropriate for such purpose and comply with the terms of each applicable Collateral Document, (iii) deliver to Agent such customary opinions, documents and certificates referred to in Section 4.2 as may be reasonably requested by Agent, (iv) deliver to Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests in such Person, (v) deliver to Agent such updated Schedules to the Loan Documents as reasonably requested by Agent with respect to such Person, (vi) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time, and (vii) deliver to Agent such other documents as may be reasonably requested by Agent in order to comply with this Section 6.13, all in form, content and scope reasonably satisfactory to Agent.

(b) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to an Acquisition permitted hereby, and such new Subsidiary at no time holds any material assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction (provided, however, that such merger consideration shall not be held by such new Subsidiary for more than five (5) Business Days without the approval of Agent in its reasonable discretion), such new Subsidiary shall not be required to take the actions set forth in Section 6.13(a) until the consummation of such Acquisition (at which time, the surviving entity of the respective merger transaction shall be required

to so comply with Section 6.13(a) within thirty (30) days of the consummation of such Acquisition, as such time period may be extended by Agent in its sole discretion).

6.14 SEC Registration.

Within thirty (30) days of the Closing Date, Borrower shall file a Form S-3 Registration Statement with the Securities and Exchange Commission for any issuance of Equity Interests or Subordinated Debt, on terms reasonably satisfactory to Agent (including the execution of a subordination agreement in favor of Agent, if applicable) for an anticipated aggregate offering price equal to the lesser of (a) \$20,000,000 and (b) the maximum amount the Borrower is permitted to register pursuant to General Instruction I.B.6 of Form S-3.

Section 7 Negative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, in its sole discretion, it will:

7.1 Debt.

Not, and not permit any other Loan Party to, create, incur, assume or suffer to exist any Debt, except:

- (a) Obligations under this Agreement and the other Loan Documents;
- (b) Subordinated Debt approved by Agent;
- (c) Debt secured by Liens permitted by Section 7.2(b), Section 7.2(d) or Section 7.2(n) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(d) at any time outstanding shall not exceed \$250,000;
- (d) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;
- (e) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party incurred in the ordinary course of business, or (iii) representing trade payables incurred with suppliers in the ordinary course of business and customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
- (f) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;
- (g) Debt incurred in connection with surety bonds, performance bonds or letters of credit for worker's compensation, unemployment compensation and other types of social security and otherwise in the ordinary course of business or referred to in Section 7.2(e);

(h) unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Loan Parties in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding \$250,000;

(i) Debt among the Loan Parties, subject to a subordination agreement, in form and substance acceptable to Agent in its sole discretion;

(j) Debt under (i) any Approved AR Loan Facility; *provided* that the aggregate amount at any time outstanding in relation to such Approved AR Loan Facility shall not exceed \$8,000,000 without the written consent of Agent, or (ii) the Ligand Royalty Agreement;

(k) unsecured Debt incurred as a result of endorsing negotiable instruments received in the ordinary course of business; and

(l) Debt in connection with real property leases.

## 7.2 Liens.

Not, and not permit any other Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement has occurred;

(b) Liens arising in the ordinary course of business (including without limitation (i) Liens of carriers, warehousemen, mechanics, landlords and materialmen and other similar Liens imposed by law and (ii) Liens incurred in connection with worker's compensation, unemployment compensation and other types of social security or in connection with surety bonds, bids, tenders, performance bonds, trade contracts not for borrowed money, licenses, statutory obligations and similar obligations) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement of which is effectively stayed;

(c) Liens securing the (i) Approved AR Loan Facility, or (ii) Ligand Royalty Agreement;

(d) (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased), (ii) Liens on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring or improving such property; *provided* that any such Lien attaches to such property within two hundred seventy (270) days of the acquisition or improvement thereof and attaches solely to the property so acquired or improved, and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);

(e) Liens relating to litigation bonds and attachments, appeal bonds, judgments and other similar Liens arising in connection with any judgment or award that is not an Event of Default hereunder;

(f) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower or any other Loan Party;

(g) Liens arising under the Loan Documents;

(h) any interest or title of a licensor, sublicensor, lessor or sublessor under any license, lease, sublicense or sublease agreement entered into in the normal course of business, only to the extent limited to the item licensed or leased;

(i) (i) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) customary set off rights of deposit banks with respect to deposit accounts maintained at such deposit banks or which are contained in standard agreements for the opening of an account with a bank;

(j) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by a Loan Party in the ordinary course of business;

(k) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(l) Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(m) Liens to secure obligations of a Loan Party to another Loan Party;

(n) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums; and

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods.

### 7.3 Dividends: Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, other than dividends or distributions declared, paid or made to a Loan Party or in the form of Equity Interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof; provided, that (1) any Subsidiary may make dividends or distributions to any Loan Party, and (2) Loan Parties may make payments to holders of Subordinated Debt in accordance with the terms of the applicable subordination agreement.

7.4 Mergers; Consolidations; Asset Sales.

(a) Not be a party to any amalgamation or any other form of Division, merger or consolidation, unless agreed to by Agent in its sole discretion, nor permit any other Loan Party to be a party to any Division, amalgamation or any other form of merger or consolidation, unless agreed to by Agent in its reasonable discretion.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests, except for (i) sales of Inventory in the ordinary course of business for at least fair market value and (ii) transfers, destruction or other disposition of obsolete or worn-out assets in the ordinary course of business, (iii) [reserved], (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, "eminent domain" or similar proceeding, (xiii) sales and dispositions among Subsidiaries of Borrower, and (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with (a) licenses of patent rights granted by Elutia Med LLC to CorMatrix pursuant to the Cross License Agreement, or (b) the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party's business, (ii) on an arms-length basis and (iii) prior to the occurrence of an Event of Default.

7.5 Modification of Organizational Documents.

Not permit the charter, articles, by-laws or other organizational documents of Borrower or any other Loan Party to be amended or modified in any way which would reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower's certificate of incorporation to increase Borrower's authorized capital stock shall not be deemed to adversely affect the interests of Agent or any Lender.

7.6 Use of Proceeds.

Use the proceeds of the Loans solely to refinance the Prior Debt, if any, and otherwise for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, and for other general business purposes of Borrower and its Subsidiaries.

7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable

compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties, (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7, and (iv) such transactions in which the value of such arrangements, transactions, and contracts in the aggregate do not exceed \$250,000 on an annual basis.

7.8 Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on any of its assets (other than Permitted Liens) or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any other Loan Party to (i) pay dividends or make other distributions to Borrower or any other Loan Party, or pay any Debt owed to Borrower or any other Loan Party, (ii) make loans or advances to Borrower or any other Loan Party or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, (D) those arising under any Loan Document or any loan documents governing any Subordinated Debt, Approved AR Loan Facility, or Ligand Royalty Agreement and (E) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

7.9 Business Activities.

Not, and not permit any other Loan Party to, engage in any line of business other than the businesses engaged in on the Closing Date and businesses reasonably related thereto or extensions thereof.

7.10 Investments.

Not, and not permit any other Loan Party to, make or permit to exist any Investment in any other Person, except the following:

(a) The creation of any Wholly-Owned Subsidiary and contributions by Borrower to the capital of any Wholly-Owned Subsidiary of Borrower, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.14;

(b) Cash Equivalent Investments;

(c) bank deposits in the ordinary course of business;

(d) any purchase or other acquisition by Borrower or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;

(e) transactions among Loan Parties permitted by Section 7.4;

- (f) Hedging Obligations permitted under Section 7.1(d);
- (g) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;
- (h) Investments consisting of the non-cash portion or any deferred portion of the consideration received by a Loan Party in connection with any Disposition permitted under Section 7.4 in an aggregate amount not to exceed \$5,000,000 at any time;
- (i) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or expropriation proceeds in accordance with the Loan Documents;
- (j) Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;
- (k) Investments in and loans to any Loan Party;
- (l) Investments constituting (i) accounts receivable arising, (ii) trade debt granted, or (iii) deposits made in connection with the purchase price of goods or services, in each case in the ordinary course of business;
- (m) employee loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws);
- (n) loans to employees, officers or directors relating to the purchase of equity securities of Borrower's or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's board of directors (or other governing body), but the aggregate of all such loans outstanding may not exceed \$250,000 at any time; and
- (o) Other investments in an amount not to exceed \$250,000.

7.11 Restriction of Amendments to Certain Documents

Not, nor permit any Loan Party to, amend or otherwise modify in any manner that is materially adverse to the Lenders, or waive any material rights under, any provisions of any of (i) any loan documents governing any Subordinated Debt or Approved AR Loan Facility, or the Ligand Royalty Agreement (except that the terms of any document governing any Subordinated Debt, Approved AR Loan Facility, or Ligand Royalty Agreement may be amended, modified or otherwise waived to the extent permitted under the applicable subordination agreement or Intercreditor Agreement that Agent is a party to in connection therewith), or (ii) any Material Contracts (or any replacements thereof) following the occurrence and continuance of an Event of Default; in either case without the written approval of Agent, except for such amendments that would not be materially adverse to the Agent or Lenders.

7.12 Fiscal Year

Not change its Fiscal Year without prior written notice to Agent.

7.13 Financial Covenants

7.13.1 Minimum Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets, to be less than \$8,000,000 as of any date of determination.

7.13.2 Minimum Aggregate Revenue.

Not permit the Aggregate Revenue for the twelve (12) month period ending on the last Business Day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below) to be less than the applicable amount set forth in the table below for such twelve (12) month period.

Minimum Aggregate Revenue as of the end of:	
Q1 2024 and each Fiscal Quarter thereafter	\$20,000,000

; provided that, Borrower shall be deemed to be in compliance with this Section 7.13.2 as it relates to any period of measure if, as of the applicable date of determination, Borrower has Consolidated Unencumbered Liquid Assets greater than either (i) the outstanding principal balance of the Loan, or (ii) the aggregate Operating Burn for the twelve (12) month period ending on such date of determination.

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. Upon the request of Agent at any time following the occurrence of a Material Adverse Effect, Default or Event of Default, Borrower or such other applicable Loan Party shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, in relation to the Deposit Account(s) selected by Agent.

7.15 Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) within thirty (30) days following such formation or acquisition of any new Subsidiary, such Subsidiary shall have assumed and joined each Loan Document as a Loan Party pursuant to documentation acceptable to Agent in its reasonable discretion and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all representations and warranties under the Loan Documents (except to the extent such representations and warranties specifically relate to a prior date only).

7.16 Regulatory Matters.

To the extent that any of the following would reasonably be expected to result in a Material Adverse Effect, not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) commence any clinical studies in the United States or sponsor the conduct of any clinical research in the United States, other than as required by any applicable law, (iii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iv) permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact to the FDA or any other Governmental Authority, fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or (v) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names; Location of Assets; Change of Chief Executive Office.

Borrower shall not, nor shall it permit any Loan Party to, (a) change its jurisdiction of organization, change the jurisdiction in which its chief executive office is located or change its corporate name without thirty (30) calendar days prior written notice to Agent, (b) amend, alter, suspend, terminate or make provisional in any material way, any Permit, the suspension, amendment, alteration or termination of which would reasonably be expected to be, have or result in a Material Adverse Effect without the prior written consent of Agent, which consent shall not be unreasonably withheld, (c) wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, (d) amend, modify, restate or change any insurance policy in a manner adverse to Agent or Lenders or otherwise allow its aggregate products liability insurance coverage to be less than an amount that is commercially reasonable and consistent with customary industry practices, (e) change its federal tax employer identification number or similar tax identification number under the relevant jurisdiction or establish new or additional trade names without providing not less than thirty (30) days advance written notice to Agent, or (f) permit any of its material tangible personal property to be located in or relocated to any jurisdiction in which Agent has not registered or perfected its security interest without thirty (30) calendar days prior written notice to Agent.

7.18 Truth of Statements.

Borrower shall not knowingly furnish to Agent or any Lender any certificate or other document that contains any untrue statement of a material fact or that omits to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

Section 8 Events of Default; Remedies.

8.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1 Non-Payment of Credit

(a) Default in the payment when due of all outstanding Obligations on the Termination Date; (b) default in the payment of any Revenue-Based-Payment Amount on or before the applicable Payment Date; or (c) without duplication of clause (b) hereof, default, and continuance thereof for five (5) Business Days, in the payment when due of any interest, fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2 Default Under Other Debt

Any "Event of Default" (or such similar defined term) shall occur under the terms applicable to (a) any Debt of any Loan Party (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding \$500,000, (b) the Approved AR Loan Facility, or (c) the Ligand Royalty Agreement.

8.1.3 Bankruptcy; Insolvency.

(a) Any Loan Party shall (i) be unable to pay its debts generally as they become due, (ii) file a petition under any insolvency statute, (iii) make a general assignment for the benefit of its creditors, (iv) commence a proceeding for the appointment of a receiver, trustee, interim receiver, receiver and manager, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (v) make an application or commence a proceeding seeking reorganization or liquidation or similar relief under any Debtor Relief Law or any other applicable law; or

(b) (i) a court of competent jurisdiction shall (A) enter an order, judgment or decree appointing a custodian, receiver, trustee, , interim receiver, receiver and manager, liquidator or conservator of any Loan Party or the whole or any substantial part of any of Loan Party's properties, which shall continue unstayed and in effect for a period of sixty (60) calendar days, (B) approve a petition or claim filed against any Loan Party seeking reorganization, liquidation, appointment of a receiver, interim receiver, liquidator, conservator, trustee or special manager or similar relief under the any Debtor Relief Law or any other applicable law, which is not dismissed within sixty (60) calendar days or, (C) under the provisions of any Debtor Relief Law or other applicable law or statute, assume custody or control of any Loan Party or of the whole or any substantial part of any of Loan Party's properties, which is not irrevocably relinquished within sixty (60) calendar days, or (ii) there is commenced against any Loan Party any proceeding or petition seeking reorganization, liquidation or similar relief under any Debtor Relief Law or any other applicable law or statute, which (A) is not unconditionally dismissed within sixty (60) calendar days after the date of commencement, or (B) is with respect to which Borrower takes any action to indicate its approval of or consent.

8.1.4 Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$500,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of \$500,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$500,000.

8.1.7 Judgments.

Final, non-appealable judgments which exceed an aggregate of \$500,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within sixty (60) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

(a) Any Loan Document shall cease to be in full force and effect otherwise in accordance with its express terms that results in a material diminution of the rights and remedies afforded to Agent and/or Lenders or any other secured parties thereunder; (b) any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Loan Document; or (c) any Lien created pursuant to any Loan Document ceases to constitute a valid first priority perfected Lien (subject to Permitted Liens) on any material portion of the Collateral in accordance with the terms thereof, or Agent ceases to have a valid perfected first priority security interest (subject to Permitted Liens) in any material portion of the Collateral pledged to Agent, for the benefit of Agent and Lenders, pursuant to the Collateral Documents (other than, in each instance, as a result of any action or inaction by Agent).

8.1.9 Invalidity of Subordination Provisions.

Any subordination provision in any document or instrument governing any Subordinated Debt, any Approved AR Loan Facility, or the Ligand Royalty Agreement and any subordination provision in any intercreditor agreement or subordination agreement in relation thereto shall cease to be in full force and effect, or any Loan Party shall contest in any manner the validity, binding nature or enforceability of any such provision

8.1.10 Change of Control.

A Change of Control shall occur that does not result in Payment in Full in accordance with Section 2.8.

8.1.11 Certificate Withdrawals, Adverse Audit Results, and Other Matters.

(a) The institution of any proceeding by FDA, CMS, or any other Governmental Authority to order the withdrawal of any Product or Product category or Service or Service category from the market or to enjoin Borrower or any of its Affiliates from manufacturing, marketing, selling, distributing, or otherwise providing any Product or Product category or Service or Service category that would reasonably be expected to have a Material Adverse Effect, (b) the institution of any action or proceeding by FDA, CMS, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by Borrower or any of its Affiliates or any of their representatives, which, in each case, would reasonably be expected to have a Material Adverse Effect, (c) the commencement of any enforcement action against Borrower or any of its Affiliates by FDA, CMS, or any other Governmental Authority that would reasonably be expected to have a Material Adverse Effect, (d) the recall of any Products or Service from the market, the voluntary withdrawal of any Products or Service from the market, or actions to discontinue the sale of any Products or Service that, in either case, would reasonably be expected to have a Material Adverse Effect, (e) the occurrence of adverse audit or inspection results in connection with a Product or Service which would reasonably be expected to have a Material Adverse Effect, or (f) the occurrence of any event described in clauses (a) through (e) above that would otherwise cause Borrower to be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar Health Care Law.

8.1.12 Material Adverse Effect.

Any Material Adverse Effect shall occur that is not otherwise provided for in this Section 8.1.

8.2 Remedies.

(a) If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other Obligations (including without limitation the Exit Fee and any amounts due pursuant to Section 2.8 hereof, payable with respect thereto) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of an Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any

premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Lenders, or Required Lenders at any place reasonably designated by Agent or Required Lenders in its/their sole discretion, as applicable, and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

(c) The enumeration of any rights and remedies in any Loan Document is not intended to be exhaustive, and all rights and remedies of Agent and Lenders described in any Loan Document are cumulative and are not alternative to or exclusive of any other rights or remedies which Agent and Lenders otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(c) and/or Section 2.10, as applicable, and any Protective Advances shall bear interest at a the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment; Authorization.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

9.2 Delegation of Duties.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3 Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender.

9.5 Notice of Default.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default". Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders. Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; *provided* that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan

Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7 Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand Agent and its Affiliates, directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), based on such Lender's Pro Rata Term Loan Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and out-of-pocket expenses, including Legal Costs, except to the extent any thereof result from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 9.7 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of Agent.

9.8 Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent

resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of Default exists) Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent for the benefit of Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

#### 9.10 Collateral and Guarantee Matters.

Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof to release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1). Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 9.10.

Agent shall release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full, (ii) in respect of property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement) or (iii) subject to Section 10.1, if directed to do so in writing by Required Lenders.

In furtherance of the foregoing, Agent agrees to execute and deliver to Borrower, at Borrower's expense, such termination and release documentation as Borrower may reasonably request to evidence a Lien release that occurs pursuant to terms of this Section 9.10.

9.11 Intercreditor and Subordination Agreements.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into one or more intercreditor agreements and/or subordination agreements in relation to any other Debt of Borrower entered into in accordance with this Agreement or as otherwise approved by Required Lenders, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 9.11). Each Lender further agrees to be bound by the terms and conditions of any such intercreditor agreement and subordination agreement. Each Lender hereby authorizes Agent to issue blockages notices in connection with any such Debt of Borrower and such intercreditor agreement and subordination agreement, or any replacement intercreditor agreement and/or subordination agreement, in its discretion or, at the direction of Required Lenders.

9.12 Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of set-off) without first obtaining the prior written consent of Agent and Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

Section 10 Miscellaneous.

10.1 Waiver: Amendments.

(a) Except as otherwise expressly provided in this Agreement, no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party), by Lenders having aggregate Pro Rata Term Loan Shares of not less than the aggregate Pro Rata Term Loan Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that:

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly affected by such increase), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)), or interest on, the Loans or any fees or other amounts payable hereunder or under the other Loan Documents, or (C) reduce the principal amount of any Loan, the amount or rate of interest thereon, or any fees or other amounts payable hereunder or under the other Loan Documents; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Borrower (with respect to Loan Documents to which Borrower is a party), do any of the following: (A) release any material guaranty under the Guarantee and Collateral Agreement or release all or substantially all of the Collateral granted under the Collateral Documents, except as otherwise specifically provided in this Agreement or the other Loan Documents, (B) change the definition of Required Lenders, (C) change any provision of this Section 10.1, (D) amend the provisions of Section 2.10.2 or Section 2.10.4, or (E) reduce

the aggregate Pro Rata Term Loan Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by Agent, in addition to Borrower and Required Lenders (or all Lenders directly affected thereby or all of the Lenders, as the case may be, in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including without limitation under the provisions of Section 9), under this Agreement or any other Loan Document.

(c) No delay on the part of Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

#### 10.2 Notices.

All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at its address shown on Annex II or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. Borrower, Agent and Lenders each hereby acknowledge that, from time to time, Agent, Lenders and Borrower may deliver information and notices using electronic mail.

#### 10.3 Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied. The explicit qualification of terms or computations by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Debt or other liabilities of any Loan Party or any Subsidiary at "fair value", as defined therein.

#### 10.4 Costs; Expenses.

Borrower agrees to pay on demand the reasonable, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, syndication and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All

Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5 Indemnification by Borrower.

In consideration of the execution and delivery of this Agreement by Agent and Lenders and the agreement to extend the Commitments provided hereunder, Borrower hereby agrees to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any Loan Party or any of their respective officers, directors or agents, including, without limitation, (a) any tender offer, merger, amalgamation, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by Borrower or any other Loan Party, (c) any violation of any applicable Environmental Laws with respect to conditions at any property owned or leased by any Loan Party or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Loan Party or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances, (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result solely from the applicable Lender Party's own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction in a non-appealable judgment, or (f) such Person's general operation of its business including all product liability out of or in connection with such Person's or any of its Affiliates or licensees manufacture use or sale of a Product or the provision of a Service. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement. Notwithstanding the foregoing, this Section 10.5 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

10.6 Marshaling; Payments Set Aside.

Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Agent or any Lender, or Agent or any Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or any Lender in its discretion) to be repaid to a trustee, receiver, interim receiver, receiver and manager, or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the fullest extent permitted by applicable law, to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (b) each Lender severally agrees to pay to Agent upon demand its ratable share of the total amount so recovered from or repaid by Agent to the extent paid to such Lender.

10.7 Non-liability of Lenders.

The relationship between Borrower on the one hand and Lenders and Agent on the other hand shall be solely that of borrower and lender. Neither Agent nor any Lender shall have any fiduciary responsibility to Borrower. Neither Agent nor any Lender undertakes any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. To the fullest extent permitted under applicable law, execution of this Agreement by Borrower constitutes a full, complete and irrevocable release of any and all claims which Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any liability with respect to, and Borrower hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

10.8 Assignments.

10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an "Assignee") all or any portion of such Lender's Loans and Commitments, with the prior written consent of Agent, and, so long as no Event of Default has occurred and is continuing, Borrower (which consents shall not be unreasonably withheld or delayed), provided, however, that no such consent(s) shall be required:

(i) from Borrower for an assignment by a Lender to another Lender, an Affiliate of a Lender, an Approved Fund of a Lender, or any other financial institution (other than a vulture or distressed debt fund) that invests in commercial loans in the ordinary course of its business, but such Lender will give written notice to Borrower of any such assignment;

(ii) from Agent for an assignment by a Lender to an Affiliate of a Lender or an Approved Fund of a Lender;

(iii) from Borrower or Agent for an assignment by SWK, as a Lender, to any Person for which SWK Advisors LLC acts as an investment advisor (or any similar type of representation or agency) pursuant to a written agreement, but SWK will give written notice to Borrower of any such assignment;

(iv) from Borrower or Agent for an assignment by a Lender of its Loans and its Note as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder); or

(v) from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "Assigned Rights"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof,

the term “Permitted Assignee” shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person). Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

(b) From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee’s Pro Rata Term Loan Share (and, as applicable, a Note in the principal amount of the Pro Rata Term Loan Share retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower any prior Note held by it.

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Commitments of, and principal amount of the Loans (and stated interest) owing to, such Lender pursuant to the terms hereof. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(d) Notwithstanding the foregoing provisions of this Section 10.8.1 or any other provision of this Agreement, any Lender may at any time assign all or any portion of its Loans and its Note (i) as collateral security to a Federal Reserve Bank or, as applicable, to such Lender’s trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder) and (ii) to (w) an Affiliate of such Lender which is at least fifty percent (50%) owned (directly or indirectly) by such Lender or by its direct or indirect parent company, (x) its direct or indirect parent company, (y) to one or more other Lenders or (z) to an Approved Fund.

#### 10.9 Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a “Participant”). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender’s obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as

applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and *provided, further*, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

#### 10.10 Confidentiality.

Agent and each Lender to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, except that Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (*provided* that such Persons have been informed of the covenants contained in this Section 10.10); (b) to any assignee, funding source of Agent or any Lender, or participant or potential assignee or participant that has agreed to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of Agent or any Lender; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information, promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such

disclosure *provided, however*, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11 Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.12 Nature of Remedies.

All Obligations of Borrower and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.13 Counterparts: Electronic Signatures.

This Agreement and the other Loan Documents may be executed in counterparts with the same effect as if all parties had executed the same document. All counterparts shall be construed together and shall constitute a single agreement. Further, the parties hereto consent and agree that this Agreement and the other Loan Documents may be signed and/or transmitted by e-mail of any .pdf file, .jpeg file, or any other electronic or image file, or any "electronic signature" as defined under the U.S. Electronic Signatures in Global and National Commerce Act or the New York Electronic Signatures and Records Act, which includes any electronic signature provided using Orbit, Adobe Sign, DocuSign, or any other similar platform identified by the parties hereto and reasonably available at no undue burden or expense to the Agent), except to the extent the Agent requires otherwise. Any such electronic signatures shall be valid, effective and legally binding as if such electronic signatures were handwritten signatures and shall be deemed to have been duly and validly delivered for all purposes hereunder. No party hereto shall raise the use of e-mail or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of e-mail or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

10.14 Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.15 Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

10.16 Successors; Assigns.

This Agreement shall be binding upon Borrower, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent and each Lender.

10.17 Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

10.18 Forum Selection: Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.19 Waiver of Jury Trial

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20 Patriot Act.

Each Lender that is subject to the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the ‘Patriot Act’), and Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and Agent are required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

10.21 Independent Nature of Relationship.

Nothing herein contained shall constitute any Loan Party and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 10.21 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. No Loan Party, Lender, nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Loan Parties and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of any Product or the provision of any Service.

10.22 Approved AR Loan Facility.

Agent and Lenders acknowledge that Borrower may in the future seek a revolving loan facility to be secured by a first lien security interest in Borrower’s Inventory and accounts receivable generated by product sales in the normal course of business; *provided* that (a) any such loan facility will be (i)(x) in a maximum principal amount of \$8,000,000, (y) subject to an advance rate of no greater than eighty-five percent (85%) in respect of such accounts receivable and Inventory, in each case unless otherwise agreed to in writing by Agent in its sole discretion, and (ii) subject to an intercreditor agreement acceptable to Agent in its commercially-reasonable discretion, and (b) the material terms and conditions of such revolving loan facility shall be acceptable to Agent in its commercially-reasonable discretion (such revolving loan facility, together with any replacement revolving loan facility as approved by Agent that is subject to an Intercreditor Agreement, collectively an “Approved AR Loan Facility”). So long as no Default or Event of Default has occurred and is continuing, Agent and Borrower agree to work together in good faith, and at Borrower’s sole cost and expense, to negotiate and enter into such amendments to this Agreement and such other Loan Documents as may be necessary to permit such Debt owing under any Approved AR Loan Facility, to release and/or subordinate such Liens as may be necessary to effectuate any such Approved AR Loan Facility, and to enter into such third party documents as may be reasonably requested by Borrower and/or the revolving loan lender under any such Approved AR Loan Facility.

*[Remainder of page intentionally blank; signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

[Signature Blocks Intentionally Removed]

[Aziyo] Credit Agreement

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## CERTIFICATIONS

I, C. Randal Mills, Ph.D., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2025 of Elutia Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 13, 2025

By: \_\_\_\_\_  
/s/ C. Randal Mills, Ph.D.  
C. Randal Mills, Ph.D.  
*President and Chief Executive Officer*  
*(principal executive officer)*

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## CERTIFICATIONS

I, Matthew Ferguson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2025 of Elutia Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 13, 2025

By: \_\_\_\_\_  
/s/ Matthew Ferguson  
Matthew Ferguson  
Chief Financial Officer  
(principal financial officer)

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

In connection with the Quarterly Report of Elutia Inc. (the "Company") on Form 10-Q for the quarterly period ended March 31, 2025 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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, as amended;  
and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 13, 2025

By: \_\_\_\_\_  
/s/ C. Randal Mills, Ph.D.  
C. Randal Mills, Ph.D.  
*President and Chief Executive Officer*  
*(principal executive officer)*

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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

In connection with the Quarterly Report of Elutia Inc. (the "Company") on Form 10-Q for the quarterly period ended March 31, 2025 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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, as amended;  
and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 13, 2025

By: \_\_\_\_\_  
/s/ Matthew Ferguson  
Matthew Ferguson  
Chief Financial Officer  
(principal financial officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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