As filed with the Securities and Exchange Commission on December 1, 2022

Registration Statement No. 333-_____

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

FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

FENNEC PHARMACEUTICALS INC.

(Exact name of registrant as specified in its charter)

British Columbia, Canada	**20-0442384**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

PO Box 13628, 68 TW Alexander Drive **Research Triangle Park, NC 27709** **(919) 636-4530**	**Rostislav Raykov** **Chief Executive Officer** **Fennec Pharmaceuticals Inc.** **PO Box 13628, 68 TW Alexander Drive** **Research Triangle Park, NC 27709** **(919) 636-4530**
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)	(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies of communications to:

Garett Sleichter, Esq. **Rutan & Tucker, LLP** **18575 Jamboree Road, 9th Floor** **Irvine, CA 92612** **Phone (714) 641-5100** **Fax (714) 546-9035**	**Randy Taylor, Esq.** **LaBarge Weinstein LLP** **515 Legget Drive, Suite 800** **Ottawa, ON K2K 3G4** **Phone (613) 599-9600** **Fax (613) 599-0018**

Approximate date of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☐

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

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. (Check one):

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED DECEMBER 1, 2022

PROSPECTUS

Fennec Pharmaceuticals Inc.

3,914,850 Common Shares

This prospectus relates to the possible resale of up to 3,914,850 of our common shares, no par value per share, from time to time in one or more offerings by the selling stockholder named herein.

Of the 3,914,850 common shares offered for resale by the selling stockholder under this prospectus, up to 3,781,654 common shares are issuable upon the potential conversion of $25 million of senior secured floating rate convertible notes held by the selling stockholder (the "Convertible Notes") and up to 133,196 common shares are issuable upon the potential exercise of warrants to purchase common shares held by the selling stockholder (the "Warrants"). The Convertible Notes and the Warrants were issued pursuant to that certain Securities Purchase Agreement, dated August 1, 2022, between us and the selling stockholder (the "SPA"). The SPA grants the selling stockholder certain customary registration rights, pursuant to which we filed the registration statement of which this prospectus forms a part. Pursuant to the registration rights provisions of the SPA, the number of common shares offered for resale under this prospectus is calculated based on 120% of the total number of common shares issuable upon the conversion in full of the original principal amount of the Convertible Notes and the exercise in full of the Warrants.

The registration of these common shares does not necessarily mean that the selling stockholder will sell any common shares, that the Convertible Notes will be converted into common shares, or that the Warrants will be exercised for common shares. We are not offering for sale any shares of our common stock pursuant to this prospectus and we will not receive any proceeds from the resale of the shares of our common stock offered by this prospectus. To the extent the Warrants are exercised for cash, if at all, we will receive the exercise price for the common shares purchased under the Warrants. However, we cannot predict when or if the Warrants will be exercised, and it is possible that the Warrants may expire and never be exercised, or they will be exercised on a non-cash basis, in accordance with the terms of the Warrants, in which case we will not receive any cash proceeds.

The selling stockholder may offer and sell the common shares covered by this prospectus in a number of different ways and at varying prices. See the section entitled "*Plan of Distribution*" on page 10 of this prospectus for additional information.

We may amend or supplement this prospectus from time to time by filing amendments or supplements as required. You should read the entire prospectus and any amendments or supplements carefully before you make your investment decision.

Our common shares are listed on The Nasdaq Stock Market LLC ("Nasdaq") under the symbol "FENC" and on the Toronto Stock Exchange ("TSX") under the symbol "FRX". The last reported sale price of our common shares on Nasdaq on November 30, 2022, was $9.76 per share.

Investing in our securities involves a high degree of risk. Before you invest in our securities, you should carefully read the section entitled "*Risk Factors*" on page 4 of this prospectus, and other risk factors contained in any applicable prospectus supplement and in the documents incorporated by reference herein and therein.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2022

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission ("SEC") using a "shelf" registration process. Under this shelf registration process, the selling stockholder may, from time to time, offer and sell the common shares described in this prospectus in one or more offerings through any means described in the section entitled "*Plan of Distribution*."

More specific terms of any common shares that the selling stockholder offers and sells may be provided in a prospectus supplement that describes, among other things, the specific amounts and prices of the common shares being offered and the terms of the offering. A prospectus supplement may also add, update or change information included in this prospectus. Any statement contained in this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in such prospectus supplement modifies or supersedes such statement. Any statement so modified will be deemed to constitute a part of this prospectus only as so modified, and any statement so superseded will be deemed not to constitute a part of this prospectus.

You should rely only on the information contained in, or incorporated by reference into, this prospectus and any applicable prospectus supplement. Neither we nor the selling stockholder have authorized anyone to provide you with different or additional information. Neither we nor the selling stockholder take any responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the securities offered hereby and only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information appearing in this prospectus or any prospectus supplement is accurate only as of the date on the front of those documents and any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus or any applicable prospectus supplement, or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.

For investors outside the United States: neither we nor the selling stockholder have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of our securities and the distribution of this prospectus outside the United States.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described under the section titled "*Where You Can Find More Information.*"

Unless the context suggests otherwise, references in this prospectus to "Fennec Pharmaceuticals," the "Company," "we," "us" and "our" refer to Fennec Pharmaceuticals Inc. and its consolidated subsidiaries.

THE COMPANY

We incorporated under the laws of Canada in September 1996. On August 25, 2011, we continued from the laws of Canada under the *Canada Business Corporations Act* (the "CBCA") to the laws of British Columbia in accordance with Section 302 of the *Business Corporations Act* (British Columbia) (the "Continuance").

We are a commercial-stage biopharmaceutical company focused on our only product, PEDMARK®. On September 20, 2022 we received approval from the FDA for PEDMARK® (sodium thiosulfate injection) to reduce the risk of ototoxicity associated with cisplatin in pediatric patients one month of age and older with localized, non-metastatic solid tumors. This approval makes PEDMARK® the first and only treatment approved by the FDA in this area of significant unmet medical need. On October 17, 2022, we announced commercial availability of PEDMARK® in the United States.

We sell our product through an experienced field force including Regional Pediatric Oncology Specialists and medical science liaisons who are helping to educate the medical communities and patients about cisplatin induced ototoxicity and our programs supporting patient access to PEDMARK®.

Further, the Company has established Fennec HEARS™, a comprehensive single source program designed to connect PEDMARK patients to both patient financial and product access support. The program offers assistance and resources, regardless of insurance type, that can address co-pays or lack of coverage when certain eligibility requirements are met. Fennec HEARS also provides access to care coordinators that can answer insurance questions about coverage for PEDMARK and provide tips and resources for managing treatment.

Hearing loss among children receiving platinum-based chemotherapy is frequent, permanent and often severely disabling. The incidence of hearing loss in these children depends upon the dose and duration of chemotherapy, and many of these children require lifelong hearing aids. In addition, adults undergoing chemotherapy for several common malignancies, including ovarian cancer, testicular cancer, and particularly head and neck cancer and brain cancer, often receive intensive platinum-based therapy and may experience severe, irreversible hearing loss, particularly in the high frequencies.

In the U.S. and Europe, it is estimated that, annually, over 10,000 children may receive platinum-based chemotherapy. The incidence of ototoxicity depends upon the dose and duration of chemotherapy. There is currently no established preventive agent for this hearing loss and only expensive, technically difficult and sub-optimal cochlear (inner ear) implants have been shown to provide some benefit. Infants and young children that suffer ototoxicity at critical stages of development lack speech language development and literacy, and older children and adolescents lack social-emotional development and educational achievement.

THE OFFERING

Common shares offered by the selling stockholder	3,914,850 common shares, of which up to 3,781,654 common shares are issuable upon the potential conversion of the Convertible Notes and up to 133,196 common shares are issuable upon the potential exercise of the Warrants.
Terms of offering	The selling stockholder will determine when and how it will sell common shares offered pursuant to this prospectus. See "*Plan of Distribution*."
Common shares to be outstanding after this offering (1)	30,175,492 common shares (assuming the conversion in full of the Convertible Notes and the exercise in full of the Warrants).
Use of proceeds	We will not receive any of the proceeds from the sale of common shares being offered under this prospectus, except with respect to amounts received by us upon the exercise of the Warrants for cash. Unless we inform you otherwise in a prospectus supplement, we plan to use the net proceeds from any cash exercise of the Warrants for general corporate purposes. See "*Use of Proceeds*."
Risk factors	Investing in our common shares involves a high degree of risk. Before you invest in our common shares, you should carefully read the section entitled "*Risk Factors*" on page 4 of this prospectus, and other risk factors contained in any applicable prospectus supplement and in the documents incorporated by reference herein and therein.
Exchange listing	Our common shares are listed on Nasdaq under the symbol "FENC" and on the TSX under the symbol "FRX". The last reported sale price of our common shares on Nasdaq on November 30, 2022, was $9.76 per share.

(1) The number of common shares to be outstanding after this offering is based on 26,260,642 common shares issued and outstanding on November 21, 2022 and excludes as of that date the following:

- 4,593,958 common shares issuable upon the exercise of outstanding options having a weighted average exercise price of $5.44 per share (Canadian denominated exercise prices converted using the November 21, 2022 exchange rate of 0.75 CAD/USD);
- 39,130 common shares issuable upon the exercise of outstanding warrants (other than the Warrants) having an exercise price of $6.80 per share; and
- 1,971,203 additional common shares reserved for issuance under our stock option plan.

Unless otherwise indicated, all information in this prospectus assumes no exercise of the outstanding options or the outstanding warrants described above (other than exercise of the Warrants).

RISK FACTORS

An investment in our common shares involves a high degree of risk. In deciding whether to invest in our common shares, you should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, any subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, and all other information contained or incorporated by reference into this prospectus, as updated by our subsequent filings under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the risk factors and other information contained in any applicable prospectus supplement. The risks described in these documents are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. Past financial performance may not be a reliable indicator of future performance, and historical trends should not be used to anticipate results or trends in future periods. If any of these risks actually occurs, our business, financial condition, results of operations or cash flow could be materially adversely affected. This could cause the trading price of our common shares to decline, resulting in a loss of all or part of your investment. Please also carefully read the section entitled "Cautionary Note Regarding Forward-Looking Statements."

Additional Risks Related to this Offering

Sales of substantial amounts of our common shares by the selling stockholder, or the perception that these sales could occur, could adversely affect the price of our common shares.

We are registering the offer and sale of the common shares covered by this prospectus to satisfy the registration rights we granted to the selling stockholder pursuant to the SPA, so that the common shares may be offered for sale into the public market by the selling stockholder. The number of common shares covered by this prospectus is significant in relation to our historical trading volume. The sale by the selling stockholder of all or a significant portion of the common shares covered by this prospectus could have a material adverse effect on the market price of our common shares. In addition, the perception in the public markets that the selling stockholder might sell all of a portion of the common shares covered by this prospectus could also, in and of itself, have a material adverse effect on the market price of our common shares.

The conversion of the Convertible Notes and the Warrants could substantially dilute your investment.

Under the terms of the Convertible Notes and the Warrants, the selling stockholder has an opportunity to profit from a rise in the market price of our common shares that, upon conversion of the Convertible Notes or exercise of the Warrants, could result in dilution to the other holders of our common shares.

We would have to pay liquidated damages if we fail to meet our registration rights obligations to the selling stockholder, which would increase our expenses and reduce our cash resources.

Pursuant to the terms of the SPA, subject to certain limited exceptions, if the registration statement of which this prospectus forms a part has not been declared effective within the time periods specified in the SPA or we otherwise fail to maintain the effectiveness of the registration statement (subject to certain allowable grace periods), we will be required to pay the selling stockholder liquidated damages until the applicable event is cured. There can be no assurance that the registration statement of which this prospectus forms a part will be declared effective by the SEC or will remain effective for the time periods necessary to avoid payment of liquidated damages. Any payment of liquidated damages would increase our expenses, reduce our cash resources and could materially adversely affect our operations.

Future sales or issuances of our common shares may dilute the ownership interest of existing shareholders and depress the trading price of our common shares.

We cannot predict the effect, if any, that future sales of our common shares, or the availability of our common shares for future sale, will have on the market price of our common shares. Future sales or issuances of our common shares may dilute the ownership interests of our existing shareholders, including purchasers of common shares in this offering. In addition, future sales or issuances of substantial amounts of our common shares may be at prices below the offering price of the shares offered by this prospectus and may adversely impact the market price of our common shares and the terms upon which we may obtain additional equity financing in the future. The perception that such sales or issuances may occur could also negatively impact the market price of our common shares.

CAUTIONARY NOTE REGARDING FORWARD LOOKING STATEMENTS

This prospectus and the documents that are incorporated by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Exchange Act. These forward-looking statements may concern possible or anticipated future results of operations or business developments. These statements are based on management's current expectations or predictions of future conditions, events or results based on various assumptions and management's estimates of trends and economic factors in the markets in which we are active, as well as our business plans. Words such as "expects", "anticipates", "intends", "plans", "believes", "seeks", "estimates", "projects", "forecasts", "may", "should", variations of such words and similar expressions are intended to identify such forward-looking statements. The forward-looking statements may include, without limitation, statements regarding product development, product potential, regulatory environment, sales and marketing strategies, capital resources, operating performance, or the closing of this offering. The forward-looking statements are subject to risks and uncertainties, which may cause results to differ materially from those set forth in the statements. Forward-looking statements should be evaluated together with the many uncertainties that affect the Company's business and its market, particularly those discussed under the section entitled "*Risk Factors*", as well as any amendments to such risk factors reflected in our subsequent filings with the SEC. Forward-looking statements include, but are not limited to, statements about:

- our ability to successfully commercialize PEDMARK®;
- the nature and scope of potential markets for PEDMARK®;
- the rate and degree of market acceptance of PEDMARK®;
- our ability to obtain and maintain regulatory approval of PEDMARK®;
- the benefits of the use of PEDMARK®;
- our ability to maintain, or recognize the anticipated benefits of, orphan drug designation for PEDMARK®;
- our efforts to pursue collaborations with other companies and third parties;
- our ability to obtain funding for our future operations and working capital requirements and expectations regarding the sufficiency of our capital resources;
- our expectations regarding the impact of the ongoing COVID-19 pandemic, inflation and rising interest rates on our business, industry and the economy;
- our ability to protect our intellectual property;
- our corporate and development strategies;
- our expected results of operations;
- our anticipated levels of expenditures; and
- our ability to attract and retain key employees.

Forward-looking statements are not guarantees of future performance, and actual results may differ materially from those projected. The forward-looking statements are representative only as of the date they are made, and we assume no responsibility to update any forward-looking statements except as required by law.

We may from time to time provide estimates of the potential United States and foreign market for PEDMARK®. These estimates are based on a number of factors, including our expectation as to the number of patients with a certain medical condition that would potentially benefit from PEDMARK®. While we have determined these estimates based on assumptions that we believe are reasonable, there are a number of factors that could cause our expectations to change or not be realized. See the section entitled "*Risk Factors*", as well as any amendments to such risk factors reflected in our subsequent filings with the SEC. It is possible that the ultimate market for our product candidate will differ significantly from our expectations due to these or other factors and, therefore, investors should not place undue reliance on such estimates.

USE OF PROCEEDS

All of the common shares offered by this prospectus are being registered for the account of the selling stockholder. We are not offering for sale any shares of our common stock pursuant to this prospectus and we will not receive any proceeds from the resale of the shares of our common stock offered by this prospectus. We have agreed to pay all costs, expenses and fees relating to the registration of common shares covered by this prospectus. The selling stockholder will bear all commissions and discounts, if any, attributable to the sale of the common shares.

We may, however, receive cash proceeds equal to the exercise price of the Warrants that the selling stockholder may exercise, to the extent the Warrants are exercised for cash. Any sale of these common shares presumes that the selling stockholder will have exercised some or all of the Warrants. The Warrants have an exercise price of $8.11 per share. If the Warrants were exercised for cash with respect to all 110,996 common shares issuable under the Warrants, we would receive gross proceeds of approximately $0.9 million. Unless we inform you otherwise in a prospectus supplement, we plan to use the net proceeds from any cash exercise of the Warrants for general corporate purposes.

We cannot predict if or when the Warrants will be exercised, and it is possible that the Warrant may expire and never be exercised. In addition, the selling stockholder has the option to exercise the Warrants on a cashless basis. If the Warrants are exercised on a cashless basis, we will not receive any proceeds from the exercise of the Warrants. As a result, we may never receive meaningful, or any, cash proceeds from the exercise of the Warrants, and we cannot plan on any specific uses of any proceeds we may receive beyond the general corporate purposes described above.

DESCRIPTION OF CAPITAL STOCK

The following summary of the terms of our capital stock does not purport to be complete and is subject to and qualified in its entirety by reference to our Notice of Articles and Articles, each of which may be further amended from time to time and both of which are incorporated herein by reference.

General

As of November 21, 2022, our authorized capital stock consists of an unlimited number of common shares, no par value per share, of which 26,260,642 common shares were issued and outstanding as of that date.

Common Shares

Pursuant to our Notice of Articles and Articles, we are authorized to issue an unlimited number of common shares, no par value. Each holder of a common share is entitled to one vote for each common share held on all matters submitted to a vote of shareholders. We have not provided for cumulative voting for the election of directors in our Notice of Articles or Articles. This means that the holders of a majority of the shares voted can elect all of the directors then standing for election. The holders of outstanding our common shares are entitled to receive dividends out of assets legally available at the times and in the amounts that our board of directors may determine from time to time.

Holders of common shares have no preemptive subscription, redemption or conversion rights or other subscription rights. Upon our liquidation, dissolution or winding-up, the holders of common shares are entitled to share in all assets remaining after payment of all liabilities. The rights of the holders of our common shares are subject to, and may be adversely affected by, the rights of holders of shares of any preferred stock that we may designate and issue in the future. Each outstanding common share is, and all common shares to be issued in this offering, when they are paid for, will be fully paid and non-assessable.

Computershare is the transfer agent for our common shares.

Our common shares are listed on Nasdaq under the symbol “FENC” and on the TSX under the symbol “FRX”.

Exchange Controls, Restrictions on Voting or Ownership

There is currently no law, governmental decree or regulation in Canada that restricts the export or import of capital, or which would affect the remittance of dividends, interest or other payments by us to a non-resident holder of our common shares, other than applicable tax requirements.

There is currently no limitation imposed by the laws of Canada or by our Notice of Articles or Articles on the right of a non-resident to hold or vote our common shares, other than those imposed by the *Investment Canada Act* and the *Competition Act* (Canada). These acts will generally not apply except where control of an existing Canadian business or company, which has Canadian assets or revenue over a certain threshold, is acquired and will not apply to trading generally of securities listed on a stock exchange. A reviewable acquisition may not proceed unless the relevant minister is satisfied that the investment is likely to be of net benefit to Canada.

Shareholders' Rights Plan

We adopted a shareholder rights plan agreement (the “Rights Plan”) on June 27, 2017. The Rights Plan was adopted to ensure, to the extent possible, that all of our shareholders are treated fairly and equally in connection with any take-over bid or other acquisition of control. Generally stated, the Rights Plan is designed to address this purpose by requiring any potential transaction that will result in a person (an “Acquirer”) owning, in the aggregate, 20% or more of our outstanding common shares (inclusive of any common shares held by the Acquirer, its associates and affiliates, and any person acting jointly or in concert with any of them (collectively, the “Acquirer Group”)) to be structured as a formal take-over bid that satisfies certain minimum requirements relating primarily to the manner in which the bid must be made, the minimum number of days the bid must remain open, and the minimum number of shares that must be acquired under the bid. Non-compliant transactions may, through the operation of the Rights Plan and the rights issued thereunder, result in the Acquirer Group’s common share position in us being substantially diluted. Consequentially, the Rights Plan incentivizes the Acquirer to structure its proposed transaction in a manner that complies with the minimum requirements prescribed by the Rights Plan, thereby helping fulfill the purpose of the Rights Plan. One right (a “Right”) is issued and attached to each common share. This includes all common shares issued as of the effective date of the Rights Plan and all common shares issued after the effective date of the Rights Plan but prior to the eighth trading day after the earlier of public announcement of a take-over bid (other than a take-over bid that is a permitted bid or a competing permitted bid, as the case may be, under the Rights Plan) or the date upon which a permitted bid or competing permitted bid under the Rights Plan ceases to be such, or such later date as may be determined by our board of directors.

SELLING STOCKHOLDER

Pursuant to the terms of the SPA that we entered into with the selling stockholder, we may issue up to $45 million in Convertible Notes to the selling stockholder, issuable in multiple tranches on terms and subject to various conditions set forth in the SPA. As of the date of this prospectus, we have issued $25 million in Convertible Notes to the selling stockholder, $5 million on August 19, 2022 and $20 million on September 23, 2022. The remaining $20 million of Convertible Notes available under the SPA may be issued in tranches of $10 million each upon mutual agreement of us and the selling stockholder. The SPA grants the selling stockholder certain customary registration rights, pursuant to which we filed the registration statement of which this prospectus forms a part.

The Convertible Notes are secured by a first priority security interest in substantially all of our assets. Unless earlier converted or redeemed, the Convertible Notes will mature on August 19, 2027. The outstanding balance of the Convertible Notes (including any paid-in-kind interest) accrues interest at a rate equal to the sum of (i) the greater of (a) US Prime Rate or (b) three and one-half percent (3.5%), plus (ii) four and one-half percent (4.5%), payable quarterly on the first business day of each calendar quarter. Through August 19, 2024, interest equal to three and one-half percent (3.5%) on the outstanding balance of the Convertible Notes will be paid-in-kind; after August 19, 2024, such interest will be paid in cash. Subject to our redemption right described below, we may not prepay any principal balance (including any paid-in-kind interest) of the Convertible Notes prior to the maturity date without the consent of the stockholder.

At any time when the Convertible Notes remain outstanding, the selling stockholder may, at its option, convert the outstanding balance of the Convertible Notes (including all accrued and unpaid interest) into our common shares at a conversion price of: (i) $8.11 per common share for the $5 million Convertible Note issued on August 19, 2022, and (ii) $7.89 per common share for the $20 million Convertible Note issued on September 23, 2022.

At any time after August 19, 2025 but prior to the maturity date, the Company may, subject to the satisfaction of certain conditions set forth in the SPA, redeem all, but not less than all, of the outstanding Convertible Notes in cash at a premium on the redeemed amount equal to: (a) if redeemed prior to August 19, 2026, 110%; and (b) if redeemed after August 19, 2026 but on or prior to the maturity date, 107.5% (the “Redemption Premium”).

We issued the Warrants to the selling stockholder as payment of our committee fee under the SPA. The Warrants grant the selling stockholder the right to purchase up to 110,996 shares of our common shares at a price of $8.11 per share. The Warrants expire on August 19, 2027 as to 55,498 shares and September 23, 2027 as to the remaining 55,498 shares. The selling stockholder has the option to exercise the Warrants for cash or on a cashless basis.

When we refer to the “selling stockholder” in this prospectus, we mean the entity listed in the table below, its permitted transferees and others who later come to hold any of the selling stockholder’s interest in the common shares other than through a public sale. Pursuant to the registration rights provisions of the SPA, the number of common shares shown in the table below as being offered for resale by the selling stockholder under this prospectus is calculated based on 120% of the total number of common shares issuable upon the conversion in full of the original principal amount of the Convertible Notes and the exercise in full of the Warrants.

The table below sets forth, to our knowledge based on information supplied to us by the selling stockholder, the number of common shares beneficially owned by the selling stockholder prior to this offering (based on the 120% calculation noted above), the maximum number of common shares to be offered for resale by the selling stockholder pursuant to this prospectus, and the number of common shares that will be beneficially owned by the selling stockholder after completion of this offering, in each case without regard to any limitation on the conversion of the Convertible Notes or exercise of the Warrants.

The percentages of beneficial ownership in the table below is based on 26,260,642 of our common shares outstanding as of November 21, 2022. Beneficial ownership is determined in accordance with Rule 13d-3 under the Exchange Act, and includes any shares as to which the selling stockholder has sole or shared voting power or investment power, and also any shares which the selling stockholder has the right to acquire within 60 days of November 21, 2022, whether through the exercise or conversion of any stock option, convertible security, warrant or other right.

	Prior to Offering			After Offering	
Name	**Number of Shares Beneficially Owned (1)**	**Percentage of Shares Beneficially Owned**	**Number of Shares Offered (1)**	**Number of Shares Beneficially Owned**	**Percentage of Shares Beneficially Owned**
Petrichor Opportunities Fund I LP (2)	3,914,850	12.97%	3,914,850	–	–

(1) Calculated based on 120% of the total number of common shares issuable upon the conversion in full of the original principal amount of the Convertible Notes and the exercise in full of the Warrants.

(2) Petrichor Opportunities Fund I LP and its general partner, Petrichor Opportunities Fund I GP LLC, have retained Petrichor Healthcare Capital Management LP to manage the investment program of Petrichor Opportunities Fund I LP. In that capacity, Petrichor Healthcare Capital Management LP exercises investment discretion and voting control over our securities held by Petrichor Opportunities Fund I LP. The address for this beneficial owner is 220 East 42nd Street, 37th Floor, New York, NY 10017. By virtue of his control over Petrichor Healthcare Capital Management LP, Tadd S. Wessel may be deemed to share voting and investment power over our securities owned by Petrichor Opportunities Fund I LP and he expressly disclaims beneficial ownership of the shares owned by Petrichor Opportunities Fund I LP.

PLAN OF DISTRIBUTION

The selling stockholder may, from time to time, sell any or all of the common shares covered by this prospectus on Nasdaq or any other stock exchange, market or trading facility on which the common shares are traded or in private transactions. These sales may be at fixed or negotiated prices. The selling stockholder may use any one or more of the following methods when selling the common shares:

- ordinary brokerage transactions and transactions in which a broker-dealer solicits purchasers;
- block trades in which a broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- in transactions through a broker-dealer that agrees with the selling stockholder to sell a specified number of the common shares at a stipulated price per share;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The selling stockholder may also sell shares under Rule 144 under the Securities Act, if available, rather than under this prospectus.

Broker-dealers engaged by the selling stockholder may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholder (or, if any broker-dealer acts as agent for the purchaser of common shares, from the purchaser) in amounts to be negotiated.

In connection with the sale of the common shares or interests therein, the selling stockholder may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common shares in the course of hedging the positions they assume. The selling stockholder may also sell common shares short and deliver the common shares covered by this prospectus to close out their short positions, or loan or pledge the common shares to broker-dealers that in turn may sell the common shares. The selling stockholder may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities that require the delivery to such broker-dealer or other financial institution of common shares offered by this prospectus, which common shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

We are required to pay certain fees and expenses incurred by us incident to the registration of the common shares. We have also agreed to indemnify the selling stockholder against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

The selling stockholder may be deemed to be statutory underwriters under the Securities Act. In addition, any broker-dealers who act in connection with the sale of the common shares under this prospectus may be deemed to be “underwriters” within the meaning of Section 2(11) of the Securities Act, and any commissions received by them and profit on any resale of the common shares as principal may be deemed to be underwriting discounts and commissions under the Securities Act. Because the selling stockholder may be deemed to be an “underwriter” within the meaning of the Securities Act, it may be subject to the prospectus delivery requirements of the Securities Act, including Rule 172 thereunder.

The selling stockholder has acknowledged that it understands its obligations to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M.

We agreed to keep this prospectus effective with respect to the common shares offered by the selling stockholder hereunder until the earlier of the selling stockholder's sale of the common shares pursuant to this prospectus or until such shares may be sold without restrictions or other limitations (including, without limitation, volume restrictions) pursuant to Rule 144 (or any successor provision) under the Securities Act and without the need for current public information required by Rule 144(c)(1).

We will make copies of this prospectus available to the selling stockholder and have informed it of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

There can be no assurance that the selling stockholder will sell any or all of the common shares registered pursuant to the registration statement of which this prospectus forms a part.

We are not aware of any plans, arrangements or understandings between the selling stockholder and any underwriter, broker-dealer or agent regarding the sale of common shares by the selling stockholder.

We will pay all expenses incident to the preparation and filing of the registration statement of which this prospectus forms a part, estimated to be $45,000. These expenses include accounting and legal fees in connection with the preparation of the registration statement, legal and other fees in connection with the qualification of the sale of the common shares under the laws of certain states (if any), registration and filing fees, and other expenses.

MATERIAL UNITED STATES AND CANADIAN TAX CONSEQUENCES OF THIS OFFERING

Material U.S. Federal Income Tax Considerations

The following summary describes the material U.S. federal income tax consequences to U.S. Holders (as defined below) of acquiring, owning, and disposing of our common shares acquired pursuant to this prospectus, subject to the qualifications set forth herein.

General

Tax Consequences Not Addressed

This summary does not address all potential U.S. federal income tax considerations that may be relevant to a particular U.S. Holder. In addition, this summary does not take into account the individual facts and circumstances that may affect the U.S. federal income tax consequences to a particular U.S. Holder, including specific tax consequences under an applicable income tax treaty. Accordingly, this summary is not intended to be, and should not be construed as, legal or U.S. federal income tax advice with respect to any U.S. Holder. This summary does not address any U.S. federal alternative minimum, U.S. federal estate and gift, U.S. state and local, or non-U.S. tax considerations, and does not discuss tax reporting requirements that may be applicable to any particular U.S. Holder. Each prospective investor should consult a professional tax advisor with respect to the U.S. federal income, U.S. alternative minimum, U.S. federal estate and gift, U.S. state and local, and non-U.S. tax consequences of acquiring, owning, and disposing of our common shares.

Authorities

This summary is based upon the provisions of the United States Internal Revenue Code (the "Code"), the United States Treasury Regulations (whether final, temporary, or proposed) promulgated thereunder, the Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital, signed September 26, 1980, as amended (the "Canada-U.S. Tax Convention"), and administrative rulings and judicial decisions interpreting the Code and the United States Treasury Regulations, all as currently in effect, and all subject to differing interpretations or change, possibly on a retroactive basis. We have not sought, and will not seek, a ruling from the IRS regarding any matter discussed herein, and no assurance can be given that the IRS would not assert, or that a court would not sustain, a position that is different from, and contrary to, the positions taken in this summary. This summary does not discuss the potential effects, whether adverse or beneficial, of any proposed legislation.

U.S. Holders

For purposes of this summary, the term "U.S. Holder" means a beneficial owner of common shares acquired pursuant to this prospectus that is for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States (as determined under U.S. federal income tax rules);
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of any political subdivision of the United States;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust that (i) is subject to the primary supervision of a court within the United States and the control of one or more U.S. persons for all substantial decisions or (ii) has a valid election in effect under applicable United States Treasury Regulations to be treated as a U.S. person.

An individual may be a resident for U.S. federal income tax purposes in any calendar year if the individual was present in the United States for at least 31 days in that calendar year and for an aggregate of at least 183 days during the three-year period ending with the current calendar year. For purposes of this calculation, all of the days present in the current year, one-third of the days present in the immediately preceding year, and one-sixth of the days present in the second preceding year are counted. Residents are taxed for U.S. federal income tax purposes as if they were U.S. citizens.

Non-U.S. Holders Not Addressed

For purposes of this summary, a "non-U.S. Holder" is a beneficial owner of common shares that is not a U.S. Holder and is not a partnership for U.S. federal income tax purposes. This summary does not address the U.S. federal income tax consequences to non-U.S. Holders of acquiring, owning, and disposing of common shares. Each non-U.S. Holder investor should consult a professional tax advisor with respect to the U.S. federal income, U.S. alternative minimum, U.S. federal estate and gift, U.S. state and local, and non-U.S. tax consequences of acquiring, owning, and disposing of our common shares.

Certain U.S. Holders Not Addressed

This summary does not address the U.S. federal income tax considerations applicable U.S. Holders that are subject to special provisions under the Code, including, but not limited to, U.S. Holders that:

- are tax-exempt organizations, qualified retirement plans, individual retirement accounts, or other tax-deferred accounts;
- are financial institutions, underwriters, insurance companies, real estate investment trusts, or regulated investment companies;
- are broker-dealers, dealers, or traders in securities or currencies that elect to apply a mark-to-market accounting method;
- have a "functional currency" other than the U.S. dollar;
- own common shares as part of a straddle, hedging transaction, conversion transaction, constructive sale, or other arrangement involving more than one position;
- acquired common shares in connection with the exercise of employee stock options or otherwise as compensation for services;
- hold common shares other than as a capital asset within the meaning of section 1221 of the Code (generally, property held for investment purposes);
- are partnerships or other "pass-through" entities for U.S. federal income tax purposes (or investors in such partnerships or entities);
- own, have owned, or will own (directly, indirectly, or by attribution) 10% or more of the total combined voting power of the outstanding shares of your company;
- are U.S. expatriates who are former citizens or long-term residents of the United States;
- have been, are, or will be residents or deemed to be residents in Canada for purposes of the Income Tax Act (Canada) (the "Tax Act");
- use or hold, will use or hold, or that are or will be deemed to use or hold common shares in connection with carrying on a business in Canada;
- are persons whose common shares constitute "taxable Canadian property" under the Tax Act; or
- have a permanent establishment in Canada for the purposes of the Canada-U.S. Tax Convention.

U.S. Holders that are subject to special provisions under the Code, including, but not limited to, U.S. Holders described immediately above, should consult their own tax advisors regarding the U.S. federal income, U.S. federal alternative minimum, U.S. federal estate and gift, U.S. state and local, and non-U.S. tax consequences of acquiring, owning, and disposing of our common shares.

The following summary is not a substitute for careful tax planning and advice. U.S. Holders of common shares are urged to consult their own tax advisors concerning the U.S. federal income tax consequences of the issues discussed herein, in light of their particular circumstances, as well as any considerations arising under the laws of any foreign, state, local, or other taxing jurisdiction.

General Rules Applicable to the Ownership and Disposition of Common Shares

The following discussion describes the general rules applicable to the ownership and disposition of the common shares but is subject in its entirety to the special rules described below under the headings entitled "Tax Consequences if We Are a Passive Foreign Investment Company" and "Tax Consequences if We are a Controlled Foreign Corporation."

Distributions on Common Shares

The gross amount of any distribution (including amounts, if any, withheld in respect of Canadian withholding tax) actually or constructively received by a U.S. Holder with respect to our common shares will be taxable to the U.S. Holder as a dividend to the extent of our current or accumulated earnings and profits as determined under U.S. federal income tax principles. Distributions to a U.S. Holder in excess of earnings and profits will be treated first as a return of capital that reduces a U.S. Holder's tax basis in such common shares (thereby increasing the amount of gain or decreasing the amount of loss that a U.S. Holder would recognize on a subsequent disposition of our common shares), and then as gain from the sale or exchange of such common shares (see "Sale or Other Taxable Disposition of Our Common Shares"). The amount of any distribution of property other than cash will be the fair market value of that property on the date of distribution. In the event we make distributions to holders of common shares, we may or may not calculate our earnings and profits under U.S. federal income tax principles. If we do not do so, any distribution may be required to be regarded as a dividend, even if that distribution would otherwise be treated as a non-taxable return of capital or as capital gain. The amount of the dividend will generally be treated as foreign-source dividend income to U.S. Holders.

Non-corporate U.S. Holders, including individuals, will generally be eligible for the preferential U.S. federal rate on "qualified dividend income," provided that we are a "qualified foreign corporation," the stock on which the dividend is paid is held for a minimum holding period, and other requirements are satisfied. A "qualified foreign corporation" includes a foreign corporation that is not a passive foreign investment company ("PFIC") in the year of the distribution or in the prior taxable year and that is eligible for the benefits of an income tax treaty with the United States that contains an exchange of information provision and has been determined by the United States Treasury Department to be satisfactory for purposes of the legislation (such as the Canada-U.S. Tax Convention).

Distributions to U.S. Holders generally will not be eligible for the "dividends received deduction" generally allowed to U.S. corporations in respect of dividends received from other U.S. corporations.

Sale or Other Taxable Disposition of Our Common Shares

Upon the sale, exchange, or other taxable disposition of our common shares, a U.S. Holder generally will recognize gain or loss equal to the difference between the amount realized upon the sale, exchange, or other disposition and such U.S. Holder's tax basis in such common shares sold or otherwise disposed of. If the U.S. holder receives Canadian dollars in the transaction, the amount realized will be the U.S. dollar value of the Canadian dollars received, which is determined for cash basis taxpayers on the settlement date for the transaction and for accrual basis taxpayers on the trade date (although accrual basis taxpayers can also elect the settlement date). A U.S. Holder's tax basis in common shares generally will be such holder's U.S. dollar cost for such common shares. Gain or loss recognized on such sale or other disposition generally will be long-term capital gain or loss if, at the time of the sale or other disposition, the common shares have been held for more than one year.

Preferential tax rates currently apply to long-term capital gain of a U.S. Holder that is an individual, estate, or trust. There are currently no preferential tax rates for long-term capital gain of a corporate U.S. Holder. Deductions for capital losses are subject to significant limitations under the Code. The gain or loss will generally be U.S.-source gain or loss for foreign tax credit purposes.

Additional Medicare Tax on Net Investment Income

Certain U.S. Holders that are individuals, estates, or trusts (other than trusts that are exempt from tax) are subject to a tax of 3.8% on "net investment income" (or undistributed "net investment income," in the case of estates and trusts) for each taxable year, with such tax applying to the lesser of such income or the excess of such person's adjusted gross income (with certain adjustments) over a specified amount. Net investment income includes dividends on the common shares and net gains from the disposition of the common shares.

U.S. Holders that are individuals, estates, or trusts should consult their own tax advisors regarding the applicability of this tax to any of their income or gains in respect of the common shares.

Receipt of Foreign Currency

The amount of any distribution paid to a U.S. Holder in foreign currency, or on the sale, exchange, or other taxable disposition of common shares, generally will be equal to the U.S. dollar value of such foreign currency based on the exchange rate applicable on the date of receipt (regardless of whether such foreign currency is converted into U.S. dollars at that time). If the foreign currency received is not converted into U.S. dollars on the date of receipt, a U.S. Holder will have a tax basis in the foreign currency equal to its U.S. dollar value on the date of receipt. Any U.S. Holder who converts or otherwise disposes of the foreign currency after the date of receipt may have a foreign currency exchange gain or loss that would be treated as ordinary income or loss, and generally will be U.S. source income or loss for foreign tax credit purposes. Different rules apply to U.S. Holders who use the accrual method of tax accounting. Each U.S. Holder should consult its own U.S. tax advisors regarding the U.S. federal income tax consequences of receiving, owning, and disposing of foreign currency.

Foreign Tax Credit

Subject to the PFIC rules discussed below, a U.S. Holder that pays (whether directly or through withholding) Canadian income tax with respect to dividends paid on the common shares generally will be entitled, at the election of such U.S. Holder, to receive either a deduction or a credit for such Canadian income tax paid. Generally, a credit will reduce a U.S. Holder's U.S. federal income tax liability on a dollar-for-dollar basis, whereas a deduction will reduce a U.S. Holder's income that is subject to U.S. federal income tax. This election is made on a year-by-year basis and applies to all foreign taxes paid (whether directly or through withholding) by a U.S. Holder during a year.

Complex limitations apply to the foreign tax credit, including the general limitation that the credit cannot exceed the proportionate share of a U.S. Holder's U.S. federal income tax liability that such U.S. Holder's "foreign source" taxable income bears to such U.S. Holder's worldwide taxable income. In applying this limitation, a U.S. Holder's various items of income and deduction must be classified, under complex rules, as either "foreign source" or "U.S. source." Generally, dividends paid by a foreign corporation (including constructive dividends) should be treated as foreign source for this purpose, and gains recognized on the sale of stock of a foreign corporation by a U.S. Holder should be treated as U.S. source for this purpose, except as otherwise provided in an applicable income tax treaty, and if an election is properly made under the Code. However, the amount of a distribution with respect to the common shares that is treated as a "dividend" may be lower for U.S. federal income tax purposes than it is for Canadian federal income tax purposes, resulting in a reduced foreign tax credit allowance to a U.S. Holder. In addition, this limitation is calculated separately with respect to specific categories of income. The foreign tax credit rules are complex, and each U.S. Holder should consult its own U.S. tax advisors regarding the foreign tax credit rules.

Information Reporting and Backup Withholding

Under U.S. federal income tax law, certain categories of U.S. Holders must file information returns with respect to their investment in, or involvement in, a foreign corporation. For example, certain U.S. Holders who hold certain "specified foreign financial assets" that exceed certain thresholds are required to report information relating to such assets. The definition of "specified foreign financial assets" generally includes not only financial accounts maintained in foreign financial institutions, but also, unless held in accounts maintained by a financial institution, any stock or security issued by a non-U.S. person, any financial instrument or contract held for investment that has an issuer or counterparty other than a U.S. person, and any interest in a foreign entity. U.S. Holders may be subject to these reporting requirements unless their common shares are held in an account at certain financial institutions. Significant penalties may apply for failure to satisfy applicable reporting obligations.

Distributions paid with respect to common shares and proceeds from a sale, exchange, or redemption of common shares made within the United States or through certain U.S.-related financial intermediaries may be subject to information reporting to the IRS and possible U.S. backup withholding (at a rate of 28%). Backup withholding will not apply, however, to a U.S. Holder who furnishes a correct U.S. taxpayer identification number and makes any other required certification on IRS Form W-9 or that is a corporation or other entity that is otherwise exempt from backup withholding. Each U.S. Holder should consult its own tax advisors regarding the application of the U.S. information reporting and backup withholding rules. Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a holder's U.S. federal income tax liability, and such holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS and furnishing any required information in a timely manner.

The discussion of reporting requirements set forth above is not intended to constitute a complete description of all reporting requirements that may apply to a U.S. Holder. A failure to satisfy certain reporting requirements may result in an extension of the time period during which the IRS can assess a tax and, under certain circumstances, such an extension may apply to assessments of amounts unrelated to any unsatisfied reporting requirement. U.S. Holders should consult with their own tax advisors regarding their reporting obligations, if any, as a result of their acquisition, ownership, or disposition of our common shares.

Tax Consequences if We are a Passive Foreign Investment Company

A foreign corporation generally will be treated as a PFIC if, after applying certain "look-through" rules, either (i) 75% or more of its gross income is passive income or (ii) 50% or more of the average value of its assets is attributable to assets that produce or are held to produce passive income. Passive income for this purpose generally includes dividends, interest, rents, royalties and gains from securities and commodities transactions. The look-through rules require a foreign corporation that owns at least 25% by value of the stock of another corporation to treat a proportionate amount of assets and income as held or received directly by the foreign corporation.

We have not made the analysis necessary to determine whether or not we are currently a PFIC or whether we have ever been a PFIC. There can be no assurance that we are not, have never been or will not in the future be a PFIC. If we were to be treated as a PFIC, any gain recognized by a U.S. shareholder upon the sale (or certain other dispositions) of our common shares (or the receipt of certain distributions) generally would be treated as ordinary income, and a U.S. shareholder may be required, in certain circumstances, to pay an interest charge together with tax calculated at maximum rates on certain "excess distributions," including any gain on the sale or certain dispositions of our common shares. In order to avoid this tax consequence, a U.S. shareholder (i) may be permitted to make a "qualified electing fund" election, in which case, in lieu of such treatment, such shareholder would be required to include in its taxable income certain undistributed amounts of our income or (ii) may elect to mark-to-market our common shares and recognize ordinary income (or possible ordinary loss) each year with respect to such investment and on the sale or other disposition of the common shares. Additionally, if we are deemed to be a PFIC, a U.S. shareholder who acquires our common shares from a decedent will be denied the normally available step-up in tax basis to fair market value for the common shares at the date of the death and instead will have a tax basis equal to the decedent's tax basis if lower than fair market value. Neither we nor our advisors have the duty to or will undertake to inform U.S. shareholders of changes in circumstances that would cause us to become a PFIC. U.S. shareholders should consult their own tax advisors regarding the application of the PFIC rules including eligibility for and the manner and advisability of making certain elections in the event we are determined to be a PFIC at any point in time after the date of this prospectus. We intend to take the action necessary for a U.S. shareholder to make a "qualified electing fund" election in the event we are a PFIC.

Further, excess distributions treated as dividends, gains treated as excess distributions and mark-to-market inclusions and deductions, all under the PFIC rules discussed above, are all included in the calculation of net investment income for purposes of the 3.8% tax described above under the subheading entitled "Additional Medicare Tax on Net Investment Income". United States Treasury Regulations provide, subject to the election described in the following paragraph, that solely for purposes of this additional tax, distributions of previously taxed income will be treated as dividends and included in net investment income subject to the additional 3.8% tax. Additionally, to determine the amount of any capital gain from the sale or other taxable disposition of common shares that will be subject to the additional tax on net investment income, a U.S. Holder who has made a "qualified electing fund" election will be required to recalculate its basis in the common shares excluding basis adjustments resulting from the "qualified electing fund" election. Alternatively, a U.S. Holder may make an election which will be effective with respect to all interests in a PFIC for which a "qualified electing fund" election has been made and which is held in that year or acquired in future years. Under this election, a U.S. Holder pays the additional 3.8% tax on income inclusions resulting from the "qualified electing fund" election and on gains calculated after giving effect to related tax basis adjustments.

Tax Consequences if We are a Controlled Foreign Corporation

A foreign corporation will be treated as a "controlled foreign corporation" ("CFC") for U.S. federal income tax purposes if, on any day during the taxable year of such foreign corporation, more than 50% of the equity interests in such corporation, measured by reference to the combined voting power or value of the equity of the corporation, is owned directly or by application of the attribution and constructive ownership rules of Sections 958(a) and 958(b) of the Code by United States Shareholders. For this purpose, a "United States Shareholder" is any United States person that possesses directly, or by application of the attribution and constructive ownership rules of Sections 958(a) and 958(b) of the Code, 10% or more of the combined voting power of all classes of equity in such corporation or 10% or more of the total value of shares of all classes in such corporation. If a foreign corporation is a CFC on any day during any taxable year, each United States Shareholder of our Company who owns, directly or indirectly, our common shares on the last day of the taxable year on which we are a CFC will be required to include in its gross income for United States federal income tax purposes its pro rata share of our "Subpart F income," even if the Subpart F income is not distributed. Subpart F income generally includes passive income but also includes certain related party sales, manufacturing and services income.

In addition to the inclusion of "Subpart F income" of a CFC in the gross income of a United States Shareholder, there may be exposure to an additional tax under the recently enacted Global Intangible Low Tax Income regime ("GILTI"). Specifically, the GILTI rules impose an annual minimum tax on U.S. Holders of their share of GILTI income generated through CFCs. This GILTI income very generally equals a CFC's income over a 10% return on the CFCs tangible depreciable trade or business assets. The GILTI tax is 10.5% (until 2026 and 13.12% for tax years after) on U.S. Holders who are C corporations, as they are entitled to a 50% deduction (37.5% after 2025) of the GILTI income as well as a reduced foreign tax credit on foreign taxes paid on the GILTI income. U.S. Holders who are individuals, estates or trusts may pay substantially more tax on GILTI income, as they are subject to ordinary tax rates (ranging from 10% to 37% plus the net investment income tax of 3.8%). Such U.S. Holders are not entitled to a deduction on GILTI income or a reduced foreign tax credit. There is, however, an election available to such U.S. Holders to mitigate the tax impact.

If we are a CFC, the PFIC rules set forth above, even if we are otherwise considered to be a PFIC, will not be applicable.

United States persons who might, directly, indirectly or constructively, acquire 10% or more of our common shares, and therefore might be a United States Shareholder, should consider the possible application of the CFC rules and GILTI rules and consult a tax advisor with respect to such matters.

Material Canadian Federal Income Tax Considerations

Non-Residents of Canada

The following portion of the summary is generally applicable to a U.S. Holder. Special rules, which are not discussed in this summary, may apply to a U.S. Holder that is an insurer that carries on an insurance business in Canada and elsewhere.

Disposition of Common Shares

Upon the disposition by a U.S. Holder of common shares in our Company, the U.S. Holder will not be subject to tax under the Tax Act in respect of any capital gain realized unless the common shares disposed of constitute "taxable Canadian property" of the U.S. Holder and the U.S. Holder is not entitled to relief under an applicable tax treaty or convention. Common shares will generally not constitute "taxable Canadian property" of such U.S. Holder unless at any time in the preceding 60 months both of the following statements were true: (a) the U.S. Holder, together with either (i) persons with whom the U.S. Holder does not deal at arm's length or (ii) partnerships in which the U.S. Holder or a person in (a) directly or indirectly hold membership interests, held shares and/or rights to acquire shares representing 25% or more of the issued shares of any class of our capital stock; and (b) more than 50% of the fair market value of our common stock was derived directly or indirectly from one or any combination of (i) real or immovable property situated in Canada, (ii) Canadian resource properties, (iii) timber resource properties, and (iv) options in respect of, or interests in, or for civil law rights in, property described in any of (i) to (iii).

U.S. Holders whose common shares constitute "taxable Canadian property" should consult their own tax advisors for advice having regard to their particular circumstances.

Dividends Paid on Common Shares

Dividends paid, credited or deemed to have been paid or credited on our common shares held by a U.S. Holder will be subject to a Canadian withholding tax under the Tax Act at a rate of 25% of the gross amount of the dividends, subject to reduction by any applicable tax convention. Under the tax convention between Canada and the United States (the "Tax Treaty"), the rate of withholding tax on dividends generally applicable to U.S. Holders who beneficially own the dividends is reduced to 15%. In the case of U.S. Holders that are corporations that beneficially own at least 10% of our voting shares, the rate of withholding tax on dividends generally is reduced to 5%. So-called "fiscally transparent" entities, such as United States limited liability companies, or LLCs, are not entitled to rely on the terms of the Tax Treaty, however a member of such entity will be considered to have received the dividend directly and to benefit from the reduced rates under the Tax Treaty, where the member is considered under U.S. taxation law to have derived the dividend through that entity and by reason of the entity being a fiscally transparent entity, the treatment of the dividend is the same as its treatment would be if the amount had been derived directly by the member. Members of such entities are regarded as holding their proportionate share of our common shares held by the entity for the purposes of the Tax Treaty.

LEGAL MATTERS

The validity of the common shares covered by this prospectus will be passed upon for us by LaBarge Weinstein LLP, Ottawa, Ontario.

EXPERTS

The audited consolidated financial statements incorporated by reference in this prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the report of Haskell & White LLP, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of a registration statement on Form S-3 that we filed with the SEC under the Securities Act and does not contain all the information set forth or incorporated by reference in the registration statement. Whenever a reference is made in this prospectus to any of our contracts, agreements or other documents, the reference may not be complete and are qualified in their entirety by the actual contract, agreement or other document. You should refer to the exhibits that are a part of the registration statement or the exhibits to the reports or other documents incorporated by reference into this prospectus for a copy of an such contract, agreement or other document. You may obtain copies of the registration statement and its exhibits via the SEC's website referenced below.

We file annual, quarterly and current reports, proxy statements and other information with the SEC under the Exchange Act. The SEC maintains a website that contains reports, proxy and information statements and other information regarding issuers, including us, that file electronically with the SEC. You may obtain documents that we file with the SEC at www.sec.gov.

Our website address is www.fennecpharma.com.com. We do not incorporate the information on or accessible through our website into this prospectus, and you should not consider any information on, or that can be accessed through, our website as part of this prospectus. Our website address is included in this prospectus as an inactive textual reference only.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

SEC rules permit us to incorporate information by reference into this prospectus. This means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be part of this prospectus, except for information superseded by information contained in this prospectus or in any subsequently filed incorporated document. This prospectus incorporates by reference the documents set forth below that we have previously filed with the SEC, other than information in such documents that is deemed to be furnished and not filed. These documents contain important information about us and our business and financial condition. Any report or information within any of the documents referenced below that is furnished, but not filed, shall not be incorporated by reference into this prospectus.

- our Annual Report on Form 10-K for the year ended December 31, 2021;
- our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2022, June 30, 2022, and September 30, 2022;
- our Definitive Proxy Statement on Schedule 14A filed with the SEC on May 2, 2022;
- our Current Reports on Form 8-K filed with the SEC on January 31, 2022, Two filings, June 15, 2022, August 1, 2022, August 22, 2022, and September 26, 2022; and
- the description of our common shares set forth in our registration statement on Form 8-A filed with the SEC on September 11, 2017, including any amendments or reports filed for the purpose of updating such description.

All documents that we file (but not documents or parts of documents that we furnish) pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (i) after the date of the initial filing of the registration statement of which this prospectus is a part and prior to effectiveness of the registration statement and (ii)after the effectiveness of the registration statement but prior to the termination of the offering of common shares covered by this prospectus, shall be deemed to be incorporated by reference into this prospectus.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference into this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, or in any other subsequently filed document which is or is deemed to be incorporated by reference into this prospectus, modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will furnish without charge to each person, including any beneficial owner, to whom a prospectus is delivered, upon written or oral request, a copy of any or all of the documents incorporated by reference in this prospectus, including exhibits to these documents. Any such request may be made by writing or calling us at the following address or phone number:

Fennec Pharmaceuticals Inc.
PO Box 13628, 68 TW Alexander Drive
Research Triangle Park, NC 27709
(919) 636-4530
Attn: Corporate Secretary

FENNEC PHARMACEUTICALS INC.

3,914,850 Common Shares

PROSPECTUS

, 2022

We have not authorized any dealer, salesperson or other person to give any information or represent anything not contained in this prospectus. You must not rely on any unauthorized information. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus does not offer to sell any shares in any jurisdiction where it is unlawful. Neither the delivery of this prospectus, nor any sale made hereunder, shall create any implication that the information in this prospectus is correct after the date hereof.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following is a reasonably itemized statement of all fees and expenses incurred or expected to be incurred by us in connection with the issuance and distribution of the securities being registered hereby, other than underwriting discounts and commissions, if any. All but the SEC registration fee are estimates and remain subject to future contingencies.

SEC registration fee	$	4,099
Accounting fees and expenses	$	7,500
Legal fees and expenses	$	25,000
Financial printing fees, transfer agent fees and miscellaneous expenses	$	5,000
Total	$	41,599

Item 15. Indemnification of Directors and Officers.

***Business Corporations Act* (British Columbia)**

Division 5 of Part 5 of the *Business Corporations Act* (British Columbia) provides that a corporation may (a) indemnify an eligible party against all eligible penalties to which the eligible party is or may be liable and (b) after the final disposition of an eligible proceeding, pay the expenses (not including judgments, penalties, fines or amounts paid in settlement of a proceeding) actually and reasonably incurred by an eligible party in respect of that proceeding.

An “eligible party” means an individual who (a) is or was a director or officer of the corporation, (b) is or was a director or officer of another corporation (i) at a time when the other corporation is or was an affiliate of the corporation, or (ii) at the request of the corporation, or (c) at the request of the corporation, is or was, or holds or held a position equivalent to that of, a director or officer of a partnership, trust, joint venture or other unincorporated entity.

An “eligible proceeding” means a proceeding in which an eligible party or any of the heirs and personal or other legal representatives of the eligible party, by reason of the eligible party being or having been a director or officer of, or holding or having held a position equivalent to that of a director or officer of, the corporation or an associated corporation (a) is or may be joined as a party, or (b) is or may be liable for or in respect of a judgment, penalty or fine in, or expenses related to, the proceeding.

A corporation must, after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by the eligible party in respect of that proceeding if the eligible party (a) has not been reimbursed for those expenses, and (b) is wholly successful, on the merits or otherwise, in the outcome of the proceeding or is substantially successful on the merits in the outcome of the proceeding.

A corporation may pay, as they are incurred in advance of the final disposition of an eligible proceeding, the expenses actually and reasonably incurred by an eligible party in respect of that proceeding, provided the corporation first receives from the eligible party a written undertaking that, if it is ultimately determined that the payment of expenses is prohibited, the eligible party will repay the amounts advanced.

Notwithstanding any of the foregoing, a corporation must not indemnify an eligible party or pay the expenses of an eligible party if any of the following circumstances apply:

- if the indemnity or payment is made under an earlier agreement to indemnify or pay expenses and, at the time that the agreement to indemnify or pay expenses was made, the corporation was prohibited from giving the indemnity or paying the expenses by its memorandum or articles;

- if the indemnity or payment is made otherwise than under an earlier agreement to indemnify or pay expenses and, at the time that the indemnity or payment is made, the corporation is prohibited from giving the indemnity or paying the expenses by its memorandum or articles;

- if, in relation to the subject matter of the eligible proceeding, the eligible party did not act honestly and in good faith with a view to the best interests of the corporation or the associated corporation, as the case may be;

- in the case of an eligible proceeding other than a civil proceeding, if the eligible party did not have reasonable grounds for believing that the eligible party's conduct in respect of which the proceeding was brought was lawful.

If an eligible proceeding is brought against an eligible party by or on behalf of the corporation or by or on behalf of an associated corporation, the corporation must not (a) indemnify the eligible party in respect of the proceeding or (b) pay the expenses of the eligible party in respect of the proceeding.

A corporation may purchase and maintain insurance for the benefit of an eligible party or the heirs and personal or other legal representatives of the eligible party against any liability that may be incurred by reason of the eligible party being or having been a director or officer of, or holding or having held a position equivalent to that of a director or officer of, the corporation or an associated corporation.

Articles

Our Articles provide that, subject to the *Business Corporations Act* (British Columbia), we must indemnify an eligible party and their respective heirs and personal or other legal representatives against all eligible penalties to which such eligible party is or may be liable. We must, after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by such person in respect of that proceeding. Each eligible party is deemed to have contracted with us on this term. The Articles also provide that the Company may indemnify any person, subject to any restrictions in the *Business Corporations Act* (British Columbia).

Our Articles defines the following terms: (1) an “eligible penalty” means a judgment, penalty or fine awarded or imposed in, or an amount paid in settlement of, an “eligible proceeding”; (2) an “eligible party” means a director, former director or alternate director of the Company; (3) an “eligible proceeding” means a legal proceeding or investigative action (whether current, threatened, pending or completed), in which an eligible party or any of the heirs and personal or other legal representatives of the eligible party, by reason of the eligible party being or having been a director or alternate director of the Company (a) is or may be joined as a party, or (b) is or may be liable for or in respect of a judgment, penalty or fine in, or expenses related to, the proceeding; and (4) “expenses” has the meaning set out in the *Business Corporations Act* (British Columbia).

Our Articles provide that we may purchase and maintain insurance for the benefit of any person (or his or her heirs or legal personal representatives) who is or was a director, alternative director, officer, employee or agent, or held or holds such position or a position equivalent to the foregoing (each, an “insured party”) with respect to (i) us; (ii) a corporation at a time when the corporation was an affiliate of ours; (iii) at our request, served in such capacity with respect to a corporation, partnership, trust, joint venture or other unincorporated entity, against any liability that may be incurred by him or her acting in such capacity.

We maintain liability insurance policies regarding our directors and officers against certain liabilities that they may incur in such capacities.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 16. Exhibits.

Exhibit No.	Description	Location
4.1	Notice of Articles dated August 25, 2011	Exhibit 3.2(i) to the Company's Form 8-K filed August 26, 2011
4.2	Articles dated August 25, 2011	Exhibit 3.2(ii) to the Company's Form 8-K filed August 26, 2011
4.3	Notice of Alteration dated September 3, 2014	Exhibit 3.1 to the Company's Form 8-K filed September 9, 2014
4.4	Shareholder Rights Plan Agreement dated June 27, 2017 between Fennec Pharmaceuticals Inc. and Computershare Trust Company of Canada	Schedule B to the Management Proxy Circular of the Company filed May 24, 2017
4.5	Securities Purchase Agreement, dated as of August 1, 2022, between Fennec Pharmaceuticals Inc. and Petrichor Opportunities Fund I LP	Filed herewith
4.6	Senior Secured Convertible Note, dated August 19, 2022, issued by Fennec Pharmaceuticals Inc. in favor of Petrichor Opportunities Fund I LP	Filed herewith
4.7	Senior Secured Convertible Note, dated September 23, 2022, issued by Fennec Pharmaceuticals Inc. in favor of Petrichor Opportunities Fund I LP	Filed herewith
4.8	Warrant to Purchase Common Shares, dated August 19, 2022, issued by Fennec Pharmaceuticals Inc. in favor of Petrichor Opportunities Fund I LP	Filed herewith
4.9	Warrant to Purchase Common Shares, dated September 23, 2022, issued by Fennec Pharmaceuticals Inc. in favor of Petrichor Opportunities Fund I LP	Filed herewith
5.1	Opinion of LaBarge Weinstein LLP	Filed herewith
23.1	Consent of Haskell & White LLP	Filed herewith
23.2	Consent of LaBarge Weinstein LLP	Contained in Exhibit 5.1 to this Registration Statement
24.1	Power of Attorney	Contained on the signature pages of this Registration Statement
107	Filing Fee Table	Filed herewith

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement;

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, *however*, that the undertakings set forth in paragraphs (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(A) each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the Registration Statement relating to the securities in the Registration Statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of an undersigned registrant; and

(iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Durham, State of North Carolina, on December 1, 2022.

Fennec Pharmaceuticals Inc.

By: /s/ Rostislav Raykov
Rostislav Raykov
Chief Executive Officer, Director

KNOW ALL PERSONS BY THESE PRESENTS that each person whose signature appears below hereby constitutes and appoints Rostislav Raykov and Robert Andrade, and each of them, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this registration statement, and any registration statement relating to the offering covered by this registration statement and filed pursuant to Rule 462(b) under the Securities Act, and to file the same, with exhibits thereto and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Capacity	Date
/s/ Rostislav Raykov Rostislav Raykov	Chief Executive Officer and Director (Principal Executive Officer)	December 1, 2022
/s/ Robert Andrade Robert Andrade	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	December 1, 2022
/s/ Marco Brughera Marco Brughera	Director	December 1, 2022
/s/ Jodi Cook Jodi Cook	Director	December 1, 2022
/s/ Adrian Haigh Adrian Haigh	Director	December 1, 2022
/s/ Khalid Islam Khalid Islam	Director	December 1, 2022
/s/ Chris A. Rallis Chris A. Rallis	Director	December 1, 2022

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this "***Agreement***"), dated as of August 1, 2022, by and among Fennec Pharmaceuticals Inc., a British Columbia corporation (the "***Company***"), each investor identified on the signature pages hereto (each, an "***Investor***" and collectively, the "***Investors***"), and Petrichor Opportunities Fund I LP, as collateral agent (in such capacity, the "***Collateral Agent***").

RECITALS

A. The Company and each Investor are executing and delivering this Agreement in reliance upon the exemption from registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "***Securities Act***").

B. Each First Closing Investor, severally and not jointly, wishes to purchase, and the Company wishes to issue to each First Closing Investor, upon the terms and conditions stated in this Agreement, at the First Closing, one or more secured convertible notes of the Company in the form attached hereto as Exhibit A-1 (collectively, the "***First Closing Notes***" and each, individually, a "***First Closing Note***") in the aggregate principal amount set forth across from such First Closing Investor's name under the heading "Principal Amount of First Closing Note" on the Schedule of Investors, which First Closing Notes shall be convertible on the terms stated therein into common shares, no par value, of the Company (the "***Common Shares***") (the shares of Common Shares issuable pursuant to the terms of the First Closing Notes and, to the extent issued and sold hereunder at any Initial Second Closing, Delayed Second Closing, Third Closing or Fourth Closing, any Second Closing Notes, Third Closing Notes and Fourth Closing Notes issued hereunder, including, without limitation, upon conversion or otherwise, collectively, the "***Note Shares***").

C. In the event that the Second Closing Trigger Event occurs, the Company and each Second Closing Investor agrees that, on the terms set forth herein, the Company shall, at the Initial Second Closing (and, if applicable, any Delayed Second Closing), issue and sell to each Approving Second Closing Investor additional secured convertible notes of the Company in the form attached hereto as Exhibit A-2 (collectively, the "***Second Closing Notes***" and each, individually, a "***Second Closing Note***") in the aggregate principal amount set forth across from such Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors.

D. In the event that the Company and such Third Closing Investor agrees on such future issuance, on the terms set forth herein, the Company may, at the Third Closing, issue and sell to the each Third Closing Investor additional secured convertible notes of the Company in the form attached hereto as Exhibit A-3 (collectively, the "***Third Closing Notes***" and each, individually, a "***Third Closing Note***") in the aggregate principal amount not in excess of the amount set forth across from such Third Closing Investor's name under the heading "Principal Amount of Third Closing Note" on the Schedule of Investors.

E. In the event that the Company and such Fourth Closing Investor agrees on such future issuance, on the terms set forth herein, the Company may, at the Fourth Closing, issue and sell to the each Fourth Closing Investor additional secured convertible notes of the Company in the form attached hereto as Exhibit A-4 (collectively, the "***Fourth Closing Notes***" and each, individually, a "***Fourth Closing Note***"; the First Closing Notes, together with any Second Closing Notes, Third Closing Notes and Fourth Closing Notes issued hereunder, collectively, the "***Notes***" and each, individually, a "***Note***") in the aggregate principal amount not in excess of the amount set forth across from such Fourth Closing Investor's name under the heading "Principal Amount of Fourth Closing Note" on the Schedule of Investors.

F. The First Closing Notes, any Second Closing Notes, any Third Closing Notes, any Fourth Closing Notes, the Note Shares, the Commitment Fee Warrants, and the Commitment Fee Warrant Shares are collectively referred to herein as the "***Securities***."

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investors, intending to be legally bound hereby, agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated:

"***8-K Filing***" has the meaning set forth in Section 4.3.

"***Affiliate***" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act.

"***Agreement***" has the meaning set forth in the Preamble.

"***Alternative Proposal***" has the meaning set forth in Section 4.12.

"***Applicable Closing Date***" means (i) with respect to the First Closing, the First Closing Date, (ii) with respect to the Initial Second Closing, the Initial Second Closing Date, (iii) to the extent applicable, with respect to any Delayed Second Closing, the Delayed Second Closing Date, (iv) with respect to the Third Closing, the Third Closing Date, and (iv) with respect to the Fourth Closing, the Fourth Closing Date.

"***Applicable Date***" means the earlier of (x) the first date on which the resale by the Investors of all the Registrable Securities required to be filed on the initial Registration Statement in respect of a particular Closing is declared effective by the SEC (and each prospectus contained therein is available for use on such date) or (y) the first date on which all of the Registrable Securities are eligible to be resold by the Investors pursuant to Rule 144 (or, if a Current Public Information Failure has occurred and is continuing, such later date after which the Company has cured such Current Public Information Failure).

"***Applicable Fourth Closing Notes***" has the meaning set forth in Section 2.1(d)(iii).

"***Applicable Third Closing Notes***" has the meaning set forth in Section 2.1(c)(iii).

"***Approving Second Closing Investor***" has the meaning set forth in Section 2.1(b)(i).

"***BHCA***" has the meaning set forth in Section 3.1(jj).

"***Board***" means the board of directors of the Company.

"***Board Observer Agreement***" has the meaning set forth in Section 2.2(a)(iv).

"***Business Day***" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"***Claims***" has the meaning set forth in Section 6.1(a).

"***Closing***" means each of the First Closing, Initial Second Closing, Delayed Second Closing (if applicable), Third Closing and Fourth Closing, as applicable.

"***Collateral***" means all property (whether real or personal and whether tangible or intangible) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document, including Collateral as defined in the Security Agreement.

"***Collateral Agent***" has the meaning set forth in the Preamble.

"***Commitment Fee Warrants***" means, collectively, any First Commitment Fee Warrants and Second Commitment Fee Warrants issued or issuable pursuant to Section 4.10.

"***Commitment Fee Warrant Shares***" means, collectively, any First Commitment Fee Warrant Shares and Second Commitment Fee Warrant Shares.

"***Common Shares***" has the meaning set forth in the Recitals.

"***Common Share Equivalents***" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Shares, including, without limitation, any debt, preferred shares, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Shares.

"***Company***" has the meaning set forth in the Preamble.

"***Company Counsel***" means, collectively, Rutan & Tucker, LLP and LaBarge Weinstein LLP.

"***Current Public Information Failure***" has the meaning set forth in Section 4.7(b).

"***Delayed Second Closing***" means, solely in the event that a Delayed Second Closing Event has occurred, the closing of the purchase and sale of Second Closing Notes on the Delayed Second Closing Date pursuant to Section 2.1(b).

"***Delayed Second Closing Date***" means, solely in the event that a Delayed Second Closing Event has occurred, and subject to the satisfaction of the conditions set forth in Section 5.3 on or prior to such date, the date that is five (5) Business Days following the Company's delivery to the Second Closing Investors of the Delayed Second Closing Notice pursuant to Section 2.1(b)(iv).

"***Delayed Second Closing Event***" has the meaning set forth in Section 2.1(b)(iv).

"***Delayed Second Closing Notice***" has the meaning set forth in Section 2.1(b)(iv).

"***Effectiveness Deadline***" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 4.7(a) with respect to the Note Shares issuable upon conversion of the Notes issued at a particular Closing, the 150th calendar day after the Applicable Closing Date in respect of such Closing (or, if subject to a review by the SEC, the 180th calendar day after the Applicable Closing Date in respect of such Closing) and (ii) with respect to any additional Registration Statements (other than the Registration Statements referred to in clause (i) above) that may be required to be filed by the Company pursuant to this Agreement, the 150th calendar day following the date on which the Company was required to file such additional Registration Statement (or, if subject to a review by the SEC, the 180th calendar day following the date on which the Company was required to file such additional Registration Statement).

"***Effectiveness Failure***" has the meaning set forth in Section 4.7(b).

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

"***Exercising Fourth Closing Investor***" has the meaning set forth in Section 2.1(d)(iii).

"***Exercising Third Closing Investor***" has the meaning set forth in Section 2.1(c)(iii).

"***Existing Credit Agreement***" means that certain Loan and Security Agreement, dated as of February 1, 2019, between Fennec Pharmaceuticals, Inc. and Western Alliance Bank, as amended, restated, supplemented or otherwise modified, together with all "Loan Documents" (as defined therein) and any other agreements or instrument entered into in connection therewith.

"***Existing Indebtedness***" means all Indebtedness of the Company and its Subsidiaries arising under or in connection with the Existing Credit Agreement (or any other "Loan Document" (as defined therein)).

"***FDA Approval***" means approval by the U.S. Food and Drug Administration of the Company's new drug application for PEDMARK for commercialization in the United States.

"***FDA Approval Notice***" has the meaning set forth in Section 2.1(b)(i).

"***Federal Reserve***" has the meaning set forth in Section 3.1(jj).

"***Filing Deadline***" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 4.7(a) with respect to the Note Shares issuable upon conversion of the Notes issued at a particular Closing, the 105th calendar day after the Applicable Closing Date in respect of such Closing and (ii) with respect to any additional Registration Statements (other than the Registration Statements referred to in clause (i) above) that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company was required to file such additional Registration Statement pursuant to the terms of this Agreement.

"***Filing Failure***" has the meaning set forth in Section 4.7(b).

"***FINRA***" has the meaning set forth in Section 3.2(c).

"***First Closing***" means the closing of the purchase and sale of the First Closing Notes pursuant to Section 2.1(a).

"***First Closing Date***" means the first (1st) Trading Day after the date on which the last to be satisfied or waived of the conditions set forth in Sections 2.1(a) and 5.1 (other than those to be satisfied at the First Closing) shall have been satisfied or waived.

"***First Closing Investor***" means each Investor set forth under the heading "First Closing Investors" on the Schedule of Investors.

"***First Closing Notes***" has the meaning set forth in the Recitals.

"***First Commitment Fee Warrant Shares***" means (i) all Common Shares of the Company issued or issuable pursuant to, and upon the exercise of, any First Commitment Fee Warrant, and (ii) any securities issued or issuable pursuant to the First Commitment Fee Warrant with respect to the Common Shares referred to in the foregoing clause by way of an equity dividend or equity split or in connection with a combination or subdivision of Common Shares, reclassification, merger, consolidation or other reorganization of the Company.

"***First Commitment Fee Warrants***" has the meaning set forth in Section 4.10(a).

"***Fourth Closing***" means the closing of the purchase and sale of the Fourth Closing Notes pursuant to Section 2.1(d).

"***Fourth Closing Date***" has the meaning set forth in Section 2.1(d)(iii).

"***Fourth Closing Deadline***" means December 31, 2023.

"***Fourth Closing Election Notice***" has the meaning set forth in Section 2.1(d)(iii).

"***Fourth Closing Investor***" means each Investor set forth under the heading "Fourth Closing Investors" on the Schedule of Investors.

"***Fourth Closing Notes***" has the meaning set forth in the Recitals.

"***Fourth Closing Request***" has the meaning set forth in Section 2.1(d)(ii).

"***GAAP***" means United States generally accepted accounting principles applied on a consistent basis during the periods involved.

"***Guaranty Agreement***" has the meaning set forth in Section 2.2(a)(ii).

"***Indebtedness***" means, with respect to any Person, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes (including the First Closing Notes, the Second Closing Notes, the Third Closing Notes and the Fourth Closing Notes), bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement, which are required under generally accepted accounting principles to be presented as liabilities, and (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by such Person, even though such Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness.

"***Indemnified Damages***" has the meaning set forth in Section 6.1(a).

"***Indemnified Party***" has the meaning set forth in Section 6.1(a).

"***Indemnified Person***" has the meaning set forth in Section 6.1(a).

"***Initial Second Closing***" means the closing of the purchase and sale of Second Closing Notes on the Initial Second Closing Date pursuant to Section 2.1(b).

"***Initial Second Closing Date***" means, solely in the event that the Second Closing Trigger Event shall have occurred, and subject to the satisfaction of the conditions set forth in Section 5.2 on or prior to such date, the date that is five (5) Business Days following the Company's delivery to the Second Closing Investors of the FDA Approval Notice pursuant to Section 2.1(b)(i).

"***Investor***" has the meaning set forth in the Preamble.

"***Investor Label Approval Notice***" has the meaning set forth in Section 2.1(b)(i).

"***Label Side Letter***" means that certain letter agreement, dated as of the date hereof, among the Company and the Second Closing Investors, which letter agreement specifically sets forth that such letter agreement is the "Label Side Letter" hereunder.

"***Legend Removal Date***" has the meaning set forth in Section 4.1(d).

"***Lien***" means any lien, security interest, pledge, encumbrance, right of first refusal, preemptive right or other restriction.

"***Maintenance Failure***" has the meaning set forth in Section 4.7(b).

"***Material Adverse Effect***" means any condition, circumstance, or situation that may result in, or reasonably be expected to result in (i) a material adverse effect on the legality, validity or enforceability of this Agreement or any of the Transaction Documents, (ii) a material adverse effect on the results of operations, assets, liabilities, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, (iii) a material adverse effect on the Company's authority or ability to perform its obligations hereunder or under any of the Transaction Documents in any material respect on a timely basis, or (iv) a material adverse effect on the rights or remedies of the Investors or the Collateral Agent under any Transaction Document.

"***Material Contract***" means any contract of the Company that has been filed or was required to have been filed as an exhibit to the SEC Reports pursuant to Item 601(b)(10) of Regulation S-K.

"***Money Laundering Laws***" has the meaning set forth in Section 3.1(kk).

"***Note Shares***" has the meaning set forth in the Recitals.

"***Notes***" has the meaning set forth in the Recitals.

"***Observer***" has the meaning set forth in Section 4.9.

"***OFAC***" has the meaning set forth in Section 3.1(hh).

"***Permits***" has the meaning set forth in Section 3.1(s).

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

"***Petrichor***" means Petrichor Opportunities Fund I LP.

"***Press Release***" has the meaning set forth in Section 4.3.

"***Principal Market***" has the meaning given to such term in the Notes.

"***Proceeding***" means an action, claim, suit, investigation or proceeding (including, without limitation, a partial proceeding, such as a deposition), whether commenced or threatened in writing.

"***Registrable Securities***" means (i) the Note Shares, (ii) the Commitment Fee Warrant Shares and (iii) any shares of capital stock issued or issuable with respect to the Note Shares, the Notes, the Commitment Fee Warrant Shares and the Commitment Fee Warrants, including, without limitation, (1) as a result of any share split, dividend, distribution, recapitalization or similar transaction and (2) shares of capital share of a Successor Entity (as defined in the Notes) into which the Common Shares are converted or exchanged, in each case, without regard to any limitations on conversion or exercise of the Notes or the Commitment Fee Warrants.

"***Registration Delay Payments***" has the meaning set forth in Section 4.7(b).

"***Registration Period***" has the meaning set forth in Section 4.7(c)(i).

"***Registration Statement***" means a registration statement or registration statements (including, without limitation, any shelf registration statement) of the Company filed under the Securities Act covering Registrable Securities, including, in each case, the prospectus, amendments and supplements to such registration statement or prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement.

"***Required Approvals***" has the meaning set forth in Section 3.1(p).

"***Required Registration Amount***" means, with respect to any Notes or Commitment Fee Warrants issued at a particular Closing, 120% of the maximum number of Note Shares and Commitment Fee Warrant Shares issuable upon conversion of such Notes and Commitment Fee Warrants (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion or exercise of the Notes or Commitment Fee Warrants set forth in the Notes or Commitment Fee Warrants).

"***Requisite Stockholder Approval***" means the stockholder approval contemplated by Nasdaq Listing Standard Rule 5635(d) with respect to the issuance of Note Shares upon conversion of all of the Notes (including the First Closing Notes and Second Closing Notes) issuable at the First Closing, Initial Second Closing and Delayed Second Closing pursuant to this Agreement in excess of the limitations imposed by such rule.

"***Requisite Stockholder Approval Deadline***" means the date that is one hundred and twenty (120) days following the Initial Second Closing Date.

"***Rule 144***" means Rule 144 promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

"***Schedule of Investors***" means the list of Investors attached hereto as Annex A.

"***SEC***" means the United States Securities and Exchange Commission.

"***SEC Reports***" has the meaning set forth in Section 3.1(g).

"***Second Closing Deadline***" means the seventh (7^{th}) Business Day following September 30, 2022.

"***Second Closing Investor***" means each Investor set forth under the heading "Second Closing Investors" on the Schedule of Investors.

"***Second Closing Notes***" has the meaning set forth in the Recitals.

"***Second Closing Trigger Event***" has the meaning set forth in Section 2.1(b)(ii).

"***Second Commitment Fee***" has the meaning set forth in Section 4.10(b).

"***Second Commitment Fee Trigger Date***" means the earliest to occur of (i) the Initial Second Closing Date, (ii) the Maturity Date (as defined in the First Closing Notes), (iii) the date on which all of the First Closing Notes shall have been converted into Common Shares (or other equity interests) in accordance with their terms and (iv) the date on which the entire outstanding principal amount of the First Closing Notes shall have been repaid in full.

"***Second Commitment Fee Warrant Shares***" means (i) all Common Shares of the Company issued or issuable pursuant to, and upon the exercise of, any Second Commitment Fee Warrant, and (ii) any securities issued or issuable pursuant to the Second Commitment Fee Warrant with respect to the Common Shares referred to in the foregoing clause by way of an equity dividend or equity split or in connection with a combination or subdivision of Common Shares, reclassification, merger, consolidation or other reorganization of the Company.

"***Second Commitment Fee Warrants***" has the meaning set forth in Section 4.10(b).

"***Securities Act***" has the meaning set forth in the Recitals.

"***Security Agreement***" has the meaning set forth in Section 2.2(a)(iii). – Request Copy ?

"***Security Documents***" means, collectively, the Security Agreement and any other security agreement, collateral access agreement, landlord waiver, account control agreement or other agreement or instrument pursuant to or in connection with which the Company or any of the Subsidiary Guarantors grants or perfects a security interest to the Collateral Agent for the benefit of the Investors.

"***Subsidiary***" means any Person (including any Person formed or acquired after the date hereof) in which the Company, directly or indirectly, (i) owns or controls more than 50% of the outstanding capital stock or any equity or similar interest of such Person, (ii) owns or controls more than 50% of any class or classes of capital stock or other equity interests having ordinary voting power to elect a majority of the board of directors (or other applicable governing body) of such Person, or (iii) controls or operates all or any part of the business, operations or administration of such Person.

"***Subsidiary Guarantor***" means each Subsidiary of the Company that is, or that becomes, (i) a party to the Guaranty Agreement as a "Subsidiary Guarantor" thereunder, and (ii) a party to the Security Agreement as a "Grantor" thereunder.

"***Termination Fee***" has the meaning set forth in Section 8.1(b).

"***Third Closing***" means the closing of the purchase and sale of the Third Closing Notes pursuant to Section 2.1(c).

"***Third Closing Date***" has the meaning set forth in Section 2.1(c)(iii).

"***Third Closing Deadline***" means December 31, 2023.

"***Third Closing Election Notice***" has the meaning set forth in Section 2.1(c)(iii).

"***Third Closing Investor***" means each Investor set forth under the heading "Third Closing Investors" on the Schedule of Investors.

"***Third Closing Notes***" has the meaning set forth in the Recitals.

"***Third Closing Request***" has the meaning set forth in Section 2.1(c)(ii).

"***Total Purchase Price***" means, with respect to any Investor, the aggregate price paid by such Investor hereunder for all Notes purchased by such Investor at one or more Closings hereunder.

"***Trading Day***" means (i) a day on which the Common Shares is traded on a Trading Market (other than the OTCBB), or (ii) if the Common Shares is not listed or quoted on a Trading Market (other than the OTCBB), a day on which the Common Shares is traded in the over-the-counter market, as reported by the OTCBB, or (iii) if the Common Shares is not listed or quoted on any Trading Market, a day on which the Common Shares is quoted in the over-the-counter market as reported by the OTC Markets Group Inc. (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Shares is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"***Trading Market***" means whichever of the NYSE American, New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, the Toronto Stock Exchange or the OTCBB on which the Common Shares is listed or quoted for trading on the date in question.

"***Transaction Documents***" means this Agreement, including the schedules, annexes and exhibits attached hereto, the Notes, the Security Documents, the Guaranty Agreement, the First Commitment Fee Warrants, the Second Commitment Fee Warrants (if applicable), the Board Observer Agreement, and each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by this Agreement.

"***Transfer Agent***" means Computershare Investor Services Inc., or any successor transfer agent for the Company.

"***UCC***" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Collateral Agent for the benefit of the Investors pursuant to the applicable Transaction Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Transaction Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

"***Violations***" has the meaning set forth in Section 6.1(a).

"***VWAP***" has the meaning given to such term in the Notes.

ARTICLE II
PURCHASE AND SALE

2.1 Closings.

(a) First Closing. Subject to the terms and conditions set forth in this Agreement, at the First Closing, the Company shall issue and sell to each First Closing Investor, and each First Closing Investor shall, severally and not jointly, purchase from the Company, First Closing Notes in the principal amount set forth across from such First Closing Investor's name under the heading "Principal Amount of First Closing Note" on the Schedule of Investors, at a purchase price equal to the principal face amount thereof. The date and time of the First Closing shall be 10:00 a.m. (New York time), on the First Closing Date. The First Closing shall take place at the offices of LaBarge Weinstein LLP, or at such other location as the parties determine. The First Closing may take place by delivery of the items to be delivered at the First Closing by facsimile or other electronic transmission.

(b) Second Closing.

(i) In the event that the FDA Approval shall occur on or prior to September 30, 2022, the Company shall, within two (2) Business Days following the occurrence of the FDA Approval, deliver written notice of such FDA Approval to each of the Second Closing Investors (such notice, a "***FDA Approval Notice***"), which FDA Approval Notice shall specify (x) that the FDA Approval shall have occurred, and (y) the label with respect to which such FDA Approval has occurred (such label, the "***FDA Approved Label***"). Upon receipt of a FDA Approval Notice in accordance with the foregoing, in the event that a Second Closing Investor shall, in its sole discretion (subject to the following sentence), approve of the FDA Approved Label, such Second Closing Investor shall, within five (5) Business Days of receipt of such FDA Approval Notice, deliver the Company written notice of such Second Closing Investor's approval of the FDA Approved Label (such notice, an "***Investor Label Approval Notice***"; and any such Second Closing Investor that delivers an Investor Label Approval Notice in accordance with the foregoing is herein referred to as an "***Approving Second Closing Investor***"). Notwithstanding the foregoing, each Second Closing Investor agrees to provide an Investor Label Approval Notice in accordance with the foregoing if the FDA Approved Label is exactly in the form attached as Annex A to the Label Side Letter, with no amendments, modifications, supplements or additional provisions thereto (it being acknowledged and agreed that, if the FDA Approved Label is not exactly in the form attached as Annex A to the Label Side Letter, with no amendments, modifications, supplements or additional provisions thereto, each Second Closing Investor's decision whether to approve the FDA Approved Label and provide an Investor Label Approval Notice shall be in such Second Closing Investor's sole discretion).

(ii) In the event that (x) the FDA Approval shall occur on or prior to September 30, 2022 and (y) an Approving Second Closing Investor shall deliver an Investor Label Approval Notice in accordance with the foregoing clause (i) (the occurrence of the events specified in both clause (x) and clause (y) is herein collectively referred to as the "***Second Closing Trigger Event***"), then the Company shall, subject to clause (iv) below, become irrevocably obligated to issue, sell and deliver to each Approving Second Closing Investor such Approving Second Closing Investor's Second Closing Notes on the Initial Second Closing Date on the terms and conditions set forth herein.

(iii) Subject to clause (iv) below, solely in the event that the Second Closing Trigger Event shall occur, then, subject to the terms and conditions set forth in this Agreement, at the Initial Second Closing, the Company shall issue and sell to each Approving Second Closing Investor, and each such Approving Second Closing Investor shall, severally and not jointly, purchase from the Company, each such Approving Second Closing Investor's Second Closing Notes in the principal amount set forth across from each such Approving Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors, at a purchase price equal to the principal face amount thereof. The date and time of the Initial Second Closing shall be 10:00 a.m. (New York time) on the Initial Second Closing Date. The Initial Second Closing shall take place at the offices of LaBarge Weinstein LLP, or at such other location as the parties determine. The Initial Second Closing may take place by delivery of the items to be delivered at the Initial Second Closing by facsimile or other electronic transmission.

(iv) Notwithstanding the foregoing provisions of this Section 2.1(b), in the event that (x) the Second Closing Trigger Event shall occur and the Approving Second Closing Investors are required to purchase Second Closing Notes at the Initial Second Closing pursuant to this Section 2.1(b), and (y) if the Company were to issue the total amount of Second Closing Notes required to be purchased by the Approving Second Closing Investors at the Initial Second Closing pursuant to the foregoing, the Company would be required to obtain the Requisite Stockholder Approval (the occurrence of the events specified in both clause (x) and clause (y) is herein collectively referred to as the "***Delayed Second Closing Event***"), then, notwithstanding anything to the contract set forth herein:

(A) the aggregate principal amount of Second Closing Notes required to be issued by the Company to, and purchased by, the Approving Second Closing Investors at the Initial Second Closing shall be reduced to the maximum principal amount of Second Closing Notes that can be issued by the Company at the Initial Second Closing without the Company being required to obtain the Requisite Stockholder Approval, and the aggregate purchase price payable by the Approving Second Closing Investors in respect thereof shall be reduced to an amount equal to the reduced principal face amount thereof;

(B) the Company and the Approving Second Closing Investors shall consummate the closing of the purchase and sale of such reduced principal amount of Second Closing Notes at the Initial Second Closing in accordance with the terms hereof;

(C) following the Initial Second Closing, the Company shall take all actions necessary to obtain, and shall use its best efforts to obtain, the Requisite Stockholder Approval necessary to permit the issuance in full of all Second Closing Notes that would otherwise have been required to be issued at the Initial Second Closing (without giving effect to this clause (iv)) on or prior to the Requisite Stockholder Approval Deadline;

(D) in the event that the Requisite Stockholder Approval is obtained on or prior to the Requisite Stockholder Approval Deadline, then (i) the Company shall, within two (2) Business Days following the receipt of the Requisite Stockholder Approval, deliver written notice of the Requisite Stockholder Approval to each of the Approving Second Closing Investors (such notice, a "***Delayed Second Closing Notice***"), and (ii) subject to the terms and conditions set forth in this Agreement, at the Delayed Second Closing, the Company shall issue and sell to each Approving Second Closing Investor, and each such Approving Second Closing Investor shall, severally and not jointly, purchase from the Company, Second Closing Notes in a principal amount equal to (x) the amount set forth across from each such Approving Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors, minus (y) the principal amount of Second Closing Notes purchased by such Approving Second Closing Investor at the Initial Second Closing, at a purchase price equal to the principal face amount thereof. The date and time of the Delayed Second Closing shall be 10:00 a.m. (New York time) on the Delayed Second Closing Date. The Delayed Second Closing shall take place at the offices of LaBarge Weinstein LLP, or at such other location as the parties determine. The Delayed Second Closing may take place by delivery of the items to be delivered at the Delayed Second Closing by facsimile or other electronic transmission; and

(E) in the event that the Requisite Stockholder Approval not obtained on or prior to the Requisite Stockholder Approval Deadline, then, as partial relief (other than equity remedies) for the damages to any Approving Second Closing Investor by reason of its ability to purchase the total amount of Second Closing Notes originally intended to be purchased by such Approving Second Closing Investor hereon (which remedy shall not be exclusive of any other remedies available in equity), (x) the Company shall pay to each Approving Second Closing Investor, on the Required Stockholder Approval Deadline, an amount in cash equal to (i) two percent (2.00%), times, (ii) an amount equal to (1) the amount set forth across from each such Approving Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors, minus (2) the initial aggregate principal amount of Second Closing Notes issued to such Second Closing Investor at the Initial Second Closing, and (y) each Approving Second Closing Investor's obligations hereunder to purchase any additional Second Closing Notes shall terminate and cease to be of effect.

(v) For the avoidance of doubt, (A) unless (x) the FDA Approval shall occur on or prior to September 30, 2022 and (y) a Second Closing Investor delivers an Investor Label Approval Notice to the Company in accordance with the foregoing, such Second Closing Investor shall have no obligation hereunder to purchase any or all of such Second Closing Investor's Second Closing Notes hereunder, and (B) in the event that the Initial Second Closing shall not occur on or prior to the Second Closing Deadline, all obligations of the Second Closing Investors to purchase any Second Closing Notes hereunder shall terminate and expire on the Second Closing Deadline.

(c) Third Closing.

(i) Solely in the event that the Second Closing Trigger Event and the Initial Second Closing shall have previously occurred, the Company shall have the right, but not the obligation, to request that the Third Closing Investors agree to purchase $10,000,000 in aggregate principal amount of Third Closing Notes prior to the Third Closing Deadline in accordance with this Section 2.1(c).

(ii) In the event that the Company desires to request that the Third Closing Investors purchase the Third Closing Notes pursuant to this Section 2.1(c), the Company shall deliver each Third Closing Investor written notice of such request (a "***Third Closing Request***") after the Initial Second Closing but on or prior to the date that is fifteen (15) Business Days prior to the Third Closing Deadline, which Third Closing Request shall (x) sets forth that the aggregate principal amount of such Third Closing Notes that the Company requests to sell to the Third Closing Investors at the Third Closing, shall be $10,000,000, (y) set forth the Company's irrevocable offer to sell the Third Closing Notes specified in the Third Closing Request to the Third Closing Investors in accordance with this Section 2.1(c), and (z) specify the closing date for such sale of Third Closing Notes hereunder (the "***Third Closing Date***"), which Third Closing Date (A) shall not be earlier than the fifteenth (15^{th}) Business Day following the delivery of the Third Closing Election Notice to the Company, and (B) shall not be later than the Third Closing Deadline.

(iii) In the event that the Company shall timely deliver a Third Closing Request to the Third Closing Investors in accordance with the foregoing, each Third Closing Investor shall have the right, but not the obligation, to purchase all, but not less than all, of the Third Closing Notes specified in the Third Closing Request (which amount shall be allocated among the Third Closing Investors in proportion to the principal amount set forth across from such Third Closing Investor's name under the heading "Principal Amount of Third Closing Note" on the Schedule of Investors (with respect to any particular Third Closing Investor, such Third Closing Notes are herein referred to as such Third Closing Investor's "***Applicable Third Closing Notes***"). In the event that any Third Closing Investor desires to purchase such Third Closing Investor's Applicable Third Closing Notes, such Third Closing Investor must deliver written notice to the Company of its election to purchase such Third Closing Investor's Applicable Third Closing Notes hereunder (a "***Third Closing Election Notice***") no later than five (5) Business Days after the Company's request and in no event later than five (5) Business Days prior to the Third Closing Deadline, which Third Closing Election Notice shall specify that such Third Closing Investor is exercising its right under this Section 2.1(c) to purchase such Third Closing Investor's Applicable Third Closing Notes (any Third Closing Investor that shall so deliver a Third Closing Election Notice to the Company in accordance with the foregoing is herein referred to as an "***Exercising Third Closing Investor***").

(iv) Upon an Exercising Third Closing Investor's delivery of a Third Closing Election Notice to the Company pursuant to clause (iii) above, the Company shall become irrevocably obligated to issue, sell and deliver to such Exercising Third Closing Investor such Exercising Third Closing Investor's Third Closing Notes on the Third Closing Date on the terms and conditions set forth herein.

(v) For the avoidance of doubt, unless and until a Third Closing Investor delivers a Third Closing Election Notice to the Company in accordance with the foregoing, such Third Closing Investor shall have no obligation hereunder to purchase any or all of such Third Closing Investor's Third Closing Notes hereunder.

(vi) Solely in the event that one or more Exercising Third Closing Investors shall have delivered a Third Closing Election Notice to the Company in accordance with the foregoing pursuant to which each such Exercising Third Closing Investor shall have elected to purchase such Exercising Third Closing Investor's Third Closing Notes on the Third Closing Date, subject to the terms and conditions set forth in this Agreement, at the Third Closing, the Company shall issue and sell to each such Exercising Third Closing Investor, and each such Exercising Third Closing Investor shall, severally and not jointly, purchase from the Company, each such Exercising Third Closing Investor's Applicable Third Closing Notes at a purchase price equal to the principal face amount thereof. The date and time of the Third Closing shall be 10:00 a.m. (New York time) on the Third Closing Date. The Third Closing shall take place at the offices of LaBarge Weinstein LLP, or at such other location as the parties determine. The Third Closing may take place by delivery of the items to be delivered at the Third Closing by facsimile or other electronic transmission.

(d) Fourth Closing.

(i) Solely in the event that the Second Closing Trigger Event, the Initial Second Closing and the Third Closing shall have previously occurred (or, in the case of the Third Closing, shall occur contemporaneously with the Fourth Closing), the Company shall have the right, but not the obligation, to request that the Fourth Closing Investors agree to purchase $10,000,000 in aggregate principal amount of Fourth Closing Notes prior to the Fourth Closing Deadline in accordance with this Section 2.1(d).

(ii) In the event that the Company desires to request that the Fourth Closing Investors purchase the Fourth Closing Notes pursuant to this Section 2.1(d), the Company shall deliver each Fourth Closing Investor written notice of such request (a "***Fourth Closing Request***") after the Initial Second Closing but on or prior to the date that is fifteen (15) Business Days prior to the Fourth Closing Deadline, which Fourth Closing Request shall (x) sets forth that the aggregate principal amount of such Fourth Closing Notes that the Company requests to sell to the Fourth Closing Investors at the Fourth Closing, shall be $10,000,000, (y) set forth the Company's irrevocable offer to sell the Fourth Closing Notes specified in the Fourth Closing Request to the Fourth Closing Investors in accordance with this Section 2.1(d), and (z) specify the closing date for such sale of Fourth Closing Notes hereunder (the "***Fourth Closing Date***"), which Fourth Closing Date (A) shall not be earlier than the fifteenth (15^{th}) Business Day following the delivery of the Fourth Closing Election Notice to the Company, and (B) shall not be later than the Fourth Closing Deadline.

(iii) In the event that the Company shall timely deliver a Fourth Closing Request to the Fourth Closing Investors in accordance with the foregoing, each Fourth Closing Investor shall have the right, but not the obligation, to purchase all, but not less than all, of the Third Closing Notes specified in the Fourth Closing Request (which amount shall be allocated among the Fourth Closing Investors in proportion to the principal amount set forth across from such Fourth Closing Investor's name under the heading "Principal Amount of Fourth Closing Note" on the Schedule of Investors (with respect to any particular Fourth Closing Investor, such Fourth Closing Notes are herein referred to as such Fourth Closing Investor's "***Applicable Fourth Closing Notes***"). In the event that any Fourth Closing Investor desires to purchase such Fourth Closing Investor's Applicable Fourth Closing Notes, such Fourth Closing Investor must deliver written notice to the Company of its election to purchase such Fourth Closing Investor's Applicable Fourth Closing Notes hereunder (a "***Fourth Closing Election Notice***") no later than five (5) Business Days after the Company's request and in no event later than five (5) Business Days prior to the Fourth Closing Deadline, which Fourth Closing Election Notice shall specify that such Fourth Closing Investor is exercising its right under this Section 2.1(d) to purchase such Fourth Closing Investor's Applicable Fourth Closing Notes (any Fourth Closing Investor that shall so deliver a Fourth Closing Election Notice to the Company in accordance with the foregoing is herein referred to as an "***Exercising Fourth Closing Investor***").

(iv) Upon an Exercising Fourth Closing Investor's delivery of a Fourth Closing Election Notice to the Company pursuant to clause (iii) above, the Company shall become irrevocably obligated to issue, sell and deliver to such Exercising Fourth Closing Investor such Exercising Fourth Closing Investor's Fourth Closing Notes on the Fourth Closing Date on the terms and conditions set forth herein.

(v) For the avoidance of doubt, unless and until a Fourth Closing Investor delivers a Fourth Closing Election Notice to the Company in accordance with the foregoing, such Fourth Closing Investor shall have no obligation hereunder to purchase any or all of such Fourth Closing Investor's Fourth Closing Notes hereunder.

(vi) Solely in the event that one or more Exercising Fourth Closing Investors shall have delivered a Fourth Closing Election Notice to the Company in accordance with the foregoing pursuant to which each such Exercising Fourth Closing Investor shall have elected to purchase such Exercising Fourth Closing Investor's Fourth Closing Notes on the Fourth Closing Date, subject to the terms and conditions set forth in this Agreement, at the Fourth Closing, the Company shall issue and sell to each such Exercising Fourth Closing Investor, and each such Exercising Fourth Closing Investor shall, severally and not jointly, purchase from the Company, each such Exercising Fourth Closing Investor's Applicable Fourth Closing Notes at a purchase price equal to the principal face amount thereof. The date and time of the Fourth Closing shall be 10:00 a.m. (New York time) on the Fourth Closing Date. The Fourth Closing shall take place at the offices of LaBarge Weinstein LLP, or at such other location as the parties determine. The Fourth Closing may take place by delivery of the items to be delivered at the Fourth Closing by facsimile or other electronic transmission.

(vii) For the avoidance of doubt, the Third Closing and the Fourth Closing may occur contemporaneously.

(e) Determination of Conversion Prices for Notes. The Company and each of the Investors hereby agree that the initial "Conversion Price" (as set forth in the First Closing Notes, Second Closing Notes, Third Closing Notes and Fourth Closing Notes, as applicable) with respect to the First Closing Notes, any Second Closing Notes, Third Closing Notes or Fourth Closing Notes issued by the Company hereunder at the Initial Second Closing, Delayed Second Closing (if applicable), Third Closing and Fourth Closing shall be determined as follows:

(i) With respect to the First Closing Notes issued by the Company hereunder at the First Closing, the initial "Conversion Price" with respect to such First Closing Notes on the First Closing Date shall be equal to $8.11.

(ii) With respect to any Second Closing Notes issued by the Company hereunder at the Initial Second Closing, the initial "Conversion Price" with respect to such Second Closing Notes on the Initial Second Closing Date shall be equal to the lesser of (a) the product of (x) 120%, times (y) the VWAP of the Common Shares for the five (5) Trading Days ending at the close of business on the Principal Market on the Trading Day immediately prior to the receipt of the FDA Approval, and (b) the product of (x) 150%, times (y) the "Conversion Price" (as defined in the First Closing Notes) as in effect at the close of business on the Principal Market on the Trading Day immediately prior to the receipt of the FDA Approval.

(iii) With respect to any Second Closing Notes issued by the Company hereunder at the Delayed Second Closing (if applicable), the initial "Conversion Price" with respect to such Second Closing Notes on the Delayed Second Closing Date shall be equal to the "Conversion Price" (as defined in the Second Closing Notes issued at the Initial Second Closing) as in effect at the close of business on the Principal Market on the Trading Day immediately prior to the Delayed Second Closing Date.

(iv) With respect to any Third Closing Notes issued by the Company hereunder at the Third Closing, the initial "Conversion Price" with respect to such Third Closing Notes on the Third Closing Date shall be equal to the "Conversion Price" (as defined in the Second Closing Notes issued at the Initial Second Closing) as in effect at the close of business on the Principal Market on the Trading Day immediately prior to the Third Closing Date.

(v) With respect to any Fourth Closing Notes issued by the Company hereunder at the Fourth Closing, the initial "Conversion Price" with respect to such Fourth Closing Notes on the Fourth Closing Date shall be equal to the "Conversion Price" (as defined in the Second Closing Notes issued at the Initial Second Closing) as in effect at the close of business on the Principal Market on the Trading Day immediately prior to the Fourth Closing Date.

2.2 First Closing Deliverables.

(a) At the First Closing, the Company shall:

(i) deliver or cause to be delivered to each First Closing Investor a duly executed First Closing Note in the principal amount set forth across from such First Closing Investor's name under the heading "Principal Amount of First Closing Note" on the Schedule of Investors;

(ii) deliver or cause to be delivered to each First Closing Investor a duly executed Guaranty Agreement in the form attached hereto as Exhibit B (the "***Guaranty Agreement***"), executed by each of the Subsidiaries, if any, of the Company;

(iii) deliver or cause to be delivered to each First Closing Investor a duly executed Security Agreement in the form attached hereto as Exhibit C (the "***Security Agreement***"), executed by the Company and each of the Subsidiaries, if any, of the Company;

(iv) deliver or cause to be delivered to Petrichor a duly executed Board Observer Agreement in the form attached hereto as Exhibit D (the "***Board Observer Agreement***"), executed by the Company; and

(v) issue and deliver to each First Closing Investor a First Commitment Fee Warrant in accordance with Section 4.10(a).

(b) At the First Closing, the First Closing Investors (as applicable) shall deliver or cause to be delivered to the Company the following:

(i) the aggregate purchase price for the First Closing Notes purchased by such First Closing Investor hereunder, as set forth across from such First Closing Investor's name under the heading "Aggregate First Closing Purchase Price" on the Schedule of Investors, in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such First Closing Investor by the Company for such purpose; and

(ii) an executed Board Observer Agreement, executed by the individual designated by Petrichor to serve as a board observer thereunder.

2.3 Initial Second Closing Deliverables. Solely in the event that the Second Closing Trigger Event shall have occurred and one or more Approving Second Closing Investors shall have delivered an Investor Label Approval Notice in accordance with Section 2.1(b), at the Initial Second Closing:

(a) the Company shall deliver or cause to be delivered to each Approving Second Closing Investor a duly executed Second Closing Note in the principal amount set forth across from such Approving Second Closing Investor's name under the heading "Principal Amount of Second Closing Note" on the Schedule of Investors (or, in the event that a Delayed Second Closing Event has occurred, such lesser principal amount as determined in accordance with Section 2.1(b)(iv)); and

(b) each Approving Second Closing Investor shall deliver or cause to be delivered to the Company the aggregate purchase price for the Second Closing Notes purchased by such Approving Second Closing Investor at the Initial Second Closing, as set forth across from such Approving Second Closing Investor's name under the heading "Aggregate Second Closing Purchase Price" on the Schedule of Investors (or, in the event that a Delayed Second Closing Event has occurred, such lesser amount as determined in accordance with Section 2.1(b)(iv)), in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such Approving Second Closing Investor by the Company for such purpose.

2.4 Delayed Second Closing Deliverables. Solely in the event that the Initial Second Closing and a Delayed Second Closing Event shall have occurred, at the Delayed Second Closing:

(a) the Company shall deliver or cause to be delivered to each Approving Second Closing Investor a duly executed Second Closing Note in a principal amount determined in accordance with Section 2.1(b)(iv); and

(b) each Approving Second Closing Investor shall deliver or cause to be delivered to the Company the aggregate purchase price for the Second Closing Notes purchased by such Approving Second Closing Investor at the Delayed Second Closing, as determined in accordance with Section 2.1(b)(iv), in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such Approving Second Closing Investor by the Company for such purpose.

2.5 Third Closing Deliverables. Solely in the event that one or more Exercising Third Closing Investors shall have delivered a Third Closing Election Notice to the Company in accordance with Section 2.1(c) pursuant to which each such Exercising Third Closing Investor shall have elected to purchase each such Exercising Third Closing Investor's Applicable Third Closing Notes on the Third Closing Date, at the Third Closing:

(a) the Company shall deliver or cause to be delivered to each Exercising Third Closing Investor a duly executed Third Closing Note in a principal amount equal to such Exercising Third Closing Investor's Applicable Third Closing Notes; and

(b) each Exercising Third Closing Investor shall deliver or cause to be delivered to the Company the aggregate purchase price for the Applicable Third Closing Notes purchased by such Exercising Third Closing Investor hereunder, in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such Exercising Third Closing Investor by the Company for such purpose.

2.6 Fourth Closing Deliverables. Solely in the event that one or more Exercising Fourth Closing Investors shall have delivered a Fourth Closing Election Notice to the Company in accordance with Section 2.1(d) pursuant to which each such Exercising Fourth Closing Investor shall have elected to purchase each such Exercising Fourth Closing Investor's Applicable Fourth Closing Notes on the Fourth Closing Date, at the Fourth Closing:

(a) the Company shall deliver or cause to be delivered to each Exercising Fourth Closing Investor a duly executed Fourth Closing Note in a principal amount equal to such Exercising Fourth Closing Investor's Applicable Fourth Closing Notes; and

(b) each Exercising Fourth Closing Investor shall deliver or cause to be delivered to the Company the aggregate purchase price for the Applicable Fourth Closing Notes purchased by such Exercising Fourth Closing Investor hereunder, in U.S. dollars and in immediately available funds, by wire transfer to an account designated in writing to such Exercising Fourth Closing Investor by the Company for such purpose.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Investors, as of the date hereof and as the date of each Closing, as follows:

(a) Subsidiaries. The Company owns, directly or indirectly, all of the capital stock or comparable equity interests of each Subsidiary free and clear of any Lien (other than Liens which will be discharged on or before the First Closing and restrictions on transfer arising under applicable securities laws), and all issued and outstanding shares of capital stock or comparable equity interest of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights. The Company does not own an equity or other ownership interest in any Person other than the Subsidiaries.

(b) Organization and Qualification. The Company and each Subsidiary is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, as applicable, with the requisite power and legal authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation of any of the provisions of its certificate or articles of incorporation, bylaws or other organizational or charter documents, as applicable. The Company and each Subsidiary is duly qualified to do business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect and no Proceeding has been instituted seeking to revoke, limit or curtail such power or authority or qualification.

(c) Authorization; Enforcement. The Company and each of its Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder and, in the case of the Company, to issue the Securities, in each case, in accordance with the terms hereof and thereof. The execution and delivery by the Company and each of its Subsidiaries of each of the Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby, including, in the case of the Company, the issuance of the Notes and the reservation for issuance and issuance of the Note Shares and the issuance of the Commitment Fee Warrants and the reservation for issuance and issuance of the Commitment Fee Warrant Shares, have been duly authorized by all necessary action on the part of the Company and each such Subsidiary, and (other than the filing with the SEC of one or more Registration Statements in accordance with Section 4.7, any filings as may be required by state securities agencies, and any filings required pursuant to the Security Documents) no further consent, filing, authorization or action is required from or with any United States federal or state regulatory authority or governmental body or any Trading Market by the Company or any Subsidiary. Each of the Transaction Documents to which it is a party has been (or upon delivery will be) duly executed by the Company and each of its Subsidiaries and is, or when delivered in accordance with the terms hereof, will constitute, the valid and binding obligation of the Company and each such Subsidiary enforceable against the Company and each such Subsidiary 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 provisions contained herein may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company and each of its Subsidiaries of the Transaction Documents to which it is a party, the consummation by the Company and each of its Subsidiaries of the transactions contemplated hereby and thereby, and, in the case of the Company, the issuance and sale of the Notes and the reservation for issuance and issuance of the Note Shares and the issuance of the Commitment Fee Warrants and the reservation for issuance and issuance of the Commitment Fee Warrant Shares, do not, and will not, (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate of incorporation, bylaws or other organizational or charter documents, as applicable, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement (including any Material Contract), credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound, or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or any Subsidiary is subject or by which any property or asset of the Company or any Subsidiary is bound or affected, except, in the case of clauses (ii) and (iii) above, to the extent that such conflict, default, termination, amendment, acceleration, cancellation right or violation would not have or reasonably be expected to result in a Material Adverse Effect. The Company is not in violation of the listing requirements of the Trading Market and has no knowledge of any facts that would reasonably lead to delisting or suspension of the Common Shares in the foreseeable future. The issuance by the Company of the Securities shall not have the effect of delisting or suspending the Common Shares from the Trading Market.

(e) Valid Issuance. The Notes are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens (other than restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of shareholders. Upon issuance or conversion in accordance with the Notes, the Note Shares, when issued, will be validly issued, fully paid and nonassessable, free and clear of all Liens (other than restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of shareholders, with the holders being entitled to all rights accorded to a holder of Common Shares. The Commitment Fee Warrants are duly authorized and, when issued in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens (other than restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of shareholders. Upon issuance in accordance with the Commitment Fee Warrants, the Commitment Fee Warrant Shares, when issued, will be validly issued, fully paid and nonassessable, free and clear of all Liens (other than restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of shareholders, with the holders being entitled to all rights accorded to a holder of Common Shares.

(f) Capitalization. As of July 29, 2022, the aggregate number of shares and type of all authorized, issued and outstanding classes of shares, capital stock, options and other securities of the Company and each of its Subsidiaries (whether or not presently convertible into or exercisable or exchangeable for shares of capital stock of the Company or such Subsidiary, as applicable) is set forth in Schedule 3.1(f) hereto. All outstanding shares of capital stock of the Company and of each Subsidiary are duly authorized, validly issued, fully paid and nonassessable and have been issued in compliance in all material respects with all applicable securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase any capital stock of the Company or such Subsidiary. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents that have not been effectively waived as of the date hereof and as of each Applicable Closing Date. The issuance and sale of the Securities (including the Note Shares) and the transactions contemplated by the Transaction Documents will not obligate the Company to issue shares of Common Shares or other securities to any Person (other than the Investors) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans and pursuant to the conversion and/or exercise of Common Share Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. As of the First Closing, the Company shall have reserved from its duly authorized capital stock not less than the maximum number of Note Shares issuable upon conversion of the First Closing Notes based on the initial Conversion Price (as defined in the Notes) of $8.11. As of the First Closing, the Company shall have reserved from its duly authorized capital stock not less than the maximum number of First Commitment Fee Warrant Shares issuable upon exercise of the First Commitment Fee Warrants based on the initial Exercise Price (as defined in the First Commitment Fee Warrants) of $8.11. As of each Closing occurring after the First Closing, (i) the Company shall have reserved from its duly authorized capital stock not less than the maximum number of Note Shares issuable upon conversion of all Notes then outstanding (including the Notes issued at such Closing) based on the then effective Conversion Price (as defined in the Notes), and (ii) the Company shall have reserved from its duly authorized capital stock not less than the maximum number of Commitment Fee Warrant Shares issuable upon conversion of all Commitment Fee Warrants then outstanding (including any Commitment Fee Warrants issued at such Closing) based on the then effective Exercise Price (as defined in the Notes).

(g) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof (the "***SEC Reports***"). As of their respective dates (or, if amended or superseded by a filing prior to the First Closing Date, then on the date of such filing), the SEC Reports filed by the Company complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed (or, if amended or superseded by a filing prior to the First Closing Date, then on the date of such filing) by the Company, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or, if amended or superseded by a filing prior to the First Closing Date, then on the date of such filing). Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP or may be condensed or summary statements, and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments. All Material Contracts to which the Company or any Subsidiary is a party or to which the property or assets of the Company or any Subsidiary are subject are included as part of or identified in the SEC Reports.

(h) Absence of Litigation. Except as disclosed in the SEC Reports, there is no action, suit, claim, or Proceeding pending, or, to the Company's knowledge, threatened, before or by any court, public board, government agency, self-regulatory organization or body that adversely affect or challenge the legality, validity or enforceability of any of the Transaction Documents or that would, individually or in the aggregate, have or be reasonably likely to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or executive officer thereof, is or has within the past ten years been the subject of any action, suit, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. To the knowledge of the Company, within the past ten years there has not been, and there is not pending or contemplated, any investigation by the SEC involving the Company or any current director or executive officer of the Company. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(i) Compliance. Except as would not, individually or in the aggregate, have or be reasonably likely to result in a Material Adverse Effect, (i) neither the Company nor any Subsidiary is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received written notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement (including any Material Contract) or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) neither the Company nor any Subsidiary is in violation of any order of any court, arbitrator or governmental body to which the Company or any Subsidiary is subject or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) neither the Company nor any Subsidiary is in violation of any law, statute, rule or regulation of any governmental authority to which the Company or any Subsidiary is subject or by which any property or asset of the Company or any Subsidiary is bound or affected.

(j) Title to Assets. Neither the Company nor any Subsidiary owns real property. The Company and each Subsidiary has good and marketable title in all personal property owned by them that is material to the business of the Company and each Subsidiary, in each case free and clear of all Liens (other than Liens which will be discharged on or before the First Closing), except for Liens that do not, individually or in the aggregate, have or are reasonably likely to result in a Material Adverse Effect or which do not materially affect the value and do not materially interfere with the use of such property by the Company. Any real property and facilities held under lease by the Company or any Subsidiary is held by it under valid, subsisting and enforceable leases of which the Company and each Subsidiary is in compliance in all material respects.

(k) Intellectual Property. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and rights necessary to conduct their respective businesses as now conducted. Except for matters described in the SEC Documents, or matters which would not be reasonably likely to have a Material Adverse Effect, the Company and its Subsidiaries do not have any knowledge of any violation or infringement by the Company or its Subsidiaries of trademark, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, trade secret or other similar rights of others, and, to the knowledge of the Company, there is no claim, action or Proceeding being made or brought against, or to the Company's knowledge, being threatened against, the Company or its Subsidiaries regarding trademark, trade name, patents, patent rights, invention, copyright, license, service names, service marks, service mark registrations, trade secret or other violation or infringement; and the Company and its Subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Insurance. The Company and each Subsidiary is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses and locations in which the Company and each Subsidiary is engaged. Neither the Company nor any Subsidiary has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business.

(m) Internal Accounting Controls. The Company and each Subsidiary maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(n) Sarbanes-Oxley Act; Disclosure Controls. The Company is in compliance in all material respects with applicable requirements, as a non-accelerated filer and smaller reporting company, of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***") and applicable rules and regulations promulgated by the SEC thereunder, except where such noncompliance would not have, individually or in the aggregate, a Material Adverse Effect. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act).

(o) Indebtedness. Except as disclosed in the SEC Reports, neither the Company nor any Subsidiary (i) has any outstanding Indebtedness, or (ii) is in violation of any term of and is not in default under any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect.

(p) Filings, Consents and Approvals. Neither the Company nor any of its Subsidiaries is required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company or any of its Subsidiaries of the Transaction Documents (including the issuance of the Securities), other than (i) filings required by applicable state securities laws, (ii) the filing of any requisite notices and/or application(s) to any Trading Market for the issuance and sale of the Note Shares or Commitment Fee Warrant Shares and the listing of the Note Shares or Commitment Fee Warrant Shares for trading or quotation, as the case may be, thereon in the time and manner required thereby, (iii) the filing of one or more Registration Statements in accordance with Section 4.7, (iv) solely with respect to the issuance of the Second Closing Notes at the Delayed Second Closing (if applicable), the Requisite Stockholder Approval, if required, and (v) those that have been made or obtained prior to the date of this Agreement (collectively, the "***Required Approvals***").

(q) Material Changes; Undisclosed Events, Liabilities or Developments. Since December 31, 2021, there has been no event, occurrence or development that has had or that would reasonably be expected to result in a Material Adverse Effect. Since December 31, 2021, except as specifically disclosed in an SEC Report filed subsequent to such date and prior to the date hereof: (i) the Company and its Subsidiaries have not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the SEC, (ii) the Company has not altered its method of accounting, (iii) the Company has not declared or made any dividend or distribution of cash or other property to its shareholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (iv) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company share option plans, and (v) there has not been any material change or amendment to, or any waiver of any material right by the Company under, any Material Contract under which the Company or any of its Subsidiaries is bound or subject. The Company does not have pending before the SEC any request for confidential treatment of information. Except for the transactions contemplated by the Transaction Documents, including the issuance of the Securities, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company on a Current Report on Form 8-K at the time this representation is made or deemed made that has not been publicly disclosed at least one Trading Day prior to the date that this representation is made.

(r) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company or any of its Subsidiaries, which would reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement with the Company, or any restrictive covenant in favor of any third party. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(s) Consents and Permits. Except as disclosed in the SEC Reports, each of the Company and its Subsidiaries has made all filings, applications and submissions required by, possesses and is operating in compliance with, all approvals, licenses, certificates, certifications, clearances, consents, grants, exemptions, marks, notifications, orders, permits and other authorizations issued by, the appropriate federal, state or foreign regulatory authorities necessary for the ownership or lease of its respective properties or to conduct its businesses as described in the SEC Reports (collectively, "***Permits***"), except for such Permits for which the failure to possess, obtain or make would not have a Material Adverse Effect; the Company and its Subsidiaries are in compliance with the terms and conditions of all such Permits, except where the failure to be in compliance would not have a Material Adverse Effect; all of the Permits are valid and in full force and effect, except where any invalidity, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; and neither the Company nor any of its Subsidiaries has received any written notice relating to the limitation, revocation, cancellation, suspension, modification or non-renewal of any such Permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

(t) Regulatory Filings. Except as disclosed in the SEC Reports, neither the Company nor any of its Subsidiaries has failed to file with the applicable regulatory authorities any required filing, declaration, listing, registration, report or submission, except for such failures that, individually or in the aggregate, would not have a Material Adverse Effect.

(u) Environmental Laws. Except as set forth in the SEC Reports, the Company and its Subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "***Environmental Laws***"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the SEC Reports; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, have a Material Adverse Effect; and, to the knowledge of the Company, there is no pending investigation or investigation threatened that could reasonably be expected to lead to such a claim.

(v) Transactions with Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), which would be required to be disclosed pursuant to Item 404 of Regulation S-K under the Securities Act.

(w) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Investors shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 3.1(w) that may be due in connection with the transactions contemplated by the Transaction Documents. The Company shall pay, and hold each Investor harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such fees or claims.

(x) Private Placement. Assuming the accuracy of the Investors' representations and warranties set forth in Section 3.2 and their compliance with their agreements contained in this Agreement, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Investors pursuant to the terms of this Agreement. The issuance and sale of the Securities do not, and will not, contravene the rules and regulations of the Trading Market, which, for the avoidance of doubt, as of the date hereof, is the Nasdaq Capital Market and the Toronto Stock Exchange.

(y) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Notes, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(z) Registration Rights. Other than (i) as disclosed in the SEC Reports and (ii) as set forth in this Agreement, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company.

(aa) Disclosure. The Company understands and confirms that the Investors will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Investors regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein not misleading. The Company acknowledges and agrees that no Investor makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(bb) No Integrated Offering. Assuming the accuracy of the Investors' representations and warranties set forth in in Section 3.2 and their compliance with their agreements contained in this Agreement, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act which would require the registration of any such securities under the Securities Act.

(cc) Solvency. Based on the consolidated financial condition of the Company as of the First Closing Date and any Applicable Closing Date occurring after the First Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Notes hereunder on such Applicable Closing Date: (i) the fair saleable value of the Company's assets as a going concern exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature and (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the First Closing Date or within one year from any Applicable Closing Date occurring after the First Closing Date.

(dd) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(ee) No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered, and may offer, the Securities for sale only to the Investors and other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(ff) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the Company's knowledge, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of Foreign Corrupt Practices Act of 1977, as amended.

(gg) Accountants. Haskell & White LLP (the "***Accountant***"), whose report on the consolidated financial statements of the Company is filed with the SEC as part of the Company's most recent Annual Report on Form 10-K filed with the SEC, is and, during the periods covered by their report, was an independent registered public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the Company's knowledge, the Accountant is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act with respect to the Company.

(hh) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("***OFAC***"); and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any joint venture partner or other person or entity, towards any sales or operations in Cuba, Iran, Syria, Sudan or any other country sanctioned by OFAC or for the purpose of financing the activities of any person currently subject to any U.S. sanctions.

(ii) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Investors' request.

(jj) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "***BHCA***") and to regulation by the Board of Governors of the Federal Reserve System (the "***Federal Reserve***"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(kk) Money Laundering. The operations of the Company and its Subsidiaries are and, to the Company's knowledge, have been conducted at all times in material compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "***Money Laundering Laws***"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the Company's knowledge, threatened.

(ll) Disqualification Events. None of the Company or any Subsidiary, any of their respective predecessors, any director, executive officer, other officer of the Company or any Subsidiary participating in the offering contemplated hereby, any beneficial owner (as that term is defined in Rule 13d-3 under the Exchange Act) of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, any "promoter" (as that term is defined in Rule 405 under the Securities Act) connected with the Company or any of the Subsidiaries in any capacity at the time of the First Closing or any other Closing occurring after the First Closing, any placement agent or dealer participating in the offering of the Notes, any of such agents' or dealer's directors, executive officers, other officers participating in the offering of the Notes (each, a "***Covered Person***" and, together, "***Covered Persons***") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "***Disqualification Event***"). The Company has exercised reasonable care to determine (i) the identity of each person that is a Covered Person; and (ii) whether any Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e). The Company is not for any other reason disqualified from reliance upon Rule 506 of Regulation D under the Securities Act for purposes of the offer and sale of the Securities. The Company will notify the Investors prior to the First Closing Date or any Applicable Closing Date occurring after the First Closing Date of the existence of any Disqualification Event with respect to any Covered Person.

(mm) Acknowledgment Regarding Investor's Purchase of Securities. The Company acknowledges and agrees that each Investor is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Investor is (i) an officer or director of the Company, (ii) an "affiliate" (as defined in Rule 144) of the Company or (iii) to its knowledge, a "beneficial owner" of more than 10% of the shares of Common Shares (as defined for purposes of Rule 13d-3 of the Exchange Act). The Company further acknowledges that no Investor is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by an Investor or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Investor's purchase of the Securities. The Company further represents to each Investor that the Company's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company and its representatives.

(nn) Acknowledgement Regarding Investors' Trading Activity. It is understood and acknowledged by the Company that, except as otherwise specifically set forth in any written agreement between the Company and the applicable Investor, (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Investors have been asked by the Company to agree, nor has any Investor agreed with the Company, to refrain from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long and/or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) each Investor shall not be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Investor may rely on the Company's obligation to timely deliver shares of Common Shares upon conversion, exercise or exchange, as applicable, of the Notes as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Shares of the Company. The Company further understands and acknowledges that, except as otherwise specifically set forth in any written agreement between the Company and the applicable Investor, following the public disclosure of the transactions contemplated by the Transaction Documents pursuant to the Press Release (as defined below) one or more Investors may engage in trading activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value and/or number of the Note Shares deliverable with respect to the Securities are being determined and such trading activities, if any, can reduce the value of the existing shareholders' equity interest in the Company both at and after the time the trading activities are being conducted. The Company acknowledges that, except as otherwise specifically set forth in any written agreement between the Company and the applicable Investor, such aforementioned trading activities do not constitute a breach of this Agreement, the Notes or any other Transaction Document or any of the documents executed in connection herewith or therewith.

(oo) Manipulation of Price. The Company has not, and, to the knowledge of the Company, no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company in connection with the transactions contemplated by the Transaction Documents, or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company.

(pp) Ranking of Notes. No Indebtedness of the Company will be senior to, or *pari passu* with, the Notes in right of payment, whether with respect to payment or redemptions, interest, damages, upon liquidation or dissolution or otherwise.

(qq) Security Interest in Collateral. The provisions of this Agreement and the other Transaction Documents create legal, valid and enforceable Liens on, and security interests in, all of the Company's and each of the Subsidiary Guarantor's right, title and interest in and to all the Collateral in favor of the Collateral Agent, for the benefit of the Collateral Agent and the Investors, and upon (x) the making of the filings, recordings and other similar actions specified in the Security Documents, and (y) the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Security Document), such Liens shall constitute perfected and continuing Liens on, and security interests in, the Collateral, securing the Secured Obligations (as defined in the Security Agreement), enforceable against the Company, the Subsidiary Guarantors and all third parties, having priority over all other Liens (other than Liens which will be discharged on or before the First Closing) on the Collateral.

(rr) THE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY IN THIS SECTION 3.1 ARE THE EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY. THE COMPANY HAS NOT MADE ANY IMPLIED REPRESENTATIONS OR WARRANTIES AND THE COMPANY HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE SET FORTH IN THIS SECTION 3.1.

3.2 Representations and Warranties of the Investors. Each Investor hereby, as to itself only and for no other Investor, represents and warrants to the Company as follows:

(a) Organization; Authority. Such Investor is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate, limited liability company, partnership or other power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The purchase by such Investor of the Securities hereunder and the consummation of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership or other action on the part of such Investor. This Agreement and the Transaction Documents to which such Investor is a party or has or will execute have been duly executed and delivered by such Investor and constitute the valid and binding obligations of such Investor, enforceable against it in accordance with their 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 contained herein may be limited by applicable law.

(b) No Public Sale or Distribution. Such Investor is acquiring the Securities for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities laws, and such Investor does not have a present arrangement to effect any distribution of the Securities to or through any person or entity; provided, however, by making the representations herein, such Investor does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the Securities Act.

(c) Investor Status. Such Investor is an "accredited investor" as defined in Rule 501(a) under the Securities Act and within the meaning of National Instrument 45-106 – *Prospectus Exemptions* of the Canadian Securities Administrators. Such Investor is not a registered broker dealer registered under Section 15(a) of the Exchange Act, or a member of the Financial Industry Regulatory Authority, Inc. ("***FINRA***") or an entity engaged in the business of being a broker dealer. Such Investor is not subject to any Disqualification Event.

(d) Experience of Such Investor; Risk of Loss. Such Investor has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Investor understands that it must bear the economic risk of its investment in the Securities, and is able to bear such risk and is able to afford a complete loss of such investment.

(e) Access to Information. Such Investor acknowledges that it has been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Investor. Such Investor has been afforded the opportunity to ask questions of the Company and receive answers from representatives of the Company concerning the Company and the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities. Neither such inquiries nor any other due diligence investigations conducted by such Investor or its advisors, if any, or its representatives shall modify, amend or affect such Investor's right to rely on the Company's representations and warranties contained herein or in any other Transaction Document.

(f) No Governmental Review. Such Investor understands that no U.S. federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) Reliance on Exemptions. Such Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Company is relying upon the truth and accuracy of, and such Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Investor set forth herein and in the other Transaction Documents in order to determine the availability of such exemptions and the eligibility of such Investor to acquire the Securities.

(h) Residency. Such Investor is a resident of that jurisdiction specified below its address on the Schedule of Investors.

(i) Transfer or Resale. Such Investor understands that: (i) the Securities have not been and are not being registered under the Securities Act, any U.S. state securities laws or the laws of any foreign country or other jurisdiction, and may not be offered for sale, sold, assigned or transferred other than pursuant to Section 4.1; and (ii) except as set forth in Section 4.7, neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(j) Legends. Such Investor understands that each of the certificates representing the Securities, except as set forth below, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend as set forth in Section 4.1(b), which shall only be removed as set forth in Section 4.1(d).

ARTICLE IV
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Investors covenant that the Securities will be disposed of only pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with applicable state securities laws. In connection with any transfer of Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, (iii) pursuant to Rule 144 (provided that the Investor provides the Company with reasonable assurances (in the form of a seller representation letter) that such Securities, as applicable, may be sold pursuant to such rule) or Rule 144A (as promulgated under the Securities Act), or (iv) in connection with a bona fide pledge as contemplated in Section 4.1(c), the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities, as applicable, under the Securities Act. Notwithstanding the foregoing, the Company hereby consents to and agrees to register on the books of the Company and with its Transfer Agent, without any such legal opinion, except to the extent that the transfer agent requests such legal opinion, any transfer of Securities, as applicable, by an Investor to an Affiliate of such Investor; provided further that such transfer does not involve a "sale" within the meaning of Section 2(a)(3) of the Securities Act; and provided, further that such Affiliate does not request any removal of any existing legends on any certificate evidencing such Securities, as applicable.

(b) The Investors agree to the imprinting, until no longer required by this Section 4.1(b), of the following legend on any certificate evidencing any of the Securities:

> THESE SECURITIES [*for Notes, insert*: AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF; *for Commitment Fee Warrants, insert:* AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF] HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (I) THE ISSUE DATE AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.

(c) The Company acknowledges and agrees that an Investor may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities, as applicable, to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and, if required under the terms of such arrangement, such Investor may transfer pledged or secured Securities, as applicable, to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith; provided, that an opinion of legal counsel to the Company may be required by the Transfer Agent in connection with any such transfer. Further, no notice shall be required of such pledge. At the appropriate Investor's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities, as applicable, may reasonably request in connection with a pledge or transfer of such Securities, as applicable, including, (i) the opinion of legal counsel to the Company, if required by the Transfer Agent, as described above and (ii) if the Securities, as applicable, are subject to registration pursuant to this Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling shareholders.

(d) Certificates evidencing the Securities, as applicable, shall not be required to contain such legend or any other legend (i) following any sale of such Securities, as applicable, pursuant to an effective registration statement under the Securities Act, (ii) pursuant to Rule 144 if the holder provides the Company with a legal opinion (and the documents upon which the legal opinion is based) reasonably acceptable to the Company to the effect that the Securities, as applicable, can be sold under Rule 144 or (iii) if the holder provides the Company with a legal opinion (and the documents upon which the legal opinion is based) reasonably acceptable to the Company to the effect that the legend is not required under applicable requirements of the Securities Act (including controlling judicial interpretations and pronouncements issued by the staff of the SEC (the "***Staff***")). The Company, at its expense, shall cause Company Counsel to issue any legal opinion to the Transfer Agent in connection with any sale or transfer pursuant to Rule 144 in compliance with this Section 4.1(d). The Company will no later than three (3) Trading Days following the delivery by an Investor to the Company or the Transfer Agent (if delivery is made to the Transfer Agent a copy shall be contemporaneously delivered to the Company) of (x) a legended certificate representing the applicable Securities, as applicable, and any necessary instruments of transfer and (y) evidence reasonably satisfactory to the Company and its counsel of the occurrence of any of (i) through (iii) above (including any applicable investor and broker representation letters and the delivery of any legal opinion referred to therein, as applicable), deliver or cause to be delivered to such Investor (or a transferee of such Investor, as applicable) a certificate or book-entry (including shares transferred via DWAC or similar methodology by DTC) representing such Securities, as applicable, that is free from all restrictive and other legends(the date on which (x) and (y) are delivered being referred to herein as the "***Legend Removal Date***"). The Company may not make any notation on its records or give instructions to the Transfer Agent that expand the restrictions on transfer set forth in this Section 4.1(d).

4.2 Use of Proceeds. The Company intends to use the net proceeds from the sale of the Notes to fund product commercialization, to fund research and development, for general corporate purposes, to repay certain existing indebtedness and to pay the fees and expenses incurred in connection with the transactions contemplated by this Agreement. The Company shall not use such proceeds (x) in violation of FCPA or OFAC regulations, or (y) to make any dividend or distribution in respect of, or to repurchase or redeem, any shares of its capital stock.

4.3 Securities Laws Disclosure; Publicity. The Company shall, on or before 9:30 a.m. (New York time), on the first (1st) Business Day after the date of this Agreement, issue a press release (the "***Press Release***"), the contents of which shall be subject to prior review and reasonable approval of the Investors, disclosing all the material terms of the transactions contemplated by the Transaction Documents. On or before 9:30 a.m., New York time, on the first (1st) Business Day after the date of this Agreement, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the Exchange Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (and all schedules to this Agreement) and the form of Notes (including all attachments, the "***8-K Filing***"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided to any of the Investors by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the filing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Investors or any of their affiliates, on the other hand, shall terminate. Without the prior written consent of an Investor, which consent shall not be unreasonably withheld, conditioned or delayed, the Company shall not publicly disclose the name of such Investor, or include the name of such Investor in any filing with the SEC or any regulatory agency or Trading Market; provided, however, that without such Investor's consent, the Company may publicly disclose the name of such Investor, or include the name of such Investor in any filing with the SEC or any regulatory agency or Trading Market, (a) as required by federal securities law in connection with any registration statement contemplated by this Agreement or (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Investors with prior notice of such disclosure permitted under this clause (b); provided, however, that, notwithstanding the foregoing proviso, at least five (5) Business Days prior to the Company's filing with the SEC of its first Quarterly Report on Form 10-Q or Annual Report on Form 10-K following the First Closing Date, the Company shall deliver to each Investor a draft of such Quarterly Report on Form 10-Q or such Annual Report on Form 10-K and shall reasonably cooperate with each such Investor in respect of any reasonable comments thereto proposed by such Investor.

4.4 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Investor is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Investor could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities, as applicable, under the Transaction Documents.

4.5 Non-Public Information. Except with respect to (i) the material terms and conditions of the transactions contemplated by the Transaction Documents and (ii) information provided to the Observer, the Company covenants and agrees that neither it, nor any other Person acting on its behalf, will provide any Investor or its agents or counsel with any information that the Company believes constitutes material non-public information from and after the filing of the Press Release, unless prior thereto such Investor shall have entered into a written agreement with the Company regarding the confidentiality and use of such information. The Company understands and confirms that each Investor shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.6 Blue Sky. The Company, on or before each Applicable Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Notes for sale to the Investors at such Closing pursuant to this Agreement under applicable securities or "blue sky" laws of the states of the United States (or to obtain an exemption from such qualification). The Company shall make all filings and reports relating to the offer and sale of the Securities, as applicable, required under applicable securities or "blue sky" laws of the states of the United States following the Applicable Closing Date and shall provide copies to any Investor who so requests.

4.7 Resale Registration.

(a) Mandatory Registration. Following each Closing, the Company shall prepare and, as soon as reasonably practicable, but in no event later than the Filing Deadline in respect of such Closing, file with the SEC, a Registration Statement on Form S-3 or such other form under the Securities Act as is then available to the Company (or, in the case of an existing shelf registration statement, file a prospectus supplement with the SEC), providing for the resale from time to time by the Investors of at least the number of Registrable Securities equal to the Required Registration Amount in respect of the Notes and Commitment Fee Warrants issued at such Closing as of the date such Registration Statement is initially filed with the SEC. Notwithstanding anything to the contrary contained herein, the Filing Deadline with respect to any Registration Statement shall be automatically extended by a number of days necessary to address any comments to such Registration Statement by any Investor's counsel, which comments have required that the Company not file such Registration Statement as set forth in clause (B) of Section 4.7(c)(iii). Each Registration Statement (or, in the case of an existing shelf registration statement, prospectus supplement) required to be filed pursuant to the terms of this Agreement, shall contain (except as otherwise directed by the Investors) the "Selling Shareholders" and "Plan of Distribution" sections in substantially the form attached hereto as Annex B. The Company agrees to use its reasonable best efforts to cause each Registration Statement (or, in the case of an existing shelf registration statement, each prospectus supplement) required to be filed pursuant to the terms of this Agreement to be declared effective by the SEC as soon as practicable following such filing and prior to the applicable Effectiveness Deadline for such Registration Statement. The Company shall promptly, and in any event within three (3) Trading Days, notify the Investors of the effectiveness of a Registration Statement. The Company shall maintain the effectiveness of each Registration Statement for so long as there are any Registrable Securities covered by such Registration Statement outstanding, with respect to such outstanding Registrable Securities.

(b) Effect of Failure to File and Obtain and Maintain Effectiveness of any Registration Statement. If (i) a Registration Statement covering the resale of all of the Registrable Securities required to be covered thereby (after giving effect to any reduction pursuant to Section 4.7(g)) and required to be filed by the Company pursuant to this Agreement is (A) not filed with the SEC on or before the Filing Deadline for such Registration Statement (a "***Filing Failure***") or (B) not declared effective by the SEC on or before the Effectiveness Deadline for such Registration Statement (an "***Effectiveness Failure***") (it being understood that if on or prior to the fifth Business Day immediately following the effective date for such Registration Statement the Company shall not have filed a "final" prospectus for such Registration Statement with the SEC under Rule 424(b) (to the extent such a prospectus is either technically required by such rule or is otherwise required under applicable securities laws in order to permit the resale by the Investors of the Registrable Securities covered thereby), the Company shall be deemed to not have satisfied this clause (i)(B) and such event shall be deemed to be an Effectiveness Failure), (ii) on any day after the effective date of a Registration Statement during the Registration Period (as defined below) for such Registration Statement sales of all of the Registrable Securities required to be included on such Registration Statement cannot be made pursuant to such Registration Statement (including, without limitation, because of a failure to keep such Registration Statement effective, a failure to disclose such information as is necessary for sales to be made pursuant to such Registration Statement, a suspension or delisting of the Common Shares on the applicable Trading Market, or a failure to register a sufficient number of Common Shares or by reason of a stop order) or the prospectus contained therein is not available for use for any reason (a "***Maintenance Failure***"), or (iii) if a Registration Statement is not effective for any reason or the prospectus contained therein is not available for use for any reason, and either (x) the Company fails for any reason to satisfy the requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) or (y) the Company has ever been an issuer described in Rule 144(i)(1)(i) or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "***Current Public Information Failure***") as a result of which any of the Investors are unable to sell Registrable Securities without restriction under Rule 144 (including, without limitation, volume restrictions), then, as partial relief (other than equitable remedies) for the damages to any holder by reason of any such delay in, or reduction of, its ability to sell Registrable Securities (which remedy shall not be exclusive of any other remedies available in equity), the Company shall pay to each holder of Registrable Securities relating to such Registration Statement an amount in cash equal to one half of one percent (0.50%) of the Total Purchase Price paid by such Investor for the Notes purchased by such Investor pursuant to this Agreement on (1) the date of such Filing Failure, Effectiveness Failure, Maintenance Failure or Current Public Information Failure, as applicable, and (2) on every thirty (30) day anniversary of (I) a Filing Failure until such Filing Failure is cured; (II) an Effectiveness Failure until such Effectiveness Failure is cured; (III) a Maintenance Failure until such Maintenance Failure is cured; and (IV) a Current Public Information Failure until the earlier of (i) the date such Current Public Information Failure is cured and (ii) such time that such public information is no longer required pursuant to Rule 144 (in each case, pro-rated for periods totaling less than thirty (30) days). The payments to which a holder of Registrable Securities shall be entitled pursuant to this Section 4.7(b) are referred to herein as "***Registration Delay Payments***." Following the initial Registration Delay Payment for any particular event or failure (which shall be paid on the date of such event or failure, as set forth above), without limiting the foregoing, if an event or failure giving rise to the Registration Delay Payments is cured prior to any monthly anniversary of such event or failure, then such Registration Delay Payment shall be made on the third (3rd) Business Day after such cure (pro-rated for the number of days elapsed between the date on which the most recent Registration Delay Payment was required to have been paid in accordance with this Section 4.7(b) and the date of cure). In the event the Company fails to make Registration Delay Payments in a timely manner in accordance with the foregoing, such Registration Delay Payments shall bear interest at the rate of one percent (1.0%) per month (prorated for partial months) until paid in full. Notwithstanding the foregoing, no Registration Delay Payments shall be owed to an Investor (other than with respect to a Maintenance Failure resulting from a suspension or delisting of (or a failure to timely list) the Common Shares on the applicable Trading Market) with respect to any period during which all of such Investor's Registrable Securities may be sold by such Investor without restriction under Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1)). For the avoidance of doubt, no more than one Registration Delay Payment shall be payable by the Company at any given time, notwithstanding that more than one failure giving rise to a Registration Delay Payment shall have occurred and is continuing (e.g., an Effectiveness Failure and a Current Public Information Failure continuing simultaneously); provided, that, Registration Delay Payments shall continue in accordance with this Section 4.7(b) until all failures giving rise to such payments are cured.

(c) Related Obligations. The Company shall use its reasonable best efforts to effect the registration of all the Registrable Securities in accordance with the intended method of disposition thereof, and, pursuant thereto, the Company shall have the following obligations:

(i) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to all the Registrable Securities required to be covered thereby (but in no event later than the applicable Filing Deadline) and use its reasonable best efforts to cause such Registration Statement to become effective as soon as practicable after such filing and prior to the applicable Effectiveness Deadline. The Company shall keep each Registration Statement effective (and the prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investors on a delayed or continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earlier of (A) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement (disregarding any reduction pursuant to Section 4.7(g)) without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (B) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement (the "***Registration Period***"). Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that, when filed and at all times while effective, each Registration Statement (1) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading and (2) will disclose (whether directly or through incorporation by reference to other SEC filings to the extent permitted) all material information regarding the Company and its securities. The Company shall submit to the SEC, within five (5) Business Days after the Staff advises the Company (orally or in writing, whichever is earlier) that the Staff either will not review a particular Registration Statement or has no further comments on such Registration Statement (as the case may be), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than forty-eight (48) hours after the submission of such request.

(ii) The Company shall prepare and file with the SEC such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep each such Registration Statement effective at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company required to be covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement or the completion of the applicable Registration Period; provided, however, by 5:30 p.m. (New York time) on or prior to the fifth (5^{th}) Business Day immediately following the effective date of each Registration Statement, the Company shall file with the SEC in accordance with Rule 424(b) under the Securities Act the final prospectus to be used in connection with sales pursuant to such Registration Statement (whether or not such a prospectus is technically required by such rule). In the case of amendments and supplements to any Registration Statement which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 4.7(c)(ii)) by reason of the Company filing a report on Form 10-Q or Form 10-K or any analogous report under the Exchange Act, the Company shall, if permitted under the applicable rules and regulations of the SEC, have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on or prior to the third (3^{rd}) Trading Day following the date on which the Exchange Act report is filed with the SEC which created the requirement for the Company to amend or supplement such Registration Statement.

(iii) The Company shall (A) permit legal counsel for each Investor, at each such Investor's cost and expense, to review and comment upon (i) each Registration Statement that includes the name, or otherwise identifies, any Investor as a "Selling Shareholder" with respect to securities registered for sale pursuant to such Registration Statement at least five (5) days prior to its filing with the SEC and (ii) all amendments and supplements to each Registration Statement that includes the name, or otherwise identifies, any Investor as a "Selling Shareholder" with respect to securities registered for sale pursuant to such Registration Statement (including, without limitation, the prospectus contained therein) (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) not file any Registration Statement or amendment or supplement thereto, in each, referred to in clause (A) above, in a form to which any legal counsel for any Investor reasonably objects in a timely manner. The Company shall reasonably cooperate with legal counsel for each other Investor in performing the Company's obligations pursuant to this Section 4.7(c)(iii).

(iv) The Company shall promptly furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) copies of any correspondence from the SEC or the Staff to the Company or its representatives relating to such Registration Statement, provided that such correspondence shall not contain any material, non-public information regarding the Company or any of its Subsidiaries, (ii) upon request, after the same is prepared and filed with the SEC, a reasonable number of copies of such Registration Statement and any amendment(s) and supplement(s) thereto, including, if so requested, the financial statements and schedules filed therewith, all documents incorporated therein by reference, all exhibits and each preliminary prospectus, (iii) upon request, upon the effectiveness of such Registration Statement, two (2) copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request from time to time), and (iv) such other documents, including, without limitation, copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

(v) The Company shall use its reasonable best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by any Registration Statement under such other securities or "blue sky" laws of jurisdictions in the United States as shall be reasonably appropriate for the distribution of the Registrable Securities covered by such Registration Statement, (ii) prepare and file in those jurisdictions, such amendments (including, without limitation, post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the applicable Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the applicable Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 4.7(c)(v), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(vi) The Company shall notify each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company or any of its Subsidiaries), and promptly prepare a supplement or amendment to such Registration Statement and such prospectus contained therein to correct such untrue statement or omission and, upon request by any Investor, deliver two (2) copies of such supplement or amendment to such Investor (or such other number of copies as such Investor may reasonably request). The Company shall also promptly notify each Investor in writing when a prospectus or any prospectus supplement or post-effective amendment relating to a Registration Statement has been filed, when a Registration Statement or any post-effective amendment thereto has become effective (notification of such effectiveness shall be delivered to each Investor by facsimile or e-mail on the same day of such effectiveness or by overnight mail), and when the Company receives written notice from the SEC that a Registration Statement or any post-effective amendment thereto will be reviewed by the SEC. The Company shall respond as promptly as reasonably practicable to any comments received from the SEC with respect to each Registration Statement or any amendment thereto. If the Company receives SEC comments which challenge the right of an Investor to have its Registrable Securities included in a Registration Statement without being deemed an underwriter thereunder, the Company shall, in discussions with and responses to the SEC, use its reasonable best efforts to cause as many Registrable Securities as possible to be included in such Registration Statement without characterizing any Investor as an underwriter and in such regard use its reasonable best efforts to cause the SEC to permit the affected Investors or their respective counsel to reasonably participate in SEC conversations on such issue together with Company Counsel, and timely convey relevant information concerning such issue with the affected Investors or their respective counsel. In no event may the Company name any Investor as an underwriter without such Investor's prior written consent.

(vii) The Company shall (i) use reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of each Registration Statement or the use of any prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension as soon as reasonably practicable and (ii) notify each Investor who holds Registrable Securities of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(viii) The Company shall hold in confidence and not make any disclosure of confidential information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in a Registration Statement or is otherwise required to be disclosed in a Registration Statement pursuant to the Securities Act, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. The Company agrees that it shall, to the extent permitted by law, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at such Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(ix) Without limiting any obligation of the Company under this Agreement, the Company shall use its reasonable best efforts either to (i) cause all of the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all of the Registrable Securities on the applicable Trading Market. In addition, the Company shall cooperate with each Investor and any broker or dealer through which any such Investor proposes to sell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as requested by such Investor and at such Investor's expense. Other than with respect to the immediately preceding sentence, the Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4.7(c)(ix).

(x) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (subject to applicable securities laws, not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to any Registration Statement and enable such certificates to be in such denominations or amounts (as the case may be) as the Investors may reasonably request from time to time and registered in such names as the Investors may request.

(xi) The Company shall use its reasonable best efforts to cause the Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(xii) The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of each Registration Statement.

(xiii) The Company shall otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(xiv) Within two (2) Business Days after the date on which a Registration Statement which covers Registrable Securities is declared effective by the SEC, the Company shall deliver, or shall cause legal counsel for the Company to deliver, to the Transfer Agent (with copies to the Investors whose Registrable Securities are included in such Registration Statement upon request by any such Investor) written confirmation that such Registration Statement has been declared effective by the SEC.

(xv) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, at the request of any Investor, the Company shall furnish to such Investor, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(xvi) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, upon the written request of such Investor, the Company shall make available for inspection, upon reasonable notice and during normal business hours, by (i) such Investor, (ii) legal counsel for such Investor and (iii) one (1) firm of accountants or other agents retained by such Investor (collectively, the "***Inspectors***"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be deemed reasonably necessary by each Inspector to enable such Investor to exercise its due diligence responsibly, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, each Inspector shall agree in writing to hold in strict confidence and not to make any disclosure (except to such Investor) or use of any Record or other information which the Company's board of directors determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (1) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the Securities Act, (2) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (3) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. Such Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and such Investor, if any) shall be deemed to limit any Investor's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations. For the avoidance of doubt, any material non-public information received by an Inspector and/or an Investor in connection with exercising its inspection right under this Section 4.7(c)(xvi) shall not constitute a violation of any provision of the other Transaction Documents.

(xvii) The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by each Investor of its Registrable Securities pursuant to each Registration Statement.

(d) Obligations of the Investors. Each Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as the Company shall reasonably request and as shall be required in connection with the registration of the Registrable Securities, and shall execute such documents in connection with such registration as the Company may reasonably request. Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(e) Expenses of Registration. All expenses incurred in connection with any Registration Statement, excluding underwriters' discounts and commissions, but including without limitation all registration, filing and qualification fees, word processing, duplicating, printers' and accounting fees, stock exchange fees, messenger and delivery expenses, all fees and expenses of complying with state securities or blue sky laws and the fees and disbursements of counsel for the Company shall be paid by the Company.

(f) Sufficient Number of Shares Registered. Subject to Section 4.7(g), in the event the number of shares available under any Registration Statement during the applicable Registration Period is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 4.7(h), the Company shall amend such Registration Statement (if permissible), or file with the SEC a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) Business Days after the necessity therefor arises (but taking account of any Staff position with respect to the date on which the Staff will permit such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use reasonable best efforts to cause such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC and prior to the applicable Effectiveness Deadline for such Registration Statement. Subject to Section 4.7(g), for purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of Common Shares available for resale under the applicable Registration Statement is less than the product determined by multiplying (i) the Required Registration Amount as of such time by (ii) 0.90. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on conversion, exercise, amortization and/or redemption of the Notes or Commitment Fee Warrants (and such calculation shall assume that (A) the Notes are then convertible in full into Common Shares at the then prevailing Conversion Rate (as defined in the Notes), (B) no redemptions or prepayments of the Notes occur prior to the scheduled Maturity Date (except to the extent redemptions or prepayments of the Notes have actually occurred on or prior to such date), and (C) the Commitment Fee Warrants are then exercisable in full into Common Shares at the then prevailing Exercise Price (as defined in the Commitment Fee Warrants).

(g) Offering. Notwithstanding anything to the contrary contained in this Agreement, in the event the Staff or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities by, or on behalf of, the Company, or in any other manner, such that the Staff or the SEC do not permit such Registration Statement to become effective and used for resales in a manner that does not constitute such an offering and that permits the continuous resale at the market by the Investors participating therein (or as otherwise may be acceptable to each Investor) without being named therein as an "underwriter," then the Company shall reduce the number of shares to be included in such Registration Statement by all Investors until such time as the Staff and the SEC shall so permit such Registration Statement to become effective as aforesaid. In making such reduction, the Company shall reduce the number of shares to be included by all Investors on a pro rata basis (based upon the number of Registrable Securities otherwise required to be included for each Investor) unless the inclusion of shares by a particular Investor or a particular set of Investors are resulting in the Staff or the SEC's "by or on behalf of the Company" offering position, in which event the shares held by such Investor or set of Investors shall be the only shares subject to reduction (and if by a set of Investors on a pro rata basis by such Investors or on such other basis as would result in the exclusion of the least number of shares by all such Investors); provided, that, with respect to such pro rata portion allocated to any Investor, such Investor may elect the allocation of such pro rata portion among the Registrable Securities of such Investor. In addition, in the event that the Staff or the SEC requires any Investor seeking to sell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an "underwriter" in order to permit such Registration Statement to become effective, and such Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of such Investor, until such time as the Staff or the SEC does not require such identification or until such Investor accepts such identification and the manner thereof. In the event of any reduction in Registrable Securities pursuant to this paragraph, an affected Investor shall have the right to require, upon delivery of a written request to the Company signed by such Investor, the Company to file a registration statement within forty-five (45) days of such request (subject to any restrictions imposed by Rule 415 or required by the Staff or the SEC) for resale by such Investor in a manner acceptable to such Investor, and the Company shall following such request cause to be and keep effective such Registration Statement in the same manner as otherwise contemplated in this Agreement for Registration Statements hereunder, in each case until such time as: (i) all Registrable Securities held by such Investor have been registered and sold pursuant to an effective Registration Statement in a manner acceptable to such Investor or (ii) all Registrable Securities may be resold by such Investor without restriction (including, without limitation, volume limitations) pursuant to Rule 144 (taking account of any Staff position with respect to "affiliate" status) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (iii) such Investor agrees to be named as an underwriter in any such Registration Statement in a manner acceptable to such Investor as to all Registrable Securities held by such Investor and that have not theretofore been included in a Registration Statement under this Agreement.

(h) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time such Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee or assignee (as the case may be) that becomes an Investor shall be allocated a pro rata portion of the then-remaining number of Registrable Securities included in such Registration Statement for such transferor or assignee (as the case may be). Any Common Shares included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement.

(i) No Inclusion of Other Securities. The Company shall in no event include any securities other than Registrable Securities on any Registration Statement filed in accordance herewith without the prior written consent of the Investors (provided, however, that securities registered pursuant to a separate prospectus supplement under a shelf registration statement shall not constitute a violation of this Section 4.7(i)). The Company shall not enter into any agreement providing any registration rights to any of its security holders to the extent such agreement requires, or would otherwise result in, any registration statement of the Company in respect of any securities of the Company (other than the Registrable Securities) becoming effective on or prior to the Applicable Date.

4.8 Furnishing of Information. In order to enable the Investors to sell the Securities under Rule 144 of the Securities Act, for a period of two years from each Applicable Closing Date, the Company shall use its commercially reasonable efforts to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. During such two year period, if the Company is not required to file reports pursuant to such laws, it will prepare and furnish to the Investors and make publicly available in accordance with Rule 144(c) such information as is required for the Investors to sell the Note Shares and Commitment Fee Warrant Shares under Rule 144.

4.9 Board Observer. Until such time as the Board Observer Agreement is terminated pursuant to Section 8 of the Board Observer Agreement, the Company shall allow one (1) non-voting representative designated by Petrichor (such representative, the "***Observer***") to attend, in the capacity of an observer and not a member, all meetings the Board. The Company shall give the Observer prior written notice of all meetings of the Board on the terms and conditions set forth in the Board Observer Agreement.

4.10 Commitment Fees.

(a) As an inducement to the First Closing Investors to purchase the Notes hereunder, and in consideration thereof, on the First Closing Date, the Company agrees to pay the First Closing Investors a commitment fee by issuing each such First Closing Investor a warrant, initially exercisable for such number of shares of the Company's Common Shares (subject to adjustment as therein provided) set forth opposite each such First Closing Investor's name under the heading "First Commitment Fee Warrants" on the Schedule of Investors, at an initial exercise price as set forth therein (subject to adjustment as provided therein), such warrants to be substantially in the form of Exhibit E-1 attached hereto (all such warrants issued pursuant to this Agreement, or delivered in substitution or exchange for any thereof, being collectively called the "***First Commitment Fee Warrants***" and, individually, a "***First Commitment Fee Warrant***"), duly executed and dated the First Closing Date, and registered in each such First Closing Investor's name or in the name of its nominee.

(b) As an inducement to the First Closing Investors to purchase the Notes hereunder, and in consideration thereof, on the Second Commitment Fee Trigger Date, the Company agrees to pay the First Closing Investors an additional commitment fee (the "***Second Commitment Fee***"), which additional commitment fee shall be payable on the Second Commitment Fee Trigger Date either, at the option of the Company, (A) in cash, by wire transfer of immediately available funds to each such First Closing Investor, in an amount equal to 1.00% of the initial principal amount of the Notes purchased by such First Closing Investor hereunder (including any First Closing Notes purchased by such First Closing Investor at the First Closing and any Second Closing Notes purchased, or purchasable, by such First Closing Lender at the Initial Second Closing (determined without giving effect to any reduction in the principal amount of Second Closing Notes issued at the Initial Second Closing pursuant to Section 2.1(b)(iv))), or (B) by issuing each such First Closing Investor a warrant, initially exercisable for such number of shares of the Company's Common Shares (subject to adjustment as therein provided) set forth opposite each such First Closing Investor's name under the heading "Second Commitment Fee Warrants" on the Schedule of Investors, at an initial exercise price as set forth therein (subject to adjustment as provided therein), such warrants to be substantially in the form of Exhibit E-2 attached hereto (all such warrants issued pursuant to this Agreement, or delivered in substitution or exchange for any thereof, being collectively called the "***Second Commitment Fee Warrants***" and, individually, a "***Second Commitment Fee Warrant***, duly executed and dated the Second Commitment Fee Trigger Date, and registered in each such First Closing Investor's name or in the name of its nominee.

4.11 Use of Efforts. The Company shall, and the Company shall cause its Subsidiaries to, use reasonable best efforts to satisfy (or cause the satisfaction of) all of the conditions set forth in Section 5.1(a) as promptly as practicable following the date of this Agreement.

4.12 No Shop. Except for the transactions contemplated hereby, during the period from the date hereof through the First Closing Date or the earlier termination of this Agreement pursuant to Section 8.1(a), (a) the Company shall not, and shall cause its Subsidiaries, Affiliates and representatives to not, take any action to encourage the submission of any proposal or offer from any Person with respect to, or initiate, engage or continue in discussions or negotiations with any Person (other than the Collateral Agent and the Investors) concerning, any issuance or sale of any convertible promissory notes, capital stock, equity, Indebtedness or convertible securities by, or any incurrence of any Indebtedness by, the Company or any of its Subsidiaries (an "***Alternative Proposal***") or (b) furnish or cause to be furnished to any Person (other than the Collateral Agent and the Investors) any information with respect to the business, operations, properties or assets of the Company or any of its Subsidiaries in connection with, or in an attempt to facilitate, such Person's pursuit of any Alternative Proposal.

ARTICLE V
CONDITIONS TO CLOSINGS

5.1 Conditions Precedent to the First Closing.

(a) Conditions Precedent to the Obligations of the First Closing Investors(b) . The obligation of each First Closing Investor to purchase the First Closing Notes at the First Closing is subject to the satisfaction, unless waived in writing by such First Closing Investor, at or before the First Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the First Closing Date with the same effect as though made on and as of the First Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. The Company and each Subsidiary Guarantor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the First Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the First Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Shares; Listing. Trading in the Common Shares shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the First Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity which, in each case, makes it impracticable to purchase the First Closing Notes at the First Closing.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the First Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) Transaction Documents. The Company and each Subsidiary Guarantor shall have executed each of the Transaction Documents to which it is a party and delivered the same to the First Closing Investors.

(vii) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(viii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(ix) Legal Opinion. Company Counsel shall have delivered to the First Closing Investors a legal opinion of Company Counsel, addressed to the First Closing Investors, in form and substance mutually agreed upon by the parties hereto.

(x) Officer's Certificate. The Company shall have delivered to the First Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.1(a)(i), 5.1(a)(ii) and 5.1(a)(viii).

(xi) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the First Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the First Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the First Closing Date, (iii) the bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the First Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the First Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xii) Collateral Items.

(A) In accordance with the terms of the Security Documents, the Company and each of the Subsidiary Guarantors shall have (1) delivered to the Collateral Agent (i) original certificates (a) representing each Subsidiaries' shares of capital stock to the extent such Subsidiary is a corporation or otherwise has certificated equity and (b) representing all other equity interests and all promissory notes required to be pledged thereunder, in each case, accompanied by undated stock powers and allonges executed in blank and other proper instruments of transfer and (B) authorized the Collateral Agent and the First Closing Investors to file appropriate financing statements on Form UCC-1 in such office or offices as may be necessary or, in the opinion of the First Closing Investors, desirable to perfect the security interests purported to be created by each Security Document.

(B) Within two (2) Business Days prior to the Closing, the Company shall have delivered or caused to be delivered to the First Closing Investors (A) certified copies of requests for copies of information on Form UCC-11, listing all effective financing statements which name as debtor the Company or any of the Subsidiary Guarantors and which are filed in such office or offices as may be necessary or, in the opinion of the First Closing Investors, desirable to perfect the security interests purported to be created by the Security Agreement, together with copies of such financing statements, none of which, except as otherwise agreed in writing by the First Closing Investors, shall cover any of the Collateral (as defined in the Security Agreement), and the results of searches for any tax Lien and judgment Lien filed against such Person or its property, which results, except as otherwise agreed to in writing by the First Closing Investors, shall not show any such Liens; and (B) a perfection certificate, duly completed and executed by the Company and each of the Subsidiary Guarantors, in form and substance satisfactory to the First Closing Investors (the "***Perfection Certificate***").

(C) Each document (including any UCC financing statement) required by the Security Documents or reasonably requested by the First Closing Investors to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Investors, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall be in proper form for filing, registration or recordation.

(xiii) First Commitment Fee Warrants. The Company shall have issued and delivered the First Commitment Fee Warrants to each of the First Closing Investors in accordance with Section 4.10(a).

(xiv) Repayment of Existing Indebtedness.

(A) The Company shall have delivered to the Collateral Agent an executed copy of a customary payoff letter in respect of the Existing Indebtedness and all documents or instruments necessary to release all Liens securing the Existing Indebtedness, in each case, in form and substance acceptable to the Collateral Agent.

(B) Either prior to or contemporaneously with the First Closing, (i) all Existing Indebtedness shall have been repaid in full, (ii) the Company and each of its Subsidiaries shall cease to have any obligations under the Existing Indebtedness or the Existing Credit Agreement (or any "Loan Document" as defined therein), and (iii) all commitments under the Existing Indebtedness or the Existing Credit Agreement (or any "Loan Document" as defined therein), if any, to lend or make other extensions of credit thereunder shall have been terminated.

(xv) General. The Company and the Subsidiary Guarantors shall have delivered to such First Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the First Closing Notes at the First Closing is subject to the satisfaction or waiver by the Company, at or before the First Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Investors contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the First Closing Date with the same effect as though made on and as of the First Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. The Investors shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the First Closing.

(iii) Deliverables. The Investors shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company. The Investors shall have delivered to the Company those items required by Section 2.2(b).

5.2 Conditions Precedent to the Initial Second Closing.

(a) Conditions Precedent to the Obligations of the Second Closing Investors(b) . The obligation of each Approving Second Closing Investor to purchase such Approving Second Closing Investor's Second Closing Notes at the Initial Second Closing is subject to the satisfaction, unless waived in writing by such Approving Second Closing Investor, at or before the Initial Second Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Initial Second Closing Date with the same effect as though made on and as of the Initial Second Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. The Company and each Subsidiary Guarantor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Initial Second Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Second Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Shares; Listing. Trading in the Common Shares shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the Initial Second Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity which, in each case, makes it impracticable to purchase the Second Closing Notes at the Initial Second Closing.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the Initial Second Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(vii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(viii) Legal Opinion. Company Counsel shall have delivered to the Approving Second Closing Investors a legal opinion of Company Counsel, addressed to the Approving Second Closing Investors, in form and substance reasonable satisfactory to the Approving Second Closing Investors.

(ix) Officer's Certificate. The Company shall have delivered to the Approving Second Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.2(a)(i), 5.2(a)(ii), 5.2(a)(vii) and 5.2(a)(xi).

(x) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the Approving Second Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the Initial Second Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Initial Second Closing Date, (iii) the bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Initial Second Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the Initial Second Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xi) Second Closing Trigger Event. The Second Closing Trigger Event shall have occurred.

(xii) Investor Label Approval Notice. Such Approving Second Closing Investor shall have delivered an Investor Label Approval Notice in accordance with Section 2.1(b).

(xiii) Second Commitment Fee. The Company shall have paid the Second Commitment Fee to each of the First Closing Investors in accordance with Section 4.10(b).

(xiv) First Closing. The First Closing shall have previously occurred.

(xv) General. The Company and the Subsidiary Guarantors shall have delivered to such Approving Second Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Approving Second Closing Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the Second Closing Notes to an Approving Second Closing Investor at the Initial Second Closing is subject to the satisfaction or waiver by the Company, at or before the Initial Second Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of such Approving Second Closing Investor contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Initial Second Closing Date with the same effect as though made on and as of the Initial Second Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. Such Approving Second Closing Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the Initial Second Closing.

5.3 Conditions Precedent to the Delayed Second Closing.

(a) Conditions Precedent to the Obligations of the Second Closing Investors. The obligation of each Approving Second Closing Investor to purchase such Approving Second Closing Investor's Second Closing Notes at the Delayed Second Closing is subject to the satisfaction, unless waived in writing by such Approving Second Closing Investor, at or before the Delayed Second Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Delayed Second Closing Date with the same effect as though made on and as of the Delayed Second Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. The Company and each Subsidiary Guarantor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Delayed Second Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Second Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Shares; Listing. Trading in the Common Shares shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the Delayed Second Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity which, in each case, makes it impracticable to purchase the Second Closing Notes at the Delayed Second Closing.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the Delayed Second Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(vii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(viii) Legal Opinion. Company Counsel shall have delivered to the Approving Second Closing Investors a legal opinion of Company Counsel, addressed to the Approving Second Closing Investors, in form and substance reasonable satisfactory to the Approving Second Closing Investors.

(ix) Officer's Certificate. The Company shall have delivered to the Approving Second Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.3(a)(i), 5.3(a)(ii), 5.3(a)(vii) and 5.3(a)(xii).

(x) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the Approving Second Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the Delayed Second Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Delayed Second Closing Date, (iii) the bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Delayed Second Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the Delayed Second Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xi) Initial Second Closing. The Initial Second Closing shall have previously occurred.

(xii) Requisite Stockholder Approval. A Delayed Second Closing Event shall have occurred and the Requisite Stockholder Approval shall have been obtained.

(xiii) General. The Company and the Subsidiary Guarantors shall have delivered to such Approving Second Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Approving Second Closing Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company(c) . The obligation of the Company to sell the Second Closing Notes to an Approving Second Closing Investor at the Delayed Second Closing is subject to the satisfaction or waiver by the Company, at or before the Delayed Second Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of such Approving Second Closing Investor contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Delayed Second Closing Date with the same effect as though made on and as of the Delayed Second Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. Such Approving Second Closing Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the Delayed Second Closing.

5.4 Conditions Precedent to the Third Closing.

(a) Conditions Precedent to the Obligations of the Third Closing Investors. The obligation of each Exercising Third Closing Investor to purchase such Exercising Third Closing Investor's Applicable Third Closing Notes at the Third Closing is subject to the satisfaction, unless waived in writing by such Exercising Third Closing Investor, at or before the Third Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Third Closing Date with the same effect as though made on and as of the Third Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. The Company and each Subsidiary shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Third Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Third Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Shares; Listing. Trading in the Common Shares shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the Third Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity which, in each case, makes it impracticable to purchase the Third Closing Notes at the Third Closing.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the Third Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(vii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(viii) Legal Opinion. Company Counsel shall have delivered to the Exercising Third Closing Investors a legal opinion of Company Counsel, addressed to the Exercising Third Closing Investors, in form and substance reasonable satisfactory to the Exercising Third Closing Investors.

(ix) Officer's Certificate. The Company shall have delivered to the Exercising Third Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.4(a)(i), 5.4(a)(ii) and 5.4(a)(vii).

(x) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the Exercising Third Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the Third Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Third Closing Date, (iii) the bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Third Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the Third Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xi) Third Closing Election Notice. Such Exercising Third Closing Investor shall have delivered a Third Closing Election Notice to the Company in accordance with Section 2.1(c) pursuant to which such Exercising Third Closing Investor shall have elected to purchase such Exercising Third Closing Investor's Applicable Third Closing Notes on the Third Closing Date.

(xii) General. The Company and the Subsidiary Guarantors shall have delivered to such Exercising Third Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Exercising Third Closing Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the Third Closing Notes to an Exercising Third Closing Investor at the Third Closing is subject to the satisfaction or waiver by the Company, at or before the Third Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of such Exercising Third Closing Investor contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Third Closing Date with the same effect as though made on and as of the Third Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. Such Exercising Third Closing Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the Third Closing.

5.5 Conditions Precedent to the Fourth Closing.

(a) Conditions Precedent to the Obligations of the Fourth Closing Investors. The obligation of each Exercising Fourth Closing Investor to purchase such Exercising Fourth Closing Investor's Applicable Fourth Closing Notes at the Fourth Closing is subject to the satisfaction, unless waived in writing by such Exercising Fourth Closing Investor, at or before the Fourth Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of the Company and each Subsidiary contained herein and in each other Transaction Document shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Fourth Closing Date with the same effect as though made on and as of the Fourth Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. The Company and each Subsidiary shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Fourth Closing; provided, that, with respect to covenants, agreements and conditions that are qualified by materiality, the Company shall have performed such covenants, agreements and conditions, as so qualified, in all respects.

(iii) Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Fourth Closing Notes (including all Required Approvals), all of which shall be and remain so long as necessary in full force and effect.

(iv) No Suspensions of Trading in Common Shares; Listing. Trading in the Common Shares shall not have been suspended by the SEC or any Trading Market at any time since the date of execution of this Agreement and, at any time prior to the Fourth Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity which, in each case, makes it impracticable to purchase the Fourth Closing Notes at the Fourth Closing.

(v) Absence of Litigation. No action, suit or proceeding by or before any court or any governmental body or authority, against the Company or any Subsidiary Guarantor or pertaining to the transactions contemplated by this Agreement or their consummation, shall have been instituted on or before the Fourth Closing Date, which action, suit or proceeding would, if determined adversely, have or reasonably be expected to result in, a Material Adverse Effect.

(vi) No Injunction. No Proceeding shall have been filed and no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered or promulgated by any court or governmental authority of competent jurisdiction that prohibits or seeks to prohibit or otherwise challenges the consummation of any of the transactions contemplated by the Transaction Documents.

(vii) Adverse Changes. Since the execution of this Agreement, no event or series of events shall have occurred that has had a Material Adverse Effect.

(viii) Legal Opinion. Company Counsel shall have delivered to the Exercising Fourth Closing Investors a legal opinion of Company Counsel, addressed to the Exercising Fourth Closing Investors, in form and substance reasonable satisfactory to the Exercising Fourth Closing Investors.

(ix) Officer's Certificate. The Company shall have delivered to the Exercising Fourth Closing Investors a certificate executed by a duly authorized officer of the Company certifying the fulfillment of the conditions specified in Sections 5.5(a)(i), 5.5(a)(ii) and 5.5(a)(vii).

(x) Secretary's Certificate. The Company and each of the Subsidiary Guarantors shall have delivered to the Exercising Fourth Closing Investors a certificate executed by the secretary of the Company or such Subsidiary Guarantor, as applicable, dated as of the Fourth Closing Date, as to (i) the resolutions adopted by the Board of Directors of the Company or such Subsidiary Guarantor, as applicable, approving the transactions contemplated hereby, (ii) the certificate of incorporation of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Fourth Closing Date, (iii) the bylaws of the Company or such Subsidiary Guarantor, as applicable, as in effect on the Fourth Closing Date, (iv) the good standing of the Company or such Subsidiary Guarantor, as applicable, not more than five (5) days prior to the Fourth Closing Date, and (v) the authority and incumbency of the officers of the Company or such Subsidiary Guarantor, as applicable, executing the Transaction Documents.

(xi) Fourth Closing Election Notice. Such Exercising Fourth Closing Investor shall have delivered a Fourth Closing Election Notice to the Company in accordance with Section 2.1(d) pursuant to which such Exercising Fourth Closing Investor shall have elected to purchase such Exercising Fourth Closing Investor's Applicable Fourth Closing Notes on the Fourth Closing Date.

(xii) General. The Company and the Subsidiary Guarantors shall have delivered to such Exercising Fourth Closing Investor such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as such Exercising Fourth Closing Investor or its counsel may reasonably request.

(b) Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the Fourth Closing Notes to an Exercising Fourth Closing Investor at the Fourth Closing is subject to the satisfaction or waiver by the Company, at or before the Fourth Closing, of each of the following conditions:

(i) Representations and Warranties. The representations and warranties of such Exercising Fourth Closing Investor contained herein shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) as of the date when made and as of the Fourth Closing Date with the same effect as though made on and as of the Fourth Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(ii) Performance. Such Exercising Fourth Closing Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by them at or prior to the Third Closing.

ARTICLE VI
INDEMNIFICATION

6.1 Indemnification.

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Collateral Agent and each Investor and each of their respective directors, officers, shareholders, members, partners, employees, agents, and representatives and each Person, if any, who controls such Investor within the meaning of the Securities Act or the Exchange Act and each of the directors, officers, shareholders, members, partners, employees, agents, advisors, representatives of such controlling Persons (each, an "***Indemnified Person***"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several (collectively, "***Claims***"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened in writing ("***Indemnified Damages***"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any breach of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents, (ii) any untrue statement or alleged untrue statement of a material fact in any Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered, or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) any untrue statement or alleged untrue statement of a material fact contained in any final prospectus relating to any Registration Statement (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iv) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law applicable to the Company, including, without limitation, any applicable state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to any Registration Statement (the matters in the foregoing clauses (i) through (iv) being, collectively, "***Violations***"), or (v) any Proceeding instituted against such Indemnified Person in any capacity by any shareholder of the Company who is not an Affiliate of such Indemnified Person, with respect to any of the transactions contemplated by the Transaction Documents (a "***Shareholder Suit***"). Subject to Section 6.1(c), the Company shall reimburse the Indemnified Persons for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6.1(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation or Shareholder Suit which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person expressly for use in connection with the preparation of, or inclusion in, any Registration Statement or any such amendment thereof or supplement thereto and (ii) shall not be available to a particular Investor to the extent such Claim is based on a failure of such Investor to deliver or to cause to be delivered the prospectus made available by the Company (to the extent applicable), including, without limitation, a corrected prospectus, if such prospectus or corrected prospectus was made available by the Company; and (iii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors.

(b) In connection with any Registration Statement, each Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6.1(a), the Company, each of its directors, officers, shareholders, members, partners, employees, agents, and representatives and each Person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (each, an "***Indemnified Party***"), against any Claim or Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation or Shareholder Suit, in each case, to the extent, and only to the extent, that such Violation or Shareholder Suit occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with the preparation of, or inclusion in, (x) a Registration Statement or any such amendment thereof or supplement thereto or (y) any final prospectus relating to any Registration Statement (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC); and, subject to Section 6.1(c) and the below provisos in this Section 6.1(b), such Investor will reimburse an Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such Claim; provided, however, the indemnity agreement contained in this Section 6.1(b) and the agreement with respect to contribution contained in Section 6.2 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed, provided, further, that such Investor shall be liable under this Section 6.1(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of any of the Registrable Securities by any of the Investors.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party (as the case may be) under this Section 6.1 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party (as the case may be) shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6.1, deliver to the applicable indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party (as the case may be); provided, however, an Indemnified Person or Indemnified Party (as the case may be) shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Indemnified Person or Indemnified Party (as the case may be) in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Indemnified Person or Indemnified Party (as the case may be) and the indemnifying party, and such Indemnified Person or such Indemnified Party (as the case may be) shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Person or such Indemnified Party and the indemnifying party (in which case, if such Indemnified Person or such Indemnified Party (as the case may be) notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party); provided, further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnified Person or Indemnified Party (as the case may be). The Indemnified Party or Indemnified Person (as the case may be) shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person (as the case may be) reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person (as the case may be), consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person (as the case may be) of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person (as the case may be) with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party (as the case may be) under this Section 6.1, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities to which the indemnifying party may be subject pursuant to the law.

6.2 Contribution. To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6.1 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6.1; (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to a Registration Statement. Notwithstanding the provisions of this Section 6.2, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6.1(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

ARTICLE VII
COLLATERAL AGENT

7.1 Appointment. Each of the Investors hereby irrevocably appoints the Collateral Agent as its agent and authorizes the Collateral Agent to take such actions on its behalf, including execution of the other Transaction Documents, and to exercise such powers as are delegated to the Collateral Agent by the terms of the Transaction Documents, together with such actions and powers as are reasonably incidental thereto.

7.2 Duties. The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Transaction Documents. Without limiting the generality of the foregoing, (a) the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default (as defined in the Notes) has occurred and is continuing, (b) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Transaction Documents that the Collateral Agent is required to exercise in writing as directed by the Required Holders (as defined in the Notes), and (c) except as expressly set forth in the Transaction Documents, the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Subsidiaries that is communicated to or obtained by the entity serving as Collateral Agent or any of its Affiliates in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Holders (as defined in the Notes) or in the absence of its own gross negligence or willful misconduct. The Collateral Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Collateral Agent by the Company or an Investor, and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Transaction Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Transaction Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Transaction Document, (iv) the validity, enforceability, effectiveness or genuineness of any Transaction Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in any Transaction Document. The entity serving as the Collateral Agent may generally engage in any kind of business with the Company or any Subsidiary of the Company or other Affiliate thereof as if it were not the Collateral Agent hereunder. The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

7.3 Sub-Agents. The Collateral Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of this Article VII shall apply to any such sub-agent and to the Affiliates of the Collateral Agent and any such sub-agent, and shall apply to their activities as Collateral Agent.

7.4 Successor Collateral Agent. Subject to the appointment and acceptance of a successor Collateral Agent as provided in this paragraph, the Collateral Agent may resign at any time by notifying the Investors and the Company. Upon any such resignation, the Required Holders (as defined in the Notes) shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Holders (as defined in the Notes) and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Investors, appoint a successor Collateral Agent which shall be a commercial bank or an Affiliate of any such commercial bank. Upon the acceptance of its appointment as Collateral Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. After the Collateral Agent's resignation hereunder, the provisions of this Article VII shall continue in effect for the benefit of such retiring Collateral Agent, its sub agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Collateral Agent.

7.5 Non-Reliance. Each Investor acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Investor and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Investor also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Investor and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Transaction Document or related agreement or any document furnished hereunder or thereunder.

ARTICLE VIII
MISCELLANEOUS

8.1 Termination.

(a) This Agreement may be terminated by the Company or Investors having the right to acquire a majority of the First Closing Notes hereunder, by written notice to the other parties, if the First Closing has not been consummated by September 14, 2022. In the case of any termination of this Agreement pursuant to this Section 8.1(a), this Agreement shall be of no further force and effect except for the provisions of this Article VIII which shall continue in full force and effect.

(b) In the event that this Agreement is terminated pursuant to Section 8.1(a) for any reason by any party, then the Company shall, as promptly as practicable following such termination (and in any event within two (2) Business Days), pay to the Collateral Agent (for the benefit of the Investors) an amount equal to $100,000 (the "***Termination Fee***") by wire transfer of immediately available funds to an account designated by the Collateral Agent. The Company acknowledges that the agreements contained in this Section 8.1(b) are an integral part of the transactions contemplated by this Agreement. In the event that the Company shall fail to pay the Termination Fee (or any portion thereof) when due pursuant to this Section 8.1, then, in addition to the Termination Fee, (x) the Company shall pay interest, compounded daily, on the Termination Fee from the second (2^{nd}) Business Day following the termination of the Agreement, at the "Prime Rate" as published in the printed copy of the Wall Street Journal on any particular day as the same may be adjusted from time to time and (y) the Company shall reimburse the Collateral Agent and the Investors for all out-of-pocket costs and expenses actually incurred by the Collateral Agent and the Investors (including fees and expenses of counsel) in connection with enforcing the rights of the Collateral Agent and the Investors under this Section 8.1(b) (including with respect to any claims, actions or litigations in respect thereof). The Company further acknowledges that (i) without the provision regarding the Termination Fee and the other provisions of this Section 8.1(b), the Collateral Agent and the Investors would not have entered into this Agreement, and (ii) that the Termination Fee (and any other amounts payable under this Section 8.1(b)), if paid pursuant to this Section 8.1(b), is not a penalty, but rather is liquidated damages in a reasonable amount that will appropriately compensate the Collateral Agent and the Investors for such termination of this Agreement. Other than the right to sue and seek damages in respect of (x) any default, breach or violation by the Company of its obligations under Section 4.12 or Section 8.2 and (y) any willful default, breach or violation by the Company of its obligations under Section 4.11 (it being acknowledged that the rights of the Collateral Agent and Investors to sue and seek damages in respect of the matters referred to in the foregoing clauses (x) and (y) shall survive any termination of this Agreement), the right to receive payment of the Termination Fee and other amounts payable under this Section 8.1(b) shall be the sole remedy of the Collateral Agent and all Investors in the event of a termination of this Agreement pursuant to Section 8.1.

8.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, the Company shall pay or otherwise reimburse the Collateral Agent and the Investors for all reasonable and documented fees and expenses incurred by or on behalf of the Collateral Agent and the Investors in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Transaction Documents and the matters contemplated herein and therein, including, without limitation, the reasonable and documented fees and expenses of counsel to the Collateral Agent and the Investors.

8.3 Entire Agreement; Further Assurances. The Transaction Documents, together with the Exhibits, Annexes and Schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company and the Investors will execute and deliver to the Investors such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

8.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and provided by email and by deposit with a nationally recognized courier service and shall be deemed given and effective on the earliest of (a) the Trading Date such notice or communication is delivered by such nationally recognized courier service to the party to whom such notice is required to be given, if such notice or communication is delivered at the address specified in this Section 8.4 prior to 6:30 p.m. (New York time) on a Trading Day, or (b) the next Trading Day after the date of delivery, if such notice or communication is delivered by such nationally recognized courier service to the party to whom such notice is required to be given at the address specified in this Section 8.4 on a day that is not a Trading Day or later than 6:30 p.m. (New York time) on any Trading Day. The addresses and email addresses for such notices and communications are those set forth on the signature pages hereof, or such other address as may be designated in writing hereafter, in the same manner, by any such Person.

8.5 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by the Company, the Collateral Agent and the Investors holding or having the right to acquire a majority of the Note Shares (voting together as a single class) at the time of such amendment or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

8.6 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

8.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investors; provided, however this Agreement shall be assigned to any corporation or association into which the Company may be merged or converted or with which it may be consolidated, or any corporation, association or other similar entity resulting from any merger, conversion or consolidation to which the Company shall be a party without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties to this Agreement except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding. Any Investor may assign its rights under this Agreement to any Person to whom such Investor assigns or transfers any Securities; provided (i) such transferor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company after such assignment, (ii) the Company is furnished with written notice of the name and address of such transferee or assignee, (iii) following such transfer or assignment, the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws, (iv) such transferee agrees in writing to be bound, with respect to the transferred Securities, as applicable, by the provisions hereof that apply to the "Investors" and (v) such transfer shall have been made in accordance with the applicable requirements of this Agreement and with all laws applicable thereto.

8.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

8.9 Governing Law; Venue; Waiver of Jury Trial. This agreement shall be governed by and construed in accordance with the laws of the State of New York. The Company and Investors hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute brought by the Company or any Investor hereunder, in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waive, and agree not to assert in any suit, action or proceeding brought by the Company or any Investor, any claim that it is not personally subject to the jurisdiction of any such court, or that such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. The Company and Investors hereby waive all rights to a trial by jury.

8.10 Survival. Unless this Agreement is terminated under Section 8.1(a), the representations and warranties, agreements and covenants contained herein shall survive indefinitely and shall not be merged in the consummation of the transactions contemplated by this Agreement or any of the Transaction Documents.

8.11 Execution. This Agreement may be executed in counterparts, all of which when taken together shall be considered one and the same agreement. In the event that any signature is delivered by facsimile transmission or email attachment, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or email-attached signature page were an original thereof.

8.12 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

8.13 Independent Nature of Investors' Obligations and Rights. The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Documents. The decision of each Investor to purchase Securities pursuant to this Agreement has been made by such Investor independently of any other Investor and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company which may have been made or given by any other Investor or by any agent or employee of any other Investor, and no Investor or any of its agents or employees shall have any liability to any other Investor (or any other person) relating to or arising from any such information, materials, statements or opinions. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no other Investor will be acting as agent of such Investor in connection with monitoring its investment hereunder. Each Investor shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any Proceeding for such purpose.

8.14 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Collateral Agent, the Investors and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

8.15 Replacement of Securities. If any certificate or instrument evidencing any Securities, as applicable, is mutilated, lost, stolen or destroyed, then the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities, as applicable, but without any requirement to post a bond (unless required by the Transfer Agent, in which case the cost of such bond shall be paid by the Company).

8.16 Liquidated Damages. The Company's obligations to pay (i) the Termination Fee and any other amounts payable under Section 8.1(b), and (ii) any partial liquidated damages or other amounts owing under the Transaction Documents is, in each case, a continuing obligation of the Company and shall not terminate until the entire Termination Fee (and any other amounts payable under Section 8.1(b)), unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such Termination Fee (and any other amounts payable under Section 8.1(b)), partial liquidated damages or other amounts are due and payable shall have been canceled.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

COMPANY:

FENNEC PHARMACEUTICALS INC.

By: /s/ Robert Andrade
Name: Robert Andrade
Title: CFO

Address for Notice:

Fennec Pharmaceuticals Inc.
68 TW Alexander Drive
Research Triangle Park, NC 27709
Attn: Robert Andrade, CFO
Email: randrade@fennecpharma.com

With a copy to, which shall not constitute notice:

LaBarge Weinstein LLP
321 Water Street, Suite 501
Vancouver, BC V6B1B8
Attn: Randy Taylor
Email: rt@lwlaw.com

COLLATERAL AGENT:

PETRICHOR OPPORTUNITIES FUND I LP
BY PETRICHOR OPPORTUNITIES FUND I GP LLC

By: /s/ Tadd Wessel
Name: Tadd Wessel
Title: Managing Member

Address for Notice:

Petrichor Opportunities Fund I LP
885 Third Avenue, Suite 2403
New York, NY 10022
Attn: Michael Beecham
Email: mbeecham@petrichorcap.com

With a copy to, which shall not constitute notice:

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Todd E. Bowen
Email: bowent@gtlaw.com

Investor Signature Page

IN WITNESS WHEREOF, by its execution and delivery of this signature page, the undersigned Investor hereby joins in and agrees to be bound by the terms and conditions of that certain Securities Purchase Agreement, dated as of August 1, 2022 (the "***Purchase Agreement***"), by and among Fennec Pharmaceuticals Inc., a British Columbia corporation, the Investors (as defined therein), and the Collateral Agent (as defined therein), as to the principal amount of the Notes set forth across from such Investor's name on the Schedule of Investors, and authorizes this signature page to be attached to the Purchase Agreement or counterparts thereof.

NAME OF INVESTOR:

PETRICHOR OPPORTUNITIES FUND I LP
BY PETRICHOR OPPORTUNITIES FUND I GP LLC

By: /s/ Tadd Wessel
Name: Tadd Wessel
Title: Managing Member

Address for Notice:

Petrichor Opportunities Fund I LP

885 Third Avenue, Suite 2403
New York, NY 10022
Attn: Michael Beecham
Email: mbeecham@petrichorcap.com

With a copy to, which shall not constitute notice:

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Todd E. Bowen
Email: bowent@gtlaw.com

Delivery Instructions (if different than above):
c/o: _____
Address: _____
_____
Telephone No.: _____
Facsimile No. : _____
Other Special Instructions: _____

ANNEX A

SCHEDULE OF INVESTORS

I. FIRST CLOSING INVESTORS

Name and Address of Investor	Principal Amount of First Closing Note	Aggregate First Closing Purchase Price	First Commitment Fee Warrants	Second Commitment Fee Warrants
Petrichor Opportunities Fund I LP 885 Third Avenue Suite 2403 New York, NY 10022	$5,000,000	$5,000,000	55,498	55,498
TOTAL:	**$5,000,000**	**$5,000,000**	**55,498**	**55,498**

II. SECOND CLOSING INVESTORS

Name and Address of Investor	Principal Amount of Second Closing Note	Aggregate Second Closing Purchase Price
Petrichor Opportunities Fund I LP 885 Third Avenue Suite 2403 New York, NY 10022	$20,000,000	$20,000,000
TOTAL:	**$20,000,000**	**$20,000,000**

III. THIRD CLOSING INVESTORS

Name and Address of Investor	Principal Amount of Third Closing Note	Aggregate Third Closing Purchase Price
Petrichor Opportunities Fund I LP 885 Third Avenue Suite 2403 New York, NY 10022	$10,000,000	$10,000,000
TOTAL:	**$10,000,000**	**$10,000,000**

IV. FOURTH CLOSING INVESTORS

Name and Address of Investor	Principal Amount of Fourth Closing Note	Aggregate Fourth Closing Purchase Price
Petrichor Opportunities Fund I LP 885 Third Avenue Suite 2403 New York, NY 10022	$10,000,000	$10,000,000
TOTAL:	**$10,000,000**	**$10,000,000**

ANNEX B

"SELLING SHAREHOLDERS" / "PLAN OF DISTRIBUTION"

Plan of Distribution

Each Selling Shareholder (the "Selling Shareholders") of the shares and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares covered hereby on the NASDAQ Capital Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Shareholder may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- in transactions through broker-dealers that agree with the Selling Shareholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Shareholders may also sell shares under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Shareholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Shareholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated.

In connection with the sale of the shares or interests therein, the Selling Shareholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the shares in the course of hedging the positions they assume. The Selling Shareholders may also sell shares short and deliver these shares to close out their short positions, or loan or pledge the shares to broker-dealers that in turn may sell these securities. The Selling Shareholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the shares. The Company has agreed to indemnify the Selling Shareholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

The Selling Shareholders may be deemed to be statutory underwriters under the Securities Act. In addition, any broker-dealers who act in connection with the sale of the shares hereunder may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, and any commissions received by them and profit on any resale of the shares as principal may be deemed to be underwriting discounts and commissions under the Securities Act. Because Selling Shareholders may be deemed to be "underwriters" within the meaning of the Securities Act, they may be subject to the prospectus delivery requirements of the Securities Act including Rule 172 thereunder.

The selling shareholders have acknowledged that they understand their obligations to comply with the provisions of the Securities Exchange Act of 1934, as amended, and the rules thereunder relating to stock manipulation, particularly Regulation M.

We agreed to keep this prospectus effective with respect to the common shares offered by a Selling Shareholder hereunder until the earlier of such Selling Shareholder's sale of such shares pursuant to this prospectus or until such shares may be sold without restrictions or other limitations pursuant to Rule 144 (or any successor provision) under the Securities Act (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1).

We will make copies of this prospectus available to the Selling Shareholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

There can be no assurance that the Selling Shareholders will sell any or all of the common shares registered pursuant to the registration statement of which this prospectus forms a part.

We are not aware of any plans, arrangements or understandings between the Selling Shareholders and any underwriter, broker-dealer or agent regarding the sale of common shares by the selling shareholders.

We will pay all expenses incident to the filing of this registration statement, estimated to be $[●]. These expenses include accounting and legal fees in connection with the preparation of the registration statement of which this prospectus forms a part, legal and other fees in connection with the qualification of the sale of the shares under the laws of certain states (if any), registration and filing fees and other expenses.

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (I) THE ISSUE DATE AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.

FENNEC PHARMACEUTICALS INC.

SENIOR SECURED CONVERTIBLE NOTE

Issuance Date: August 19, 2022 Original Principal Amount: U.S. $5,000,000

FOR VALUE RECEIVED, Fennec Pharmaceuticals Inc., a British Columbia corporation (the "***Company***"), hereby promises to pay to Petrichor Opportunities Fund I LP or its registered assigns (the "***Holder***") in cash the amount set out above as the Original Principal Amount (as (x) reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, and (y) increased from time to time by the aggregate amount of PIK Interest that shall have been added to the outstanding principal amount of this Note pursuant to Section 2.2, the "***Principal***") when due, whether upon the Maturity Date, acceleration, redemption or otherwise (in each case in accordance with the terms hereof), to pay cash interest ("***Cash Interest***") on any outstanding Principal at the Cash Interest Rate from the date set out above as the Issuance Date (the "***Issuance Date***") until the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof), and to pay paid-in-kind interest ("***PIK Interest***", and together with Cash Interest, collectively, "***Interest***") on any outstanding Principal at a rate of 3.50% per annum from the Issuance Date until the earlier of (A) August 19, 2024, and (B) the date the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, this "***Note***") is one of a series of Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the First Closing Notes (collectively, the "***Notes***" and such other Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the First Closing Notes, the "***Other Notes***"). Certain capitalized terms used herein are defined in Section 32.

1. Payments of Principal. On the Maturity Date, the Company shall pay to the Holder an amount in cash equal to (i) the product of all outstanding Principal multiplied by the Redemption Premium as of the Maturity Date, plus (ii) all accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest, or accrued and unpaid Late Charges on Principal or Interest, if any. Notwithstanding anything herein to the contrary, with respect to any repayment, conversion or redemption hereunder, as applicable, the Company shall repay, convert or redeem, as applicable, (i) first, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, (ii) second, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by such Holder, (iii) third, all other amounts (other than Principal, but including any Redemption Premium) outstanding under any other Notes held by such Holder, and (v) fourth, all Principal outstanding hereunder and under any other Notes held by such Holder, in each case, allocated pro rata among this Note and such other Notes held by such Holder.

2. Interest.

2.1 Cash Interest. Cash Interest on this Note shall commence accruing on the Issuance Date at the Cash Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in arrears for each Calendar Quarter on the first (1st) Business Day of each Calendar Quarter after the Issuance Date (each, an "***Interest Date***"). Cash Interest shall be payable on each Interest Date, to the record holder of this Note on the applicable Interest Date, by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. Prior to the payment of Cash Interest on an Interest Date, Cash Interest on this Note shall accrue at the Cash Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount in connection with any conversion of this Note under Section 3, on each Redemption Date and/or in connection with any required payment upon any Bankruptcy Event of Default.

2.2 PIK Interest. PIK Interest on this Note shall commence accruing on the Issuance Date at a rate of 3.50% per annum and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in arrears for each Calendar Quarter on each Interest Date; provided, that (x) PIK Interest shall cease to accrue on this Note on August 19, 2024, and (y) from and after August 19, 2024, no further PIK Interest shall accrue on this Note (provided, that, any PIK Interest that shall have accrued on this Note prior to August 19, 2024 shall remain outstanding and be payable hereunder as set forth herein. Any accrued PIK Interest shall be payable in kind on each Interest Date, to the record holder of this Note on the applicable Interest Date, by capitalizing such PIK Interest and, effective as of such Interest Date, adding it to (and thereby increasing) the outstanding Principal of this Note. For the avoidance of doubt, effective as of, and from and after, any Interest Date, the outstanding Principal of this Note shall be increased by the amount of PIK Interest paid in kind on such Interest Date for all purposes of this Note (including, without limitation, for the purposes of the future accrual of Interest on the outstanding Principal of this Note and for the purposes of determining the Conversion Amount as of any date). Prior to the payment in kind of PIK Interest on an Interest Date, PIK Interest on this Note shall, until August 19, 2024, accrue at a rate of 3.50% per annum and be payable by way of inclusion of the Interest in the Conversion Amount in connection with any conversion of this Note under Section 3, on each Redemption Date and/or in connection with any required payment upon any Bankruptcy Event of Default.

3. Conversion of Notes. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Shares, on the terms and conditions set forth in this Section 3.

3.1 Conversion Right. Subject to the provisions of Section 3.4, at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount into fully paid and nonassessable shares of Common Shares in accordance with Section 3.3, at the Conversion Rate. The Company shall not issue any fraction of a share of Common Shares upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Shares, the Company shall round such fraction of a share of Common Shares up to the nearest whole share. The Company shall pay any and all transfer, stamp and similar taxes, costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "***Transfer Agent***")) that may be payable with respect to the issuance and delivery of Common Shares upon conversion of any Conversion Amount.

3.2 Conversion Rate. The number of shares of Common Shares issuable upon conversion of any Conversion Amount pursuant to Section 3 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "***Conversion Rate***").

3.3 Mechanics of Conversion.

(a) Optional Conversion.

1. To convert any Conversion Amount into shares of Common Shares on any date (a "***Conversion Date***"), the Holder shall deliver (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "***Conversion Notice***") to the Company.

2. On or before the second (2^{nd}) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail the transfer agent instructions and representation as to whether such shares of Common Shares may then be resold pursuant to (A) an effective and available registration statement, (B) Rule 144, provided that the Holder affirmatively indicates on the applicable Conversion Notice that the shares of Common Shares issuable in connection with such Conversion Notice have been or are being resold either prior to or contemporaneously with the date of the applicable Conversion Notice by the Holder, or (C) Rule 144 without having to comply with the information requirements under Rule 144(c)(1) (each, a "***Permitted Securities Transaction***"), in the form attached hereto as Exhibit II, to the Holder and the Transfer Agent which shall instruct the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

3. On or before the third (3rd) Trading Day following the date on which the Company has received a Conversion Notice (the "***Share Delivery Deadline***"), the Company shall (1) provided that the Transfer Agent is participating in The Depository Trust Company's ("***DTC***") Fast Automated Securities Transfer Program, with respect to the shares of Common Shares included in the Conversion Notice that may then be resold by the Holder pursuant to a Permitted Securities Transaction, credit such aggregate number of shares of Common Shares to which the Holder shall be entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or with respect to the shares of Common Shares included in the Conversion Notice that may not then be resold by the Holder pursuant to a Permitted Securities Transaction, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Shares to which the Holder shall be entitled pursuant to such conversion.

4. The Person or Persons entitled to receive the shares of Common Shares issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Shares on the Conversion Date.

5. Notwithstanding anything to the contrary contained in this Note or the Securities Purchase Agreement, after the effective date of the Registration Statement, the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee) in connection with any sale of Registrable Securities with respect to which the Holder has entered into a contract for sale, and delivered a copy of the prospectus included as part of the particular Registration Statement to the extent applicable, and for which the Holder has not yet settled.

(b) Reserved.

(c) Registration; Book-Entry. The Company shall maintain a register (the "***Register***") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "***Registered Notes***"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company. The Holder and the Company shall maintain records showing the Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(d) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3.4, shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Shares issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Shares not in dispute and resolve such dispute in accordance with Section 23.

3.4 Limitations on Conversions. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "***Maximum Percentage***") of the shares of Common Shares outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Shares beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Shares held by the Holder and all other Attribution Parties plus the number of shares of Common Shares issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Shares which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred shares or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3.4. For purposes of this Section 3.4, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Shares the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Shares as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Shares outstanding (the "***Reported Outstanding Share Number***"). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Shares is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Shares then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3.4, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Shares to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Shares then outstanding. In any case, the number of outstanding shares of Common Shares shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Shares to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Shares (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "***Excess Shares***") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Shares issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3.4 to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3.4 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

3.5 Redemption Automatic Conversion. In the event that a Redemption Automatic Conversion shall occur pursuant to Section 8.1(c)(iii) upon the occurrence of an Automatic Conversion Event, then, for the purposes of effecting the conversion of the applicable Company Optional Redemption Amount into shares of Common Shares in respect of such Redemption Automatic Conversion, such conversion shall be consummated in the manner set forth in this Section 3 as though the Holder had delivered a Conversion Notice under Section 3.3(a)(1) with respect to (x) a Conversion Amount equal to the applicable Company Optional Redemption Amount and (y) a Conversion Date of the Company Optional Redemption Date. Any such Redemption Automatic Conversion shall otherwise be consummated in the manner, and subject to the provisions and limitations, set forth in this Section 3.

4. Rights Upon and Event of Default.

4.1 Event of Default. Unless waived in writing by the Holder, each of the following events shall constitute an "***Event of Default***" and each of the events in clauses (i), (j) and (k) below shall constitute a "***Bankruptcy Event of Default***":

(a) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, the failure of such Registration Statement to be filed with the SEC on or prior to the date that is five (5) days after the applicable Filing Date or the failure of such Registration Statement to be declared effective by the SEC on or prior to the date that is five (5) days after the applicable Effectiveness Date;

(b) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, while such Registration Statement is required to be maintained effective pursuant to the terms of the Securities Purchase Agreement, the effectiveness of such Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement (or the prospectus contained therein) is unavailable to any holder of Registrable Securities for sale of all of such holder's Registrable Securities in accordance with the terms of the Securities Purchase Agreement, and such lapse or unavailability continues for a period of five (5) consecutive days or for more than an aggregate of ten (10) days in any 365-day period;

(c) the suspension from trading or the failure of the Common Shares to be quoted or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(d) the Company's (A) failure to deliver to the Holder the required number of shares of Common Shares within five (5) Trading Days after the applicable Conversion Date or (B) notice, written or oral, to any holder of the Notes, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Notes into shares of Common Shares that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3.4;

(e) except to the extent the Company is in compliance with Section 10.2 below, at any time following the tenth (10^{th}) Trading Day that the Holder's Authorized Share Allocation is less than the number of shares of Common Shares that the Holder would be entitled to receive upon a conversion of the full Conversion Amount of this Note (without regard to any limitations on conversion set forth in Section 3.4 or otherwise);

(f) the Company's or any Subsidiary Guarantor's failure to pay to the Holder (i) any amount of Principal when and as due under this Note (including, without limitation, the Company's or any Subsidiary Guarantor's failure to pay any redemption payments or amounts hereunder), or (ii) any amount of Interest, Late Charges or other amounts when and as due under this Note or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, and, solely in the case of this clause (ii), such failure shall continue for two (2) Business Days following such date due;

(g) the Company fails to remove any restrictive legend on any certificate or any shares of Common Shares issued to the Holder as and when required by the Securities Purchase Agreement or this Note, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(h) the occurrence of any default under, redemption of or acceleration prior to maturity of, any Indebtedness in an aggregate principal amount of at least $500,000 of the Company or any of its Subsidiaries, including any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Notes, Third Closing Notes or Fourth Closing Notes (but excluding the Other Notes);

(i) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(j) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(k) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(l) a final judgment or judgments for the payment of money aggregating in excess of $500,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the $500,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(m) the Company and/or any Subsidiary, individually or in the aggregate, suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate;

(n) any default by the Company in the due performance and observance of any of the covenants or agreements contained Section 13;

(o) any representation, warranty or other written statement of the Company set forth in any Transaction Document or any certification provided by the Company pursuant to any Transaction Document is incorrect or misleading in any material respect when given;

(p) other than as specifically set forth in another clause of this Section 4.1, any default by the Company in the due performance and observance of any of the covenants or agreements of any Transaction Document, except, in the case of a breach of a covenant that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

(q) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company that either (A) the Equity Conditions are satisfied, (B) there has been no Equity Conditions Failure, or (C) as to whether any Event of Default has occurred;

(r) either (x) the Company shall fail to have obtained the FDA Approval on or prior to September 30, 2022 or (y) following the Company's receipt of the FDA Approval, either (i) the FDA Approval shall be revoked, withdrawn or terminated for any reason or (ii) the United States Food & Drug Administrative shall, for any reason, revoke or withdrawal its market authorization for PEDMARK;

(s) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs;

(t) any provision of any Transaction Document (including the Guaranty Agreement, the Security Agreement and any other Security Document) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto in any material respect, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including the Guaranty Agreement, the Security Agreement and any other Security Document), or any Subsidiary Guarantor repudiates, revokes or attempts to revoke its guaranty under the Guaranty Agreement;

(u) the Security Agreement or any other Security Document shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral (as defined in the Security Documents) in favor of the Holder or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof; or

(v) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

4.2 Notice of an Event of Default: Event of Default Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) Business Day of becoming aware of such Event of Default deliver written notice thereof via facsimile or electronic mail and overnight courier (with next day delivery specified) (an "***Event of Default Notice***") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default and ending (such ending date, the "***Event of Default Right Expiration Date***") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "***Event of Default Redemption Notice***") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4.2 shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium as of the date of the Event of Default and (ii) the product of (x) the Redemption Premium as of the date of the Event of Default multiplied by (y) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Shares during the period beginning on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4.2 by (II) the Conversion Price then in effect (the "***Event of Default Redemption Price***"). Redemptions required by this Section 4.2 shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4.2 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 4.2, but subject to Section 3.4, until the Event of Default Redemption Price (together with any Late Charges thereon) is satisfied in full, the Conversion Amount submitted for redemption under this Section 4.2 (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Shares pursuant to the terms of Section 3. In the event of the Company's redemption of any portion of this Note under this Section 4.2, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4.2 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

4.3 Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest, and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium as of the date of the Bankruptcy Event of Default, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity; provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

(a) Restrictions. The Company shall not enter into or be party to a Fundamental Transaction unless: either (i) the Company is the surviving Person; or (ii) the Successor Entity (if other than the Company) assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents as provided in Section 5.1(b).

(b) Assumption. To satisfy clause (ii) of Section 5.1(a), (i) the Successor Entity shall assume in writing all of the obligations of the Company under this Note and the other Transaction Documents pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes, respectively, held by such holder, having similar conversion rights as the Notes and having similar ranking and security to the Notes, and reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose Common Shares is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(c) Confirmation. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Shares (or other securities, cash, assets or other property) issuable upon the conversion or redemption of the Notes prior to such Fundamental Transaction, such shares of the publicly traded Common Shares (or their equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note.

(d) Waiver. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5.1 to permit the Fundamental Transaction without the assumption of this Note.

(e) Applicability. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

5.2 Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "***Change of Control Date***"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via facsimile or electronic mail and overnight courier to the Holder (a "***Change of Control Notice***"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on the later of ten (10) Trading Days after (A) consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice, the Holder may require the Company to, or the Company may on its own volition, redeem all or any portion of this Note by delivering written notice thereof ("***Change of Control Redemption Notice***") to the Company or Holder, as applicable which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder or Company, as applicable, is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5.2 shall be redeemed by the Company in cash at a price (the "***Change of Control Redemption Price***") equal to the greatest of (i) the product of (w) the Redemption Premium as of the date of the date of the Change of Control multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (x) the Redemption Premium as of the date of the Change of Control multiplied by (y) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Shares during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable Change of Control and (2) the public announcement of such Change of Control and ending on the date the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (y) the Redemption Premium as of the date of the Change of Control multiplied by (z) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration plus the aggregate cash value of any non-cash consideration per share of Common Shares to be paid to the holders of the shares of Common Shares upon consummation of such Change of Control (any such non-cash consideration constituting publicly-traded securities shall be valued at the highest of the Closing Sale Price of such securities as of the Trading Day immediately prior to the consummation of such Change of Control, the Closing Sale Price of such securities on the Trading Day immediately following the public announcement of such proposed Change of Control and the Closing Sale Price of such securities on the Trading Day immediately prior to the public announcement of such proposed Change of Control) divided by (II) the Conversion Price then in effect (the "***Change of Control Redemption Price***"). Redemptions required by this Section 5.2 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to shareholders in connection with such Change of Control. To the extent redemptions required by this Section 5.2 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5.2, but subject to Section 3.4, until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5.2 (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Shares pursuant to Section 3. In the event of the Company's redemption of any portion of this Note under this Section 5.2, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5.2 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. Issuances of Purchase Rights and Other Corporate Events.

6.1 Purchase Rights. In addition to any adjustments pursuant to Section 7 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase shares, stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Shares (the "***Purchase Rights***"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Shares acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note) immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Shares are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Shares as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation).

6.2 Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Shares are entitled to receive securities or other assets with respect to or in exchange for shares of Common Shares (a "***Corporate Event***"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Shares receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Shares had such shares of Common Shares been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) or (ii) in lieu of the shares of Common Shares otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Shares in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Note initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Shares) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6.2 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. Adjustments to the Conversion Price.

7.1 Adjustment of Conversion Price upon Subdivision or Combination of Common Shares or Share Dividend. If the Company issues solely shares of Common Shares as a dividend or distribution on all or substantially all shares of the Common Shares, or if the Company effects a share split or a share combination of the Common Shares (in each case excluding an issuance solely pursuant to a Fundamental Transaction or other Corporate Event, as to which the provisions set forth in Sections 5 and 6 will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 * \frac{OS_0}{OS_1}$$

Where:

CP_0 = the Conversion Price in effect immediately before the open of business on the ex-dividend date for such dividend or distribution, or immediately before the open of business on the effective date of such share split or share combination, as applicable

CP_1 = the Conversion Price in effect immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable

OS_0 = the number of shares of Common Shares outstanding immediately before the open of business on such ex-dividend date or effective date, as applicable

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

For the avoidance of doubt, pursuant to the definition of CP_1 above, any adjustment to the Conversion Price made pursuant to this Section 7.1 will become effective immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable. If any dividend, distribution, share split or share combination of the type described in this Section 7.1 is declared or announced, but not so paid or made, then the Conversion Price, if previously adjusted, will be readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution or to effect such share split or share combination, to the Conversion Price that would then be in effect had such dividend, distribution, share split or share combination not been declared or announced.

7.2 Rights, Options and Warrants. If the Company distributes, to all or substantially all holders of Common Shares, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Shares at a price per share that is less than the average of the Closing Sale Prices per share of Common Shares for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is publicly announced, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 * \frac{OS + Y}{OS + X}$$

Where:

CP_0 = the Conversion Price in effect immediately before the open of business on the ex-dividend date for such distribution

CP_1 = the Conversion Price in effect immediately after the open of business on such ex-dividend date

OS = the number of shares of Common Shares outstanding immediately before the open of business on such ex-dividend date

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

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

For the avoidance of doubt, any adjustment to the Conversion Price made pursuant to this Section 7.2 will be made successively whenever any such rights, options or warrants are issued and, pursuant to the definition of CP_1 above, will become effective immediately after the open of business on the ex-dividend date for the applicable distribution. To the extent that shares of Common Shares are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Price, if previously adjusted, will be readjusted effective as of such expiration date to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of delivery of only the number of shares of Common Shares actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Price will be readjusted effective as of the date the Board of Directors of the Company determines not to distribute such rights, options or warrants, to the Conversion Price that would then be in effect had the ex-dividend date for the distribution of such rights, options or warrants not occurred. For purposes of this Section 7.2, in determining whether any rights, options or warrants entitle holders of Common Shares to subscribe for or purchase shares of Common Shares at a price per share that is less than the average of the Closing Sale Prices per share of Common Shares for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors of the Company.

7.3 Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

8. Redemptions at the Company's Election.

8.1 Company Optional Redemption.

(a) At any time after August 19, 2025, so long as no Equity Conditions Failure exists, the Company shall have the right to redeem all, but not less than all, of the Conversion Amount then remaining under this Note (the "***Company Optional Redemption Amount***") on the Company Optional Redemption Date (a "***Company Optional Redemption***"). The portion of this Note subject to redemption pursuant to this Section 8.1 shall be redeemed by the Company in cash at a price (the "***Company Optional Redemption Price***") equal to the product of (A) the Redemption Premium as of the Company Optional Redemption Date multiplied by (B) the Conversion Amount being redeemed as of the Company Optional Redemption Date.

(b) The Company may exercise its right to require redemption under this Section 8.1 by delivering a written notice thereof by facsimile or electronic mail and overnight courier to all, but not less than all, of the holders of Notes (the "***Company Optional Redemption Notice***" and the date all of the holders of Notes received such notice is referred to as the "***Company Optional Redemption Notice Date***"). The Company may deliver only one Company Optional Redemption Notice hereunder and such Company Optional Redemption Notice shall be irrevocable. The Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the "***Company Optional Redemption Date***") which date shall not be less than ten (10) Trading Days nor more than twenty (20) Trading Days following the Company Optional Redemption Notice Date, (y) certify that there has been no Equity Conditions Failure and (z) state the aggregate Conversion Amount of the Notes which is being redeemed in such Company Optional Redemption from the Holder and all of the other holders of the Notes pursuant to this Section 8.1 (and analogous provisions under the Other Notes) on the Company Optional Redemption Date.

(c) Notwithstanding anything herein to the contrary, (i) if no Equity Conditions Failure has occurred as of the Company Optional Redemption Notice Date but an Equity Conditions Failure occurs at any time prior to the Company Optional Redemption Date, (A) the Company shall provide the Holder a subsequent notice to that effect, and (B) unless the Holder waives the Equity Conditions Failure, the Company Optional Redemption shall be cancelled and the applicable Company Optional Redemption Notice shall be null and void, (ii) at any time prior to the date the Company Optional Redemption Price is paid, in full, the Company Optional Redemption Amount may be converted, in whole or in part, by the Holder into shares of Common Shares pursuant to Section 3, and (iii) solely in the event that an Automatic Conversion Event has occurred as of the Company Optional Redemption Date, then, effective on the Company Optional Redemption Date prior to redemption of this Note, the Company Optional Redemption Amount shall automatically, without any further required act of the Holder, be converted into shares of Common Shares in accordance with Section 3.5 (any such conversion of the Company Optional Redemption Amount in shares of Common Shares pursuant to this clause (iii) is herein referred to as a "***Redemption Automatic Conversion***").

(d) All Conversion Amounts converted by the Holder after the Company Optional Redemption Notice Date shall reduce the Company Optional Redemption Amount of this Note required to be redeemed on the Company Optional Redemption Date. Redemptions made pursuant to this Section 8.1 shall be made in accordance with Section 11.

(e) In the event of the Company's redemption of any portion of this Note under this Section 8.1, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 8.1 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. For the avoidance of doubt, the Company shall have no right to effect a Company Optional Redemption if any Event of Default has occurred and continuing, but any Event of Default shall have no effect upon the Holder's right to convert this Note in its discretion.

8.2 Pro Rata Redemption Requirement. If the Company elects to cause a Company Optional Redemption of this Note pursuant to Section 8.1, then it must simultaneously take the same action with respect to all of the Other Notes.

9. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate or articles of incorporation, bylaws or other governing document or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Shares receivable upon conversion of this Note above the Conversion Price then in effect, and (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Shares upon the conversion of this Note.

10. Reservation of Authorized Shares.

10.1 Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Shares a number of shares of Common Shares for each of this Note and the Other Notes equal to 120% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Issuance Date. So long as any of this Note and the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Shares, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Shares as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Shares so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "***Required Reserve Amount***"). The initial number of shares of Common Shares reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Securities Purchase Agreement) or at the time of the increase in the number of reserved shares, as the case may be (the "***Authorized Share Allocation***"). In the event that a holder shall sell or otherwise transfer this Note, or a portion thereof, or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation.

10.2 Insufficient Authorized Shares.

(a) If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Shares to satisfy its obligation to have reserved for issuance upon conversion of the outstanding Notes at least a number of shares of Common Shares equal to the Required Reserve Amount (an "***Authorized Share Failure***"), then the Company shall promptly take all action necessary to increase the Company's authorized shares of Common Shares to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (x) obtain the written consent of its shareholders for the approval of an increase in the number of authorized shares of Common Shares and provide each shareholder with an information statement with respect thereto or (y) file with the SEC a proxy statement for a meeting of its shareholders at which meeting the Company will seek the approval of its shareholders for an increase in the number of authorized shares of Common Shares. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use commercially reasonable efforts to solicit its shareholders' approval of such increase in authorized shares of Common Shares and to cause its Board of Directors to recommend to the shareholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Shares to approve the increase in the number of authorized shares of Common Shares, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C.

(b) If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company, in lieu of issuing Common Shares in connection with such conversion and in full satisfaction of the Company's obligations with respect to such conversion, to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of shares of Common Shares that the Company is unable to deliver pursuant to this Section 10, and (ii) the highest Closing Sale Price of the Common Shares during the period beginning on the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

11. Redemptions.

11.1 Mechanics.

(a) If the Holder has submitted an Event of Default Redemption Notice in accordance with Section 4.2, the Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice (each, an "***Event of Default Redemption Date***").

(b) If the Company or Holder has submitted a Change of Control Redemption Notice in accordance with Section 5.2, the Company shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within two (2) Business Days after the Company's or Holders' receipt (as applicable) of such notice otherwise (each, a "***Change of Control Redemption Date***").

(c) In the event of a Company Optional Redemption, the Company shall deliver the applicable Company Optional Redemption Price to the Holder in cash on the applicable Company Optional Redemption Date.

(d) Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document.

(e) In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 18.4) representing the outstanding Principal which has not been redeemed.

(f) In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 18.4), to the Holder; provided, that, notwithstanding the applicable Redemption Notice being deemed null and void and such return or issuance of this Note or a new Note in accordance with the foregoing, a continual Event of Default shall thereafter be deemed to have occurred and be continuing until the subsequent repayment or conversion of this Note in full. Furthermore, the Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

11.2 Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4 or Section 5.2 (each, an "***Other Redemption Notice***"), the Company shall immediately, but no later than two (2) Business Days after its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is five (5) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. Voting Rights. The Holder shall have no voting rights as the holder of this Note, except as required by law and as expressly provided in this Note.

13. Covenants. Until all of the Notes have been converted, redeemed or otherwise satisfied, in full, in accordance with their terms:

13.1 Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Notes, Third Closing Notes or Fourth Closing Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries.

13.2 Incurrence of Indebtedness. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note, the Other Notes and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Notes, Third Closing Notes or Fourth Closing Notes and (ii) other Permitted Indebtedness).

13.3 Existence of Liens. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "***Liens***") other than Permitted Liens.

13.4 Redemption and Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any dividend or distribution on any of its shares of capital stock (any of the foregoing, a "***Restricted Payment***"), other than (i) Restricted Payments made by any Subsidiary to the Company or any other Subsidiary of the Company, (ii) any dividend payments or other distributions by the Company or any Subsidiary payable solely in shares of capital stock of such Person and (iii) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of shares of capital stock deemed to occur upon the exercise of share options, warrants or other rights in respect thereof if such share of capital stock represents a portion of the exercise price thereof.

13.5 Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any material assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice, (ii) sales of inventory and product in the ordinary course of business, or (iii) sales or other transfers of assets from the Company or any Subsidiary Guarantor to the Company or any Subsidiary Guarantor.

13.6 Acquisitions. Without the prior written consent of the Required Holders, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, acquire all or substantially all of the assets or capital stock of any Person or acquire all or substantially all of the assets of any operating division of any Person (each, an "***Acquisition***") if the aggregate consideration payable by the Company and its Subsidiaries in connection with such Acquisition or a series of related Acquisitions (including, without limitation, all cash or equity consideration, all Indebtedness or other liabilities incurred or assumed and the maximum amount of any earn-out or comparable payment obligation in connection therewith) exceeds $500,000.

13.7 Change in Nature of Business. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the First Closing Date or any business substantially related or incidental thereto. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, modify its or their corporate structure or purpose in any material respect.

13.8 Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate, except (i) transactions entered into in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, and (ii) transactions entered into for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

13.9 Maintenance of Existence; Compliance with Contracts, Laws, Etc. The Company shall, and the Company shall cause its Subsidiaries to, preserve and maintain its legal existence, perform in all material respects its obligations under all material agreements, contracts and instruments to which the Company or such Subsidiary is a party, take all actions to ensure that all such material agreements remain in full force and effect, and comply in all material respects with all applicable laws, rules, regulations and orders, including the payment (before the same become delinquent), of all taxes, imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Company or its Subsidiary, as applicable.

13.10 Insurance. The Company shall, and the Company shall cause its Subsidiaries to, maintain:

(a) insurance on its property with financially sound and reputable insurance companies against business interruption, loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as the Company its Subsidiaries; and

(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

13.11 Subsidiary Matters.

(a) Neither the Company nor any Subsidiary Guarantor shall establish, form, create or acquire any new direct or indirect Subsidiary unless such Subsidiary shall, on the date of the establishment, formation, creation or acquisition thereof, (x) become a Subsidiary Guarantor by executing and delivering to the Holder a joinder to the Guaranty Agreement or such other document as the Holder shall reasonably deem appropriate for such purpose, (y) take all such action and execute such agreements, documents and instruments requested by the Holder, including execution and delivery of a joinder to the Security Agreement and execution and delivery of such other Security Documents, that may be necessary to grant to the Holder a perfected first priority security interest and Lien in any Collateral (as defined in the Securities Purchase Agreement) owned by such new Subsidiary and (z) deliver to the Holder documents of the types referred to in clauses (xi) and (xii) of Section 5.1(a) of the Securities Purchase Agreement and, if reasonably requested by the Holder, favorable opinions of counsel to such new Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clauses (x) and (y) of this subsection), all in form, content and scope reasonably satisfactory to the Holder.

(b) Neither the Company nor any Subsidiary Guarantor will make any Investment in any Person other than a Subsidiary Guarantor.

13.12 Maintenance of Authorizations, Contract Rights, Intellectual Property, Etc. The Company shall, and the Company shall cause its Subsidiaries to, (i) maintain in full force and effect all Regulatory Authorizations, contract rights, authorizations or other rights necessary and material for the operations of its business, and comply with the terms and conditions applicable to the foregoing, excluding the maintenance of any Regulatory Authorizations that are not commercially reasonably necessary or material for the conduct of the business of the Company and its Subsidiaries; (ii) operate their business and facilities in material compliance with all applicable laws, rules and regulations, including any newly introduced or revised applicable laws, rules and regulations as they may become introduced, altered or otherwise evolve over time; (iii) diligently pursue any application for registration of any existing or future Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (iv) maintain in full force and effect or pursue the prosecution of, as the case may be, and pay all costs and expenses relating to, all Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries, excluding the maintenance of any Intellectual Property that is not commercially reasonably necessary or material for the conduct of the business of the Company or any of its Subsidiaries; (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all Intellectual Property developed, used or controlled (or jointly owned, developed or controlled) by the Company or any of its Subsidiaries; and (vi) not permit the activities and business of the Company or any of its Subsidiaries to violate, infringe, misappropriate or misuse any Intellectual Property of any other Person.

13.13 Required Cash; Liquidity.

(a) The Company shall, at all times, maintain cash of at least $5,000,000 in the Pledged Account; provided, that, in the event that the FDA Approval shall occur on or prior to September 30, 2022, the provisions of this 13.13(a) shall cease to be of effect on the date such FDA Approval shall occur.

(b) In the event that the FDA Approval shall occur on or prior to September 30, 2022, the Company shall, at all times from and after the date the FDA Approval shall occur, maintain Liquidity of at least $5,000,000.

13.14 Books and Records. The Company shall, and the Company shall cause its Subsidiaries to, keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions.

14. Distribution of Assets. In addition to any adjustments pursuant to Section 7, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Shares, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "***Distributions***"), then the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Shares acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for such Distributions (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Shares as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

15. Amendments and Waivers. The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes; provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any Holder relative to the comparable rights and obligations of the other Holders shall require the prior written consent of such adversely affected Holder. Any change, amendment or waiver by the Company and the Required Holders shall be binding on the Holder of this Note and all holders of the Other Notes.

16. Collateral. This Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement and the other Security Documents).

17. Transfer. This Note may be offered, sold, assigned or transferred by the Holder upon notice to, but without the consent of, the Company, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement. Any shares of Common Shares issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement.

18. Reissuances; New Notes.

18.1 Transfer. If this Note is to be transferred in accordance with the terms of this Note, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 18.4), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 18.4) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

18.2 Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 18.4) representing the outstanding Principal.

18.3 Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 18.4) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

18.4 Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 18.1 or Section 18.3, the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

19. Remedies, Characterizations, other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

20. Payment of Collection, Enforcement and Other Costs. If (a) an Event of Default has occurred and this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

21. Construction; Headings. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the First Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

22. Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

23. Dispute Resolution.

23.1 Submission to Dispute Resolution.

(a) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (A) if by the Company, within five (5) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder, within five (5) Business Days after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Closing Bid Price, such Closing Sale Price, such Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2^{nd}) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then then the Holder may, with the consent of the Company not to be unreasonably or untimely withheld, select an independent, reputable investment bank to resolve such dispute.

(b) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 23 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5^{th}) Business Day immediately following the date on which the Holder selected such investment bank (the "***Dispute Submission Deadline***") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "***Required Dispute Documentation***") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(c) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The reasonable fees and reasonable expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

23.2 Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 23 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("***CPLR***") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 23, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Shares occurred under Section 6 or 7, (B) the consideration per share at which an issuance or deemed issuance of Common Shares occurred, and (C) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security, (iii) the terms of this Note and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 23 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 23 and (v) nothing in this Section 23 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 23).

23.3 Pendency of Dispute. Notwithstanding anything to the contrary set forth herein, during either (i) the pendency of any dispute under this Section 23 with respect to either (A) whether the existence or continuation of an Event of Default has occurred, or (B) whether the conditions to a Company Optional Redemption pursuant to Section 8 have been satisfied, or (ii) the time that both an Event of Default is continuing and the pendency of any other dispute under this Section 23, with the prior written consent of the Holder, the Company shall not be permitted to exercise its rights under Section 8 and no Company Optional Redemption pursuant to Section 8 shall be effective.

24. Notices; Currency; Payments.

24.1 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 8.4 of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Shares, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase shares, stock, warrants, securities or other property to all or substantially all of the holders of shares of Common Shares or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

24.2 Currency. All dollar amounts referred to in this Note are in United States Dollars ("***U.S. Dollars***"), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "***Exchange Rate***" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

24.3 Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Purchasers, shall initially be as set forth on the Schedule of Investors attached to the Securities Purchase Agreement); provided, that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of thirteen percent (13.0%) per annum from the date such amount was due until the same is paid in full ("***Late Charge***").

25. Cancellation. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been satisfied in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

26. Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

27. Governing Law. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 23 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 23. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

28. Attorneys' Fees. In the event any legal action or other proceeding is brought by one party against the other party to enforce any provision of this Note or in which the subject matter of such legal action or other proceeding arises under, or is with respect to, the provisions of this Note, the prevailing party in any such legal action or other proceeding is entitled to recover from the other party attorneys' fees and costs associated with defending or prosecuting such legal action or other proceeding, any appeal therefrom, and any ancillary or related proceedings.

29. Severability. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

30. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

31. Usury. This Note is subject to the express condition that at no time shall the Company be obligated or required to pay interest hereunder at a rate or in an amount which could subject the Holder to either civil or criminal liability as a result of being in excess of the maximum interest rate or amount which the Company is permitted by applicable law to contract or agree to pay. If by the terms of this Note, the Company is at any time required or obligated to pay interest hereunder at a rate or in an amount in excess of such maximum rate or amount, the rate or amount of interest under this Note shall be deemed to be immediately reduced to such maximum rate or amount and the interest payable shall be computed at such maximum rate or be in such maximum amount and all prior interest payments in excess of such maximum rate or amount shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

32. Definitions. As used in this Note, the following terms shall have the following meanings:

32.1 "***Acquisition***" has the meaning specified in Section 13.6.

32.2 "***Affiliate***" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

32.3 "***Attribution Parties***" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Shares would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

32.4 "***Authorized Share Allocation***" has the meaning specified in Section 10.1.

32.5 "***Authorized Share Failure***" has the meaning specified in Section 10.2.

32.6 "***Automatic Conversion Event***" means that, as of any Company Optional Redemption Date, the Automatic Conversion Reference Price as of such Company Option Redemption Date shall be in excess of the product of (x) 120%, times (y) the Conversion Price as of such Company Option Redemption Date.

32.7 "***Automatic Conversion Reference Price***" means, as of Company Optional Redemption Date, the VWAP of the Common Shares for the five (5) Trading Days ending at the close of business on the Principal Market on the Trading Day immediately prior to such Company Optional Redemption Date.

32.8 "***Bankruptcy Event of Default***" has the meaning specified in Section 4.1.

32.9 "***Business Day***" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in The State of New York are authorized or required by law or other governmental action to close.

32.10 "***Calendar Quarter***" means each of: (i) the period beginning on and including January 1 and ending on and including the next occurring March 31; (ii) the period beginning on and including April 1 and ending on and including the next occurring June 30; (iii) the period beginning on and including July 1 and ending on and including the next occurring September 30; (iv) and the period beginning on and including October 1 and ending on and including the next occurring December 31.

32.11 "***Cash Interest***" has the meaning specified in the preamble to this Note.

32.12 "***Cash Interest Rate***" means, as of any date, an annual rate per annum equal to the sum of (i) the greater of (x) the Prime Rate as of such date, and (y) 3.50%, plus (ii) 1.00%, plus (iii) at all times on or after August 19, 2024, 3.50%; provided, that, on any date when an Event of Default shall have occurred and be continuing, the "Cash Interest Rate" shall be the "Cash Interest Rate" determined in accordance with the foregoing plus 2.00%.

32.13 "***Change of Control***" means any Fundamental Transaction other than (i) any reorganization, recapitalization or reclassification of the shares of Common Shares in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

32.14 "***Change of Control Date***" has the meaning specified in Section 5.2.

32.15 "***Change of Control Notice***" has the meaning specified in Section 5.2.

32.16 "***Change of Control Redemption Date***" has the meaning specified in Section 11.1.

32.17 "***Change of Control Redemption Notice***" has the meaning specified in Section 5.2.

32.18 "***Change of Control Redemption Price***" has the meaning specified in Section 5.2.

32.19 "***Closing Bid Price***" and "***Closing Sale Price***" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by FactSet, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by FactSet, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by FactSet, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by FactSet, or, if no closing bid price or last trade price, respectively, is reported for such security by FactSet, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any share splits, share dividends, share combinations, recapitalizations or other similar transactions during such period.

32.20 "***Common Shares***" means (i) shares of Common Shares, no par value, of the Company, and (ii) any share capital into which such Common Shares shall be changed or any share capital resulting from a reclassification of such Common Shares.

32.21 "***Company***" has the meaning specified in the preamble to this Note.

32.22 "***Company Optional Redemption***" has the meaning specified in Section 8.1.

32.23 "***Company Optional Redemption Amount***" has the meaning specified in Section 8.1.

32.24 "***Company Optional Redemption Date***" has the meaning specified in Section 8.1.

32.25 "***Company Optional Redemption Notice***" has the meaning specified in Section 8.1.

32.26 "***Company Optional Redemption Notice Date***" has the meaning specified in Section 8.1.

32.27 "***Company Optional Redemption Price***" has the meaning specified in Section 8.1.

32.28 "***Conversion Amount***" means the sum of (w) the portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made, (x) all accrued and unpaid Interest with respect to such portion of the Principal amount, (y) accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any, and (z) solely with respect to any conversion of the Notes following the delivery by the Company of a Company Optional Redemption Notice under Section 8.1, an amount equal to (i) the Redemption Premium as of such date of conversion minus 100%, multiplied by (ii) the Principal being converted.

32.29 "***Conversion Date***" has the meaning specified in Section 3.3(a).

32.30 "***Conversion Notice***" has the meaning specified in Section 3.3(a).

32.31 "***Conversion Price***" means, as of any Conversion Date or other date of determination, $8.11, subject to adjustment as provided herein.

32.32 "***Conversion Rate***" has the meaning specified in Section 3.2.

32.33 "***Convertible Securities***" means any shares, stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Shares.

32.34 "***Corporate Event***" has the meaning specified in Section 6.2.

32.35 "***Current Public Information Failure***" has the meaning specified in the Securities Purchase Agreement.

32.36 "***Distributions***" has the meaning specified in Section 14.

32.37 "***Dispute Submission Deadline***" has the meaning specified in Section 23.1(b).

32.38 "***DTC***" has the meaning specified in Section 3.3(a).

32.39 "***Effectiveness Deadline***" has the meaning specified in the Securities Purchase Agreement.

32.40 "***Eligible Market***" means the NYSE American, New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTCBB.

32.41 "***Equity Conditions***" means, with respect to an given date of determination: (i) on each day during the period beginning thirty (30) calendar days prior to such applicable date of determination and ending on and including such applicable date of determination either (x) to the extent that a Registration Statement shall have been required to filed pursuant to the Securities Purchase Agreement, one or more Registration Statements filed pursuant to the Securities Purchase Agreement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Shares previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Shares issuable upon conversion of this Note and the Other Notes (each, a "***Required Minimum Securities Amount***"), in each case, in accordance with the terms of the Securities Purchase Agreement or (y) all Registrable Securities in respect of this Note and the Other Notes shall be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes) and no Current Public Information Failure exists or is continuing; (ii) on each day during the period beginning thirty (30) calendar days prior to the applicable date of determination and ending on and including the applicable date of determination (the "***Equity Conditions Measuring Period***"), the Common Shares (including all Registrable Securities in respect of this Note and the Other Notes) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Shares is then listed or designated for quotation (as applicable); (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Shares issuable upon conversion of this Note on a timely basis as set forth in Section 3 hereof and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in the other Transaction Documents; (iv) any shares of Common Shares to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3.4 hereof; (v) any shares of Common Shares to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Shares is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, (x) no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated and (y) and no pending or proposed Fundamental Transaction shall have been under consideration or negotiation by the Board of Directors of the Company; (vii) the Company shall have no knowledge of any fact that would reasonably be expected to cause (1) any Registration Statement required to be filed pursuant to the Securities Purchase Agreement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of Registrable Securities in respect of this Note and the Other Notes in accordance with the terms of the Securities Purchase Agreement or (2) any Registrable Securities in respect of this Note and the Other Notes to not be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes) and no Current Public Information Failure exists or is continuing; (viii) on each day during the Equity Conditions Measuring Period, the Company otherwise shall have been in compliance with each, and shall not have breached any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any Transaction Document; (ix) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and the applicable Required Minimum Securities Amount of shares of Common Shares are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (B) all shares of Common Shares to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (x) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default; (xi) no bona fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Shares of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document; and (xii) the shares of Common Shares issuable pursuant the event requiring the satisfaction of the Equity Conditions (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

32.42 "***Equity Conditions Failure***" means, as applicable, that (i) on any day during the period commencing twenty (20) Trading Days prior to the applicable Company Optional Redemption Notice Date through the applicable Company Optional Redemption Date or (ii) with respect to any other date of determination, any day during the period commencing twenty (20) Trading Days prior to such date of determination, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

32.43 "***Event of Default***" has the meaning specified in Section 4.1.

32.44 "***Event of Default Notice***" has the meaning specified in Section 4.2.

32.45 "***Event of Default Redemption Date***" has the meaning specified in Section 11.1.

32.46 "***Event of Default Redemption Notice***" has the meaning specified in Section 4.2.

32.47 "***Event of Default Redemption Price***" has the meaning specified in Section 4.2.

32.48 "***Event of Default Right Expiration Date***" has the meaning specified in Section 4.2.

32.49 "***Excess Shares***" has the meaning specified in Section 3.4.

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

32.51 "***FDA Approval***" has the meaning specified in the Securities Purchase Agreement.

32.52 "***Federal Funds Effective Rate***" means, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Holder from three Federal funds brokers of recognized standing reasonably selected by it.

32.53 "***Filing Deadline***" has the meaning specified in the Securities Purchase Agreement.

32.54 "***First Closing Date***" has the meaning specified in the Securities Purchase Agreement.

32.55 "***Fourth Closing Notes***" has the meaning specified in the Securities Purchase Agreement.

32.56 "***Fundamental Transaction***" means (A) that the Company shall, directly or indirectly, including through any of its subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Shares be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Shares, (y) 50% of the outstanding shares of Common Shares calculated as if any shares of Common Shares held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Shares such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Shares, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Shares, (y) at least 50% of the outstanding shares of Common Shares calculated as if any shares of Common Shares held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock or share purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Shares such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Shares, or (v) reorganize, recapitalize or reclassify its Common Shares, (B) that the Company shall, directly or indirectly, including through any of its subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Shares, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Shares, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Shares not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Shares held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Shares or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Shares without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

32.57 "***GAAP***" means United States generally accepted accounting principles, consistently applied.

32.58 "***Guaranty Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.59 "***Group***" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

32.60 "***Holder***" has the meaning specified in the preamble to this Note.

32.61 "***Indebtedness***" means, with respect to any Person, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, and (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by such Person, even though such Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness.

32.62 "***Initial Second Closing***" has the meaning specified in the Securities Purchase Agreement.

32.63 "***Intellectual Property***" means all patents, trademarks, service marks, logos and other business identifiers, trade names, trade styles, trade dress, copyrights, proprietary know-how, processes, computer software and all registrations, applications and licenses therefor.

32.64 "***Interest***" has the meaning specified in the preamble to this Note.

32.65 "***Interest Date***" has the meaning specified in Section 2.1.

32.66 "***Investment***" means, with respect to any Person, any loan, advance or extension of credit (other than to customers in the ordinary course of business) by such Person to, or any guarantee of any obligation of or other contingent liability with respect to the capital stock, Indebtedness or other obligations of, or any contributions to the capital of, any other Person, or any ownership, purchase or other acquisition by such Person of any interest in any capital stock, limited partnership interest, general partnership interest, or other securities of any such other Person.

32.67 "***Investor Label Approval Notice***" has the meaning specified in the Securities Purchase Agreement.

32.68 "***Issuance Date***" has the meaning specified in the preamble to this Note.

32.69 "***Late Charge***" has the meaning specified in Section 24.3.

32.70 "***Lien***" has the meaning specified in Section 13.3.

32.71 "***Liquidity***" means, as of any date, an amount equal to the aggregate amount of the unrestricted cash of the Company and the Subsidiary Guarantors (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of the Subsidiary Guarantors for any reason) as of such date of determination held in bank accounts of financial banking institutions in Canada or the United States of America.

32.72 "***Maturity Date***" shall mean August 19, 2027; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is the earlier of the consummation or, to the extent that the Maturity Date had previously been extended upon the public announcement of a Fundamental Transaction, termination of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date; provided further that if a Holder elects to convert a portion of this Note pursuant to Section 3 hereof that represents the maximum Conversion Amount permitted under Section 3.4 at such time, and the Conversion Amount remains limited pursuant to Section 3.4 hereunder as at the Maturity Date, the Maturity Date may be extended at the option of the Holder until such time as such provision shall not limit the conversion of this Note.

32.73 "***Maximum Percentage***" has the meaning specified in Section 3.4.

32.74 "***Note***" has the meaning specified in the preamble to this Note.

32.75 "***Options***" means any rights, warrants, grants or options to subscribe for or purchase shares of Common Shares or Convertible Securities.

32.76 "***Other Notes***" has the meaning specified in the preamble to this Note.

32.77 "***Other Redemption Notice***" has the meaning specified in Section 11.2.

32.78 "***Parent Entity***" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose Common Shares or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

32.79 "***Permitted Indebtedness***" means (i) Indebtedness evidenced by this Note, the Other Notes and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Note, Third Closing Notes or Fourth Closing Notes, (ii) Indebtedness secured by Permitted Liens under clause (iii) of the definition of Permitted Liens in an aggregate amount outstanding not to exceed $250,000, (iii) Indebtedness incurred in the ordinary course of business, not to exceed $100,000 in any one transaction or $250,000 in the aggregate outstanding at any time, and (iv) any unsecured Indebtedness, so long as the aggregate amount of Indebtedness at any time outstanding under this clause (iv) shall not exceed $250,000.

32.80 "***Permitted Liens***" means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any Lien created by operation of law, such as materialmen's liens, mechanics' liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iii) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, or (C) in respect of capitalized lease obligations, provided that the Lien is confined solely to the property leased by the Company or any of its Subsidiaries pursuant to the applicable capital lease, in the case of any of clause (A), (B) or (C), with respect to Indebtedness in an aggregate amount not to exceed $250,000, and (iv) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods.

32.81 "***Permitted Securities Transaction***" has the meaning specified in Section 3.3(a).

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

32.83 "***PIK Interest***" has the meaning specified in the preamble to this Note.

32.84 "***Pledged Account***" means the deposit account with account number 08951577809 located at Western Alliance Bank.

32.85 "***Prime Rate***" means, as of any date, the rate quoted by The Wall Street Journal as the "Prime Rate" in the United States on such date.

32.86 "***Principal***" has the meaning specified in the preamble to this Note.

32.87 "***Principal Market***" means the Nasdaq Capital Market.

32.88 "***Redemption Automatic Conversion***" has the meaning specified in Section 8.1(c)(iii).

32.89 "***Redemption Date***" means, as applicable, the Event of Default Redemption Date, the Change of Control Redemption Date or Company Optional Redemption Date.

32.90 "***Redemption Notice***" means, as applicable, an Event of Default Redemption Notice, a Company Optional Redemption Notices and a Change of Control Redemption Notice.

32.91 "***Redemption Premium***" means:

(a) as of any date after August 19, 2025 but prior to August 19, 2026, the sum of (i) 100.00%, plus (ii) 10.00%; and

(b) as of any date on or after August 19, 2026, the sum of (i) 100.00%, plus (ii) 7.50%;

provided, that, notwithstanding the foregoing, in the event that (i) the FDA Approval shall have not occurred by September 30, 2022, then, at all times following September 30, 2022, the "Redemption Premium" shall equal 5.00%, or (ii) the FDA Approval shall occur on or prior to September 30, 2002 but the Initial Second Closing shall not occur on or prior to the Second Closing Deadline solely as a result of the Second Closing Investors failing to deliver an Investor Label Approval Notice in accordance with the Securities Purchase Agreement, then, at all times following the Second Closing Deadline, the "Redemption Premium" shall equal 0.00%

32.92 "***Redemption Price***" means, as applicable, the Event of Default Redemption Price, the Change of Control Redemption Price and the Company Optional Redemption Price.

32.93 "***Register***" has the meaning specified in Section 3.3(c).

32.94 "***Registered Notes***" has the meaning specified in Section 3.3(c).

32.95 "***Registrable Securities***" has the meaning specified in the Securities Purchase Agreement.

32.96 "***Registration Statement***" has the meaning specified in the Securities Purchase Agreement.

32.97 "***Regulatory Authorizations***" means all governmental licenses, authorizations, registrations, permits, consents and approvals required under all applicable laws and regulations in order to carry on the business of the Company and its Subsidiaries as currently conducted or proposed to be conducted, including any newly introduced or revised applicable laws and regulations as they may become introduced, altered or otherwise evolve over time.

32.98 "***Reported Outstanding Share Number***" has the meaning specified in Section 3.4.

32.99 "***Required Dispute Documentation***" has the meaning specified in Section 23.1(b).

32.100 "***Required Holders***" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding.

32.101 "***Required Reserve Amount***" has the meaning specified in Section 10.1.

32.102 "***Restricted Payment***" has the meaning specified in Section 13.4.

32.103 "***Rule 144***" has the meaning specified in the Securities Purchase Agreement.

32.104 "***SEC***" means the United States Securities and Exchange Commission or the successor thereto.

32.105 "***Second Closing Deadline***" has the meaning specified in the Securities Purchase Agreement.

32.106 "***Second Closing Notes***" has the meaning specified in the Securities Purchase Agreement.

32.107 "***Securities Purchase Agreement***" means that certain Securities Purchase Agreement, dated as of August 1, 2022, among the Company and the investors identified therein, pursuant to which the Company issued, among other securities, the Notes, as such agreement may be amend, restated or otherwise modified from time to time.

32.108 "***Security Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.109 "***Security Documents***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.110 "***Share Delivery Deadline***" has the meaning specified in Section 3.3(a).

32.111 "***Subject Entity***" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

32.112 "***Subsidiary***" means any Person in which the Company, directly or indirectly, (i) owns more than 50% of the outstanding capital stock or any equity or similar interest of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person.

32.113 "***Subsidiary Guarantor***" means each Subsidiary of the Company that is, or that becomes, (i) a party to the Guaranty Agreement as a "Subsidiary Guarantor" thereunder, and (ii) a party to the Security Agreement as a "Grantor" thereunder.

32.114 "***Successor Entity***" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

32.115 "***Third Closing Notes***" has the meaning specified in the Securities Purchase Agreement.

32.116 "***Trading Day***" has the meaning specified in the Securities Purchase Agreement.

32.117 "***Transaction Documents***" means the Securities Purchase Agreement, including the schedules, annexes and exhibits attached hereto, the Notes, the Security Agreement, the other Security Documents and each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by the Securities Purchase Agreement.

32.118 "***Transfer Agent***" has the meaning specified in Section 3.1.

32.119 "***VWAP***" means, for any security as of any date or period, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet, or, if no dollar volume-weighted average price is reported for such security by FactSet for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the VWAP cannot be calculated for such security on such date or period on any of the foregoing bases, the VWAP of such security on such date or period shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any share dividend, share split, share combination, recapitalization or other similar transaction during such period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Senior Secured Convertible Note as of the Issuance Date set out above.

FENNEC PHARMACEUTICALS INC.

By: /s/ Robert Andrade
Name: Robert Andrade
Title: CFO

Accepted and Agreed:

PETRICHOR OPPORTUNITIES FUND I LP
By PETRICHOR OPPORTUNITIES FUND I GP LLC

By: /s/ Tadd Wessel
Name: Tadd Wessel
Title: Managing Member

EXHIBIT I

FENNEC PHARMACEUTICALS INC.
CONVERSION NOTICE

Reference is made to the Senior Secured Convertible Note (the "***Note***") issued to the undersigned by Fennec Pharmaceuticals Inc., a British Columbia corporation (the "***Company***"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Shares, no par value (the "***Common Shares***"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted:_____

Aggregate accrued and unpaid Interest
and accrued and unpaid Late Charges
with respect to such portion of the
Principal and such Interest to be converted:_____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price:_____

Number of shares of Common Shares to be issued (the "***Shares***"):_____

☐ Check here if the Holder does not intend to resell the Shares to be issued either (x) prior to, (y) contemporaneously with or (z) no later than thirty days after, as applicable, the date of this Conversion Notice

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty days after the date of this Conversion Notice.

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Note submitting this Conversion Notice that after giving effect to the Conversion provided for in this Conversion Notice, such Holder (together with its Attribution Parties) will not have beneficial ownership (together with the beneficial ownership of such Person's Attribution Parties) of a number of shares Common Shares which exceeds the Maximum Percentage (as defined in the Note) of the total outstanding shares of Common Shares of the Company as determined pursuant to the provisions of Section 3.4 of the Note.

Please issue the Common Shares into which the Note is being converted to Holder, or for its benefit, as follows:

☐ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

☐ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number: _____
Account Number: _____

Date:_____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____

Facsimile:_____

Email Address:_____

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

FENNEC PHARMACEUTICALS INC.

_____ ___, 20__

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Shares of Fennec Pharmaceuticals Inc.

Ladies and Gentlemen:

Reference is made to (A) the Securities Purchase Agreement, dated as of August 1, 2022, as amended, by and among Fennec Pharmaceuticals Inc., a British Columbia corporation (the "***Company***"), and the investors who are parties thereto, pursuant to which the Company is issuing to the purchasers (collectively, the "***Holders***") senior secured convertible notes (the "***Notes***"), which are convertible into shares of the Company's Common Shares, no par value (the "***Common Shares***"); (B) the related Transfer Agent Instructions, dated as of [●], 20**[22]** (the "***20[22] Instruction***"); (C) the conversion notice attached hereto (the "***Conversion Notice***"); and (D) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (1) a registration statement covering the resale of the shares of the Common Shares, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***1933 Act***"), (2) the Holders may transfer such shares of the Common Shares under Rule 144 promulgated under the 1933 Act ("***Rule 144***"), or (3) the Holders may transfer such shares of the Common Shares under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Shares as set forth under "Number of shares of the Common Shares to be issued" in the Conversion Notice,
- out of the Transfer Agent Reserve (as defined in the 20[22] Instruction), and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at [_____].

Very Truly Yours,

FENNEC PHARMACEUTICALS INC.

By: _____
Name:
Title:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (I) THE ISSUE DATE AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.

FENNEC PHARMACEUTICALS INC.

SENIOR SECURED CONVERTIBLE NOTE

Issuance Date: September 23, 2022 Original Principal Amount: U.S. $20,000,000

FOR VALUE RECEIVED, Fennec Pharmaceuticals Inc., a British Columbia corporation (the "***Company***"), hereby promises to pay to Petrichor Opportunities Fund I LP or its registered assigns (the "***Holder***") in cash the amount set out above as the Original Principal Amount (as (x) reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, and (y) increased from time to time by the aggregate amount of PIK Interest that shall have been added to the outstanding principal amount of this Note pursuant to Section 2.2, the "***Principal***") when due, whether upon the Maturity Date, acceleration, redemption or otherwise (in each case in accordance with the terms hereof), to pay cash interest ("***Cash Interest***") on any outstanding Principal at the Cash Interest Rate from the date set out above as the Issuance Date (the "***Issuance Date***") until the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof), and to pay paid-in-kind interest ("***PIK Interest***", and together with Cash Interest, collectively, "***Interest***") on any outstanding Principal at a rate of 3.50% per annum from the Issuance Date until the earlier of (A) August 19, 2024, and (B) the date the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Note (including all Senior Secured Convertible Notes issued in exchange, transfer or replacement hereof, this "***Note***") is one of a series of Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the Second Closing Notes (collectively, the "***Notes***" and such other Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement on the Issuance Date and referred to in the Securities Purchase Agreement as the Second Closing Notes, the "***Other Notes***"). Certain capitalized terms used herein are defined in Section 32.

1. Payments of Principal. On the Maturity Date, the Company shall pay to the Holder an amount in cash equal to (i) the product of all outstanding Principal multiplied by the Redemption Premium as of the Maturity Date, plus (ii) all accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest, or accrued and unpaid Late Charges on Principal or Interest, if any. Notwithstanding anything herein to the contrary, with respect to any repayment, conversion or redemption hereunder, as applicable, the Company shall repay, convert or redeem, as applicable, (i) first, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, (ii) second, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by such Holder, (iii) third, all other amounts (other than Principal, but including any Redemption Premium) outstanding under any other Notes held by such Holder, and (v) fourth, all Principal outstanding hereunder and under any other Notes held by such Holder, in each case, allocated pro rata among this Note and such other Notes held by such Holder.

2. Interest.

2.1 Cash Interest. Cash Interest on this Note shall commence accruing on the Issuance Date at the Cash Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in arrears for each Calendar Quarter on the first (1st) Business Day of each Calendar Quarter after the Issuance Date (each, an "***Interest Date***"). Cash Interest shall be payable on each Interest Date, to the record holder of this Note on the applicable Interest Date, by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. Prior to the payment of Cash Interest on an Interest Date, Cash Interest on this Note shall accrue at the Cash Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount in connection with any conversion of this Note under Section 3, on each Redemption Date and/or in connection with any required payment upon any Bankruptcy Event of Default.

2.2 PIK Interest. PIK Interest on this Note shall commence accruing on the Issuance Date at a rate of 3.50% per annum and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in arrears for each Calendar Quarter on each Interest Date; provided, that (x) PIK Interest shall cease to accrue on this Note on August 19, 2024, and (y) from and after August 19, 2024, no further PIK Interest shall accrue on this Note (provided, that, any PIK Interest that shall have accrued on this Note prior to August 19, 2024 shall remain outstanding and be payable hereunder as set forth herein. Any accrued PIK Interest shall be payable in kind on each Interest Date, to the record holder of this Note on the applicable Interest Date, by capitalizing such PIK Interest and, effective as of such Interest Date, adding it to (and thereby increasing) the outstanding Principal of this Note. For the avoidance of doubt, effective as of, and from and after, any Interest Date, the outstanding Principal of this Note shall be increased by the amount of PIK Interest paid in kind on such Interest Date for all purposes of this Note (including, without limitation, for the purposes of the future accrual of Interest on the outstanding Principal of this Note and for the purposes of determining the Conversion Amount as of any date). Prior to the payment in kind of PIK Interest on an Interest Date, PIK Interest on this Note shall, until August 19, 2024, accrue at a rate of 3.50% per annum and be payable by way of inclusion of the Interest in the Conversion Amount in connection with any conversion of this Note under Section 3, on each Redemption Date and/or in connection with any required payment upon any Bankruptcy Event of Default.

3. Conversion of Notes. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Shares, on the terms and conditions set forth in this Section 3.

3.1 Conversion Right. Subject to the provisions of Section 3.4, at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount into fully paid and nonassessable shares of Common Shares in accordance with Section 3.3, at the Conversion Rate. The Company shall not issue any fraction of a share of Common Shares upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Shares, the Company shall round such fraction of a share of Common Shares up to the nearest whole share. The Company shall pay any and all transfer, stamp and similar taxes, costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "***Transfer Agent***")) that may be payable with respect to the issuance and delivery of Common Shares upon conversion of any Conversion Amount.

3.2 Conversion Rate. The number of shares of Common Shares issuable upon conversion of any Conversion Amount pursuant to Section 3 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "***Conversion Rate***").

3.3 Mechanics of Conversion.

(a) Optional Conversion.

1. To convert any Conversion Amount into shares of Common Shares on any date (a "***Conversion Date***"), the Holder shall deliver (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "***Conversion Notice***") to the Company.

2. On or before the second (2^{nd}) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail the transfer agent instructions and representation as to whether such shares of Common Shares may then be resold pursuant to (A) an effective and available registration statement, (B) Rule 144, provided that the Holder affirmatively indicates on the applicable Conversion Notice that the shares of Common Shares issuable in connection with such Conversion Notice have been or are being resold either prior to or contemporaneously with the date of the applicable Conversion Notice by the Holder, or (C) Rule 144 without having to comply with the information requirements under Rule 144(c)(1) (each, a "***Permitted Securities Transaction***"), in the form attached hereto as Exhibit II, to the Holder and the Transfer Agent which shall instruct the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

3. On or before the third (3rd) Trading Day following the date on which the Company has received a Conversion Notice (the "***Share Delivery Deadline***"), the Company shall (1) provided that the Transfer Agent is participating in The Depository Trust Company's ("***DTC***") Fast Automated Securities Transfer Program, with respect to the shares of Common Shares included in the Conversion Notice that may then be resold by the Holder pursuant to a Permitted Securities Transaction, credit such aggregate number of shares of Common Shares to which the Holder shall be entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or with respect to the shares of Common Shares included in the Conversion Notice that may not then be resold by the Holder pursuant to a Permitted Securities Transaction, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Shares to which the Holder shall be entitled pursuant to such conversion.

4. The Person or Persons entitled to receive the shares of Common Shares issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Shares on the Conversion Date.

5. Notwithstanding anything to the contrary contained in this Note or the Securities Purchase Agreement, after the effective date of the Registration Statement, the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee) in connection with any sale of Registrable Securities with respect to which the Holder has entered into a contract for sale, and delivered a copy of the prospectus included as part of the particular Registration Statement to the extent applicable, and for which the Holder has not yet settled.

(b) Reserved.

(c) Registration; Book-Entry. The Company shall maintain a register (the "***Register***") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "***Registered Notes***"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company. The Holder and the Company shall maintain records showing the Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(d) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3.4, shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Shares issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Shares not in dispute and resolve such dispute in accordance with Section 23.

3.4 Limitations on Conversions. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "***Maximum Percentage***") of the shares of Common Shares outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Shares beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Shares held by the Holder and all other Attribution Parties plus the number of shares of Common Shares issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Shares which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred shares or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3.4. For purposes of this Section 3.4, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Shares the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Shares as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Shares outstanding (the "***Reported Outstanding Share Number***"). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Shares is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Shares then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3.4, to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Shares to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Shares then outstanding. In any case, the number of outstanding shares of Common Shares shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Shares to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Shares (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "***Excess Shares***") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61^{st}) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Shares issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3.4 to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3.4 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

3.5 Redemption Automatic Conversion. In the event that a Redemption Automatic Conversion shall occur pursuant to Section 8.1(c)(iii) upon the occurrence of an Automatic Conversion Event, then, for the purposes of effecting the conversion of the applicable Company Optional Redemption Amount into shares of Common Shares in respect of such Redemption Automatic Conversion, such conversion shall be consummated in the manner set forth in this Section 3 as though the Holder had delivered a Conversion Notice under Section 3.3(a)(1) with respect to (x) a Conversion Amount equal to the applicable Company Optional Redemption Amount and (y) a Conversion Date of the Company Optional Redemption Date. Any such Redemption Automatic Conversion shall otherwise be consummated in the manner, and subject to the provisions and limitations, set forth in this Section 3.

4. Rights Upon and Event of Default.

4.1 Event of Default. Unless waived in writing by the Holder, each of the following events shall constitute an "***Event of Default***" and each of the events in clauses (i), (j) and (k) below shall constitute a "***Bankruptcy Event of Default***":

(a) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, the failure of such Registration Statement to be filed with the SEC on or prior to the date that is five (5) days after the applicable Filing Date or the failure of such Registration Statement to be declared effective by the SEC on or prior to the date that is five (5) days after the applicable Effectiveness Date;

(b) to the extent that a Registration Statement is required to be filed with the SEC pursuant to the terms of the Securities Purchase Agreement, while such Registration Statement is required to be maintained effective pursuant to the terms of the Securities Purchase Agreement, the effectiveness of such Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement (or the prospectus contained therein) is unavailable to any holder of Registrable Securities for sale of all of such holder's Registrable Securities in accordance with the terms of the Securities Purchase Agreement, and such lapse or unavailability continues for a period of five (5) consecutive days or for more than an aggregate of ten (10) days in any 365-day period;

(c) the suspension from trading or the failure of the Common Shares to be quoted or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(d) the Company's (A) failure to deliver to the Holder the required number of shares of Common Shares within five (5) Trading Days after the applicable Conversion Date or (B) notice, written or oral, to any holder of the Notes, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Notes into shares of Common Shares that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3.4;

(e) except to the extent the Company is in compliance with Section 10.2 below, at any time following the tenth (10^{th}) Trading Day that the Holder's Authorized Share Allocation is less than the number of shares of Common Shares that the Holder would be entitled to receive upon a conversion of the full Conversion Amount of this Note (without regard to any limitations on conversion set forth in Section 3.4 or otherwise);

(f) the Company's or any Subsidiary Guarantor's failure to pay to the Holder (i) any amount of Principal when and as due under this Note (including, without limitation, the Company's or any Subsidiary Guarantor's failure to pay any redemption payments or amounts hereunder), or (ii) any amount of Interest, Late Charges or other amounts when and as due under this Note or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, and, solely in the case of this clause (ii), such failure shall continue for two (2) Business Days following such date due;

(g) the Company fails to remove any restrictive legend on any certificate or any shares of Common Shares issued to the Holder as and when required by the Securities Purchase Agreement or this Note, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days;

(h) the occurrence of any default under, redemption of or acceleration prior to maturity of, any Indebtedness in an aggregate principal amount of at least $500,000 of the Company or any of its Subsidiaries, including any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Second Closing Notes (but excluding the Other Notes), Third Closing Notes or Fourth Closing Notes;

(i) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(j) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(k) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(l) a final judgment or judgments for the payment of money aggregating in excess of $500,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the $500,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(m) the Company and/or any Subsidiary, individually or in the aggregate, suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate;

(n) any default by the Company in the due performance and observance of any of the covenants or agreements contained Section 13;

(o) any representation, warranty or other written statement of the Company set forth in any Transaction Document or any certification provided by the Company pursuant to any Transaction Document is incorrect or misleading in any material respect when given;

(p) other than as specifically set forth in another clause of this Section 4.1, any default by the Company in the due performance and observance of any of the covenants or agreements of any Transaction Document, except, in the case of a breach of a covenant that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

(q) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company that either (A) the Equity Conditions are satisfied, (B) there has been no Equity Conditions Failure, or (C) as to whether any Event of Default has occurred;

(r) either (i) the FDA Approval shall be revoked, withdrawn or terminated for any reason or (ii) the United States Food & Drug Administrative shall, for any reason, revoke or withdrawal its market authorization for PEDMARK;

(s) any Material Adverse Effect (as defined in the Securities Purchase Agreement) occurs;

(t) any provision of any Transaction Document (including the Guaranty Agreement, the Security Agreement and any other Security Document) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto in any material respect, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including the Guaranty Agreement, the Security Agreement and any other Security Document), or any Subsidiary Guarantor repudiates, revokes or attempts to revoke its guaranty under the Guaranty Agreement;

(u) the Security Agreement or any other Security Document shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien on the Collateral (as defined in the Security Documents) in favor of the Holder or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof; or

(v) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

4.2 Notice of an Event of Default: Event of Default Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) Business Day of becoming aware of such Event of Default deliver written notice thereof via facsimile or electronic mail and overnight courier (with next day delivery specified) (an "***Event of Default Notice***") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default and ending (such ending date, the "***Event of Default Right Expiration Date***") on the twentieth (20^{th}) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder's receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the "***Event of Default Redemption Notice***") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4.2 shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium as of the date of the Event of Default and (ii) the product of (x) the Redemption Premium as of the date of the Event of Default multiplied by (y) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Shares during the period beginning on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4.2 by (II) the Conversion Price then in effect (the "***Event of Default Redemption Price***"). Redemptions required by this Section 4.2 shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4.2 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 4.2, but subject to Section 3.4, until the Event of Default Redemption Price (together with any Late Charges thereon) is satisfied in full, the Conversion Amount submitted for redemption under this Section 4.2 (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Shares pursuant to the terms of Section 3. In the event of the Company's redemption of any portion of this Note under this Section 4.2, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4.2 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

4.3 Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest, and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium as of the date of the Bankruptcy Event of Default, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity; provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

(a) Restrictions. The Company shall not enter into or be party to a Fundamental Transaction unless: either (i) the Company is the surviving Person; or (ii) the Successor Entity (if other than the Company) assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents as provided in Section 5.1(b).

(b) Assumption. To satisfy clause (ii) of Section 5.1(a), (i) the Successor Entity shall assume in writing all of the obligations of the Company under this Note and the other Transaction Documents pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes, respectively, held by such holder, having similar conversion rights as the Notes and having similar ranking and security to the Notes, and reasonably satisfactory to the Holder and the Company (or the Successor Entity, as applicable) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose Common Shares is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(c) Confirmation. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Shares (or other securities, cash, assets or other property) issuable upon the conversion or redemption of the Notes prior to such Fundamental Transaction, such shares of the publicly traded Common Shares (or their equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note.

(d) Waiver. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5.1 to permit the Fundamental Transaction without the assumption of this Note.

(e) Applicability. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

5.2 Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "***Change of Control Date***"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via facsimile or electronic mail and overnight courier to the Holder (a "***Change of Control Notice***"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on the later of ten (10) Trading Days after (A) consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice, the Holder may require the Company to, or the Company may on its own volition, redeem all or any portion of this Note by delivering written notice thereof ("***Change of Control Redemption Notice***") to the Company or Holder, as applicable which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder or Company, as applicable, is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5.2 shall be redeemed by the Company in cash at a price (the "***Change of Control Redemption Price***") equal to the greatest of (i) the product of (w) the Redemption Premium as of the date of the date of the Change of Control multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (x) the Redemption Premium as of the date of the Change of Control multiplied by (y) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Shares during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable Change of Control and (2) the public announcement of such Change of Control and ending on the date the Holder delivers the Change of Control Redemption Notice by (II) the Conversion Price then in effect and (iii) the product of (y) the Redemption Premium as of the date of the Change of Control multiplied by (z) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration plus the aggregate cash value of any non-cash consideration per share of Common Shares to be paid to the holders of the shares of Common Shares upon consummation of such Change of Control (any such non-cash consideration constituting publicly-traded securities shall be valued at the highest of the Closing Sale Price of such securities as of the Trading Day immediately prior to the consummation of such Change of Control, the Closing Sale Price of such securities on the Trading Day immediately following the public announcement of such proposed Change of Control and the Closing Sale Price of such securities on the Trading Day immediately prior to the public announcement of such proposed Change of Control) divided by (II) the Conversion Price then in effect (the "***Change of Control Redemption Price***"). Redemptions required by this Section 5.2 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to shareholders in connection with such Change of Control. To the extent redemptions required by this Section 5.2 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5.2, but subject to Section 3.4, until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5.2 (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Shares pursuant to Section 3. In the event of the Company's redemption of any portion of this Note under this Section 5.2, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5.2 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. Issuances of Purchase Rights and Other Corporate Events.

6.1 Purchase Rights. In addition to any adjustments pursuant to Section 7 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase shares, stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Shares (the "***Purchase Rights***"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Shares acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note) immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Shares are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Shares as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation).

6.2 Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Shares are entitled to receive securities or other assets with respect to or in exchange for shares of Common Shares (a "***Corporate Event***"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Shares receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Shares had such shares of Common Shares been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) or (ii) in lieu of the shares of Common Shares otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Shares in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Note initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Shares) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6.2 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. Adjustments to the Conversion Price.

7.1 Adjustment of Conversion Price upon Subdivision or Combination of Common Shares or Share Dividend. If the Company issues solely shares of Common Shares as a dividend or distribution on all or substantially all shares of the Common Shares, or if the Company effects a share split or a share combination of the Common Shares (in each case excluding an issuance solely pursuant to a Fundamental Transaction or other Corporate Event, as to which the provisions set forth in Sections 5 and 6 will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 * \frac{OS_0}{OS_1}$$

Where:

CP_0 = the Conversion Price in effect immediately before the open of business on the ex-dividend date for such dividend or distribution, or immediately before the open of business on the effective date of such share split or share combination, as applicable

CP_1 = the Conversion Price in effect immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable

OS_0 = the number of shares of Common Shares outstanding immediately before the open of business on such ex-dividend date or effective date, as applicable

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

For the avoidance of doubt, pursuant to the definition of CP_1 above, any adjustment to the Conversion Price made pursuant to this Section 7.1 will become effective immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable. If any dividend, distribution, share split or share combination of the type described in this Section 7.1 is declared or announced, but not so paid or made, then the Conversion Price, if previously adjusted, will be readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution or to effect such share split or share combination, to the Conversion Price that would then be in effect had such dividend, distribution, share split or share combination not been declared or announced.

7.2 Rights, Options and Warrants. If the Company distributes, to all or substantially all holders of Common Shares, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Shares at a price per share that is less than the average of the Closing Sale Prices per share of Common Shares for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is publicly announced, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 * \frac{OS + Y}{OS + X}$$

Where:

CP_0 = the Conversion Price in effect immediately before the open of business on the ex-dividend date for such distribution

CP_1 = the Conversion Price in effect immediately after the open of business on such ex-dividend date

OS = the number of shares of Common Shares outstanding immediately before the open of business on such ex-dividend date

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

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

For the avoidance of doubt, any adjustment to the Conversion Price made pursuant to this Section 7.2 will be made successively whenever any such rights, options or warrants are issued and, pursuant to the definition of CP_1 above, will become effective immediately after the open of business on the ex-dividend date for the applicable distribution. To the extent that shares of Common Shares are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Price, if previously adjusted, will be readjusted effective as of such expiration date to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of delivery of only the number of shares of Common Shares actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Price will be readjusted effective as of the date the Board of Directors of the Company determines not to distribute such rights, options or warrants, to the Conversion Price that would then be in effect had the ex-dividend date for the distribution of such rights, options or warrants not occurred. For purposes of this Section 7.2, in determining whether any rights, options or warrants entitle holders of Common Shares to subscribe for or purchase shares of Common Shares at a price per share that is less than the average of the Closing Sale Prices per share of Common Shares for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors of the Company.

7.3 Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Required Holders, reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

8. Redemptions at the Company's Election.

8.1 Company Optional Redemption.

(a) At any time after August 19, 2025, so long as no Equity Conditions Failure exists, the Company shall have the right to redeem all, but not less than all, of the Conversion Amount then remaining under this Note (the "***Company Optional Redemption Amount***") on the Company Optional Redemption Date (a "***Company Optional Redemption***"). The portion of this Note subject to redemption pursuant to this Section 8.1 shall be redeemed by the Company in cash at a price (the "***Company Optional Redemption Price***") equal to the product of (A) the Redemption Premium as of the Company Optional Redemption Date multiplied by (B) the Conversion Amount being redeemed as of the Company Optional Redemption Date.

(b) The Company may exercise its right to require redemption under this Section 8.1 by delivering a written notice thereof by facsimile or electronic mail and overnight courier to all, but not less than all, of the holders of Notes (the "***Company Optional Redemption Notice***" and the date all of the holders of Notes received such notice is referred to as the "***Company Optional Redemption Notice Date***"). The Company may deliver only one Company Optional Redemption Notice hereunder and such Company Optional Redemption Notice shall be irrevocable. The Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the "***Company Optional Redemption Date***") which date shall not be less than ten (10) Trading Days nor more than twenty (20) Trading Days following the Company Optional Redemption Notice Date, (y) certify that there has been no Equity Conditions Failure and (z) state the aggregate Conversion Amount of the Notes which is being redeemed in such Company Optional Redemption from the Holder and all of the other holders of the Notes pursuant to this Section 8.1 (and analogous provisions under the Other Notes) on the Company Optional Redemption Date.

(c) Notwithstanding anything herein to the contrary, (i) if no Equity Conditions Failure has occurred as of the Company Optional Redemption Notice Date but an Equity Conditions Failure occurs at any time prior to the Company Optional Redemption Date, (A) the Company shall provide the Holder a subsequent notice to that effect, and (B) unless the Holder waives the Equity Conditions Failure, the Company Optional Redemption shall be cancelled and the applicable Company Optional Redemption Notice shall be null and void, (ii) at any time prior to the date the Company Optional Redemption Price is paid, in full, the Company Optional Redemption Amount may be converted, in whole or in part, by the Holder into shares of Common Shares pursuant to Section 3, and (iii) solely in the event that an Automatic Conversion Event has occurred as of the Company Optional Redemption Date, then, effective on the Company Optional Redemption Date prior to redemption of this Note, the Company Optional Redemption Amount shall automatically, without any further required act of the Holder, be converted into shares of Common Shares in accordance with Section 3.5 (any such conversion of the Company Optional Redemption Amount in shares of Common Shares pursuant to this clause (iii) is herein referred to as a "***Redemption Automatic Conversion***").

(d) All Conversion Amounts converted by the Holder after the Company Optional Redemption Notice Date shall reduce the Company Optional Redemption Amount of this Note required to be redeemed on the Company Optional Redemption Date. Redemptions made pursuant to this Section 8.1 shall be made in accordance with Section 11.

(e) In the event of the Company's redemption of any portion of this Note under this Section 8.1, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 8.1 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. For the avoidance of doubt, the Company shall have no right to effect a Company Optional Redemption if any Event of Default has occurred and continuing, but any Event of Default shall have no effect upon the Holder's right to convert this Note in its discretion.

8.2 Pro Rata Redemption Requirement. If the Company elects to cause a Company Optional Redemption of this Note pursuant to Section 8.1, then it must simultaneously take the same action with respect to all of the Other Notes.

9. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate or articles of incorporation, bylaws or other governing document or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Shares receivable upon conversion of this Note above the Conversion Price then in effect, and (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Shares upon the conversion of this Note.

10. Reservation of Authorized Shares.

10.1 Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Shares a number of shares of Common Shares for each of this Note and the Other Notes equal to 120% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Issuance Date. So long as any of this Note and the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Shares, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Shares as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Shares so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "***Required Reserve Amount***"). The initial number of shares of Common Shares reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Securities Purchase Agreement) or at the time of the increase in the number of reserved shares, as the case may be (the "***Authorized Share Allocation***"). In the event that a holder shall sell or otherwise transfer this Note, or a portion thereof, or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation.

10.2 Insufficient Authorized Shares.

(a) If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Shares to satisfy its obligation to have reserved for issuance upon conversion of the outstanding Notes at least a number of shares of Common Shares equal to the Required Reserve Amount (an "***Authorized Share Failure***"), then the Company shall promptly take all action necessary to increase the Company's authorized shares of Common Shares to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (x) obtain the written consent of its shareholders for the approval of an increase in the number of authorized shares of Common Shares and provide each shareholder with an information statement with respect thereto or (y) file with the SEC a proxy statement for a meeting of its shareholders at which meeting the Company will seek the approval of its shareholders for an increase in the number of authorized shares of Common Shares. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use commercially reasonable efforts to solicit its shareholders' approval of such increase in authorized shares of Common Shares and to cause its Board of Directors to recommend to the shareholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Shares to approve the increase in the number of authorized shares of Common Shares, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C.

(b) If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company, in lieu of issuing Common Shares in connection with such conversion and in full satisfaction of the Company's obligations with respect to such conversion, to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of shares of Common Shares that the Company is unable to deliver pursuant to this Section 10, and (ii) the highest Closing Sale Price of the Common Shares during the period beginning on the applicable Conversion Date and ending on the date the Company makes the applicable cash payment.

11. Redemptions.

11.1 Mechanics.

(a) If the Holder has submitted an Event of Default Redemption Notice in accordance with Section 4.2, the Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice (each, an "***Event of Default Redemption Date***").

(b) If the Company or Holder has submitted a Change of Control Redemption Notice in accordance with Section 5.2, the Company shall deliver the applicable Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within two (2) Business Days after the Company's or Holders' receipt (as applicable) of such notice otherwise (each, a "***Change of Control Redemption Date***").

(c) In the event of a Company Optional Redemption, the Company shall deliver the applicable Company Optional Redemption Price to the Holder in cash on the applicable Company Optional Redemption Date.

(d) Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document.

(e) In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 18.4) representing the outstanding Principal which has not been redeemed.

(f) In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 18.4), to the Holder; provided, that, notwithstanding the applicable Redemption Notice being deemed null and void and such return or issuance of this Note or a new Note in accordance with the foregoing, a continual Event of Default shall thereafter be deemed to have occurred and be continuing until the subsequent repayment or conversion of this Note in full. Furthermore, the Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

11.2 Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4 or Section 5.2 (each, an "***Other Redemption Notice***"), the Company shall immediately, but no later than two (2) Business Days after its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is five (5) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. Voting Rights. The Holder shall have no voting rights as the holder of this Note, except as required by law and as expressly provided in this Note.

13. Covenants. Until all of the Notes have been converted, redeemed or otherwise satisfied, in full, in accordance with their terms:

13.1 Rank. All payments due under this Note (a) shall rank *pari passu* with all Other Notes, any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Third Closing Notes or Fourth Closing Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries.

13.2 Incurrence of Indebtedness. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note, the Other Notes, any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Third Closing Notes or Fourth Closing Notes and (ii) other Permitted Indebtedness).

13.3 Existence of Liens. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "***Liens***") other than Permitted Liens.

13.4 Redemption and Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any dividend or distribution on any of its shares of capital stock (any of the foregoing, a "***Restricted Payment***"), other than (i) Restricted Payments made by any Subsidiary to the Company or any other Subsidiary of the Company, (ii) any dividend payments or other distributions by the Company or any Subsidiary payable solely in shares of capital stock of such Person and (iii) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of shares of capital stock deemed to occur upon the exercise of share options, warrants or other rights in respect thereof if such share of capital stock represents a portion of the exercise price thereof.

13.5 Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any material assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business consistent with its past practice, (ii) sales of inventory and product in the ordinary course of business, or (iii) sales or other transfers of assets from the Company or any Subsidiary Guarantor to the Company or any Subsidiary Guarantor.

13.6 Acquisitions. Without the prior written consent of the Required Holders, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, acquire all or substantially all of the assets or capital stock of any Person or acquire all or substantially all of the assets of any operating division of any Person (each, an "***Acquisition***") if the aggregate consideration payable by the Company and its Subsidiaries in connection with such Acquisition or a series of related Acquisitions (including, without limitation, all cash or equity consideration, all Indebtedness or other liabilities incurred or assumed and the maximum amount of any earn-out or comparable payment obligation in connection therewith) exceeds $500,000.

13.7 Change in Nature of Business. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the First Closing Date or any business substantially related or incidental thereto. The Company shall not, and the Company shall not permit any of its Subsidiaries to, directly or indirectly, modify its or their corporate structure or purpose in any material respect.

13.8 Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate, except (i) transactions entered into in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, and (ii) transactions entered into for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof.

13.9 Maintenance of Existence; Compliance with Contracts, Laws, Etc. The Company shall, and the Company shall cause its Subsidiaries to, preserve and maintain its legal existence, perform in all material respects its obligations under all material agreements, contracts and instruments to which the Company or such Subsidiary is a party, take all actions to ensure that all such material agreements remain in full force and effect, and comply in all material respects with all applicable laws, rules, regulations and orders, including the payment (before the same become delinquent), of all taxes, imposed upon it or upon its property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Company or its Subsidiary, as applicable.

13.10 Insurance. The Company shall, and the Company shall cause its Subsidiaries to, maintain:

(a) insurance on its property with financially sound and reputable insurance companies against business interruption, loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as the Company its Subsidiaries; and

(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

13.11 Subsidiary Matters.

(a) Neither the Company nor any Subsidiary Guarantor shall establish, form, create or acquire any new direct or indirect Subsidiary unless such Subsidiary shall, on the date of the establishment, formation, creation or acquisition thereof, (x) become a Subsidiary Guarantor by executing and delivering to the Holder a joinder to the Guaranty Agreement or such other document as the Holder shall reasonably deem appropriate for such purpose, (y) take all such action and execute such agreements, documents and instruments requested by the Holder, including execution and delivery of a joinder to the Security Agreement and execution and delivery of such other Security Documents, that may be necessary to grant to the Holder a perfected first priority security interest and Lien in any Collateral (as defined in the Securities Purchase Agreement) owned by such new Subsidiary and (z) deliver to the Holder documents of the types referred to in clauses (xi) and (xii) of Section 5.1(a) of the Securities Purchase Agreement and, if reasonably requested by the Holder, favorable opinions of counsel to such new Subsidiary (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clauses (x) and (y) of this subsection), all in form, content and scope reasonably satisfactory to the Holder.

(b) Neither the Company nor any Subsidiary Guarantor will make any Investment in any Person other than a Subsidiary Guarantor.

13.12 Maintenance of Authorizations, Contract Rights, Intellectual Property, Etc. The Company shall, and the Company shall cause its Subsidiaries to, (i) maintain in full force and effect all Regulatory Authorizations, contract rights, authorizations or other rights necessary and material for the operations of its business, and comply with the terms and conditions applicable to the foregoing, excluding the maintenance of any Regulatory Authorizations that are not commercially reasonably necessary or material for the conduct of the business of the Company and its Subsidiaries; (ii) operate their business and facilities in material compliance with all applicable laws, rules and regulations, including any newly introduced or revised applicable laws, rules and regulations as they may become introduced, altered or otherwise evolve over time; (iii) diligently pursue any application for registration of any existing or future Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries; (iv) maintain in full force and effect or pursue the prosecution of, as the case may be, and pay all costs and expenses relating to, all Intellectual Property owned, developed or controlled (or jointly owned, developed or controlled) by the Company and its Subsidiaries, excluding the maintenance of any Intellectual Property that is not commercially reasonably necessary or material for the conduct of the business of the Company or any of its Subsidiaries; (v) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for all Intellectual Property developed, used or controlled (or jointly owned, developed or controlled) by the Company or any of its Subsidiaries; and (vi) not permit the activities and business of the Company or any of its Subsidiaries to violate, infringe, misappropriate or misuse any Intellectual Property of any other Person.

13.13 Liquidity. The Company shall at all times maintain Liquidity of at least $5,000,000.

13.14 Books and Records. The Company shall, and the Company shall cause its Subsidiaries to, keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions.

14. Distribution of Assets. In addition to any adjustments pursuant to Section 7, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Shares, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "***Distributions***"), then the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Shares acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for such Distributions (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Shares as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

15. Amendments and Waivers. The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes; provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any Holder relative to the comparable rights and obligations of the other Holders shall require the prior written consent of such adversely affected Holder. Any change, amendment or waiver by the Company and the Required Holders shall be binding on the Holder of this Note and all holders of the Other Notes.

16. Collateral. This Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement and the other Security Documents).

17. Transfer. This Note may be offered, sold, assigned or transferred by the Holder upon notice to, but without the consent of, the Company, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement. Any shares of Common Shares issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 4.1 of the Securities Purchase Agreement.

18. Reissuances; New Notes.

18.1 Transfer. If this Note is to be transferred in accordance with the terms of this Note, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 18.4), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 18.4) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

18.2 Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 18.4) representing the outstanding Principal.

18.3 Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 18.4) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

18.4 Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 18.1 or Section 18.3, the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

19. Remedies, Characterizations, other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

20. Payment of Collection, Enforcement and Other Costs. If (a) an Event of Default has occurred and this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

21. Construction; Headings. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the First Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

22. Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

23. Dispute Resolution.

23.1 Submission to Dispute Resolution.

(a) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (A) if by the Company, within five (5) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder, within five (5) Business Days after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Closing Bid Price, such Closing Sale Price, such Conversion Price, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2^{nd}) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then then the Holder may, with the consent of the Company not to be unreasonably or untimely withheld, select an independent, reputable investment bank to resolve such dispute.

(b) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 23 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5^{th}) Business Day immediately following the date on which the Holder selected such investment bank (the "***Dispute Submission Deadline***") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "***Required Dispute Documentation***") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(c) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The reasonable fees and reasonable expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

23.2 Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 23 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("***CPLR***") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 23, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Shares occurred under Section 6 or 7, (B) the consideration per share at which an issuance or deemed issuance of Common Shares occurred, and (C) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security, (iii) the terms of this Note and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 23 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 23 and (v) nothing in this Section 23 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 23).

23.3 Pendency of Dispute. Notwithstanding anything to the contrary set forth herein, during either (i) the pendency of any dispute under this Section 23 with respect to either (A) whether the existence or continuation of an Event of Default has occurred, or (B) whether the conditions to a Company Optional Redemption pursuant to Section 8 have been satisfied, or (ii) the time that both an Event of Default is continuing and the pendency of any other dispute under this Section 23, with the prior written consent of the Holder, the Company shall not be permitted to exercise its rights under Section 8 and no Company Optional Redemption pursuant to Section 8 shall be effective.

24. Notices; Currency; Payments.

24.1 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 8.4 of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Shares, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase shares, stock, warrants, securities or other property to all or substantially all of the holders of shares of Common Shares or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

24.2 Currency. All dollar amounts referred to in this Note are in United States Dollars ("***U.S. Dollars***"), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "***Exchange Rate***" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

24.3 Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Purchasers, shall initially be as set forth on the Schedule of Investors attached to the Securities Purchase Agreement); provided, that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of thirteen percent (13.0%) per annum from the date such amount was due until the same is paid in full ("***Late Charge***").

25. Cancellation. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been satisfied in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

26. Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

27. Governing Law. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 23 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 23. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

28. Attorneys' Fees. In the event any legal action or other proceeding is brought by one party against the other party to enforce any provision of this Note or in which the subject matter of such legal action or other proceeding arises under, or is with respect to, the provisions of this Note, the prevailing party in any such legal action or other proceeding is entitled to recover from the other party attorneys' fees and costs associated with defending or prosecuting such legal action or other proceeding, any appeal therefrom, and any ancillary or related proceedings.

29. Severability. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

30. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

31. Usury. This Note is subject to the express condition that at no time shall the Company be obligated or required to pay interest hereunder at a rate or in an amount which could subject the Holder to either civil or criminal liability as a result of being in excess of the maximum interest rate or amount which the Company is permitted by applicable law to contract or agree to pay. If by the terms of this Note, the Company is at any time required or obligated to pay interest hereunder at a rate or in an amount in excess of such maximum rate or amount, the rate or amount of interest under this Note shall be deemed to be immediately reduced to such maximum rate or amount and the interest payable shall be computed at such maximum rate or be in such maximum amount and all prior interest payments in excess of such maximum rate or amount shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

32. Definitions. As used in this Note, the following terms shall have the following meanings:

32.1 "***Acquisition***" has the meaning specified in Section 13.6.

32.2 "***Affiliate***" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

32.3 "***Attribution Parties***" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Shares would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

32.4 "***Authorized Share Allocation***" has the meaning specified in Section 10.1.

32.5 "***Authorized Share Failure***" has the meaning specified in Section 10.2.

32.6 "***Automatic Conversion Event***" means that, as of any Company Optional Redemption Date, the Automatic Conversion Reference Price as of such Company Option Redemption Date shall be in excess of the product of (x) 120%, times (y) the Conversion Price as of such Company Option Redemption Date.

32.7 "***Automatic Conversion Reference Price***" means, as of Company Optional Redemption Date, the VWAP of the Common Shares for the five (5) Trading Days ending at the close of business on the Principal Market on the Trading Day immediately prior to such Company Optional Redemption Date.

32.8 "***Bankruptcy Event of Default***" has the meaning specified in Section 4.1.

32.9 "***Business Day***" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in The State of New York are authorized or required by law or other governmental action to close.

32.10 "***Calendar Quarter***" means each of: (i) the period beginning on and including January 1 and ending on and including the next occurring March 31; (ii) the period beginning on and including April 1 and ending on and including the next occurring June 30; (iii) the period beginning on and including July 1 and ending on and including the next occurring September 30; (iv) and the period beginning on and including October 1 and ending on and including the next occurring December 31.

32.11 "***Cash Interest***" has the meaning specified in the preamble to this Note.

32.12 "***Cash Interest Rate***" means, as of any date, an annual rate per annum equal to the sum of (i) the greater of (x) the Prime Rate as of such date, and (y) 3.50%, plus (ii) 1.00%, plus (iii) at all times on or after August 19, 2024, 3.50%; provided, that, on any date when an Event of Default shall have occurred and be continuing, the "Cash Interest Rate" shall be the "Cash Interest Rate" determined in accordance with the foregoing plus 2.00%.

32.13 "***Change of Control***" means any Fundamental Transaction other than (i) any reorganization, recapitalization or reclassification of the shares of Common Shares in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (ii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

32.14 "***Change of Control Date***" has the meaning specified in Section 5.2.

32.15 "***Change of Control Notice***" has the meaning specified in Section 5.2.

32.16 "***Change of Control Redemption Date***" has the meaning specified in Section 11.1.

32.17 "***Change of Control Redemption Notice***" has the meaning specified in Section 5.2.

32.18 "***Change of Control Redemption Price***" has the meaning specified in Section 5.2.

32.19 "***Closing Bid Price***" and "***Closing Sale Price***" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by FactSet, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by FactSet, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by FactSet, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by FactSet, or, if no closing bid price or last trade price, respectively, is reported for such security by FactSet, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any share splits, share dividends, share combinations, recapitalizations or other similar transactions during such period.

32.20 "***Common Shares***" means (i) shares of Common Shares, no par value, of the Company, and (ii) any share capital into which such Common Shares shall be changed or any share capital resulting from a reclassification of such Common Shares.

32.21 "***Company***" has the meaning specified in the preamble to this Note.

32.22 "***Company Optional Redemption***" has the meaning specified in Section 8.1.

32.23 "***Company Optional Redemption Amount***" has the meaning specified in Section 8.1.

32.24 "***Company Optional Redemption Date***" has the meaning specified in Section 8.1.

32.25 "***Company Optional Redemption Notice***" has the meaning specified in Section 8.1.

32.26 "***Company Optional Redemption Notice Date***" has the meaning specified in Section 8.1.

32.27 "***Company Optional Redemption Price***" has the meaning specified in Section 8.1.

32.28 "***Conversion Amount***" means the sum of (w) the portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made, (x) all accrued and unpaid Interest with respect to such portion of the Principal amount, (y) accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any, and (z) solely with respect to any conversion of the Notes following the delivery by the Company of a Company Optional Redemption Notice under Section 8.1, an amount equal to (i) the Redemption Premium as of such date of conversion minus 100%, multiplied by (ii) the Principal being converted.

32.29 "***Conversion Date***" has the meaning specified in Section 3.3(a).

32.30 "***Conversion Notice***" has the meaning specified in Section 3.3(a).

32.31 "***Conversion Price***" means, as of any Conversion Date or other date of determination, $7.89, subject to adjustment as provided herein.

32.32 "***Conversion Rate***" has the meaning specified in Section 3.2.

32.33 "***Convertible Securities***" means any shares, stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Shares.

32.34 "***Corporate Event***" has the meaning specified in Section 6.2.

32.35 "***Current Public Information Failure***" has the meaning specified in the Securities Purchase Agreement.

32.36 "***Distributions***" has the meaning specified in Section 14.

32.37 "***Dispute Submission Deadline***" has the meaning specified in Section 23.1(b).

32.38 "***DTC***" has the meaning specified in Section 3.3(a).

32.39 "***Effectiveness Deadline***" has the meaning specified in the Securities Purchase Agreement.

32.40 "***Eligible Market***" means the NYSE American, New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTCBB.

32.41 "***Equity Conditions***" means, with respect to an given date of determination: (i) on each day during the period beginning thirty (30) calendar days prior to such applicable date of determination and ending on and including such applicable date of determination either (x) to the extent that a Registration Statement shall have been required to filed pursuant to the Securities Purchase Agreement, one or more Registration Statements filed pursuant to the Securities Purchase Agreement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Shares previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Shares issuable upon conversion of this Note and the Other Notes (each, a "***Required Minimum Securities Amount***"), in each case, in accordance with the terms of the Securities Purchase Agreement or (y) all Registrable Securities in respect of this Note and the Other Notes shall be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes) and no Current Public Information Failure exists or is continuing; (ii) on each day during the period beginning thirty (30) calendar days prior to the applicable date of determination and ending on and including the applicable date of determination (the "***Equity Conditions Measuring Period***"), the Common Shares (including all Registrable Securities in respect of this Note and the Other Notes) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Shares is then listed or designated for quotation (as applicable); (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Shares issuable upon conversion of this Note on a timely basis as set forth in Section 3 hereof and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in the other Transaction Documents; (iv) any shares of Common Shares to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3.4 hereof; (v) any shares of Common Shares to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Shares is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, (x) no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated and (y) and no pending or proposed Fundamental Transaction shall have been under consideration or negotiation by the Board of Directors of the Company; (vii) the Company shall have no knowledge of any fact that would reasonably be expected to cause (1) any Registration Statement required to be filed pursuant to the Securities Purchase Agreement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of Registrable Securities in respect of this Note and the Other Notes in accordance with the terms of the Securities Purchase Agreement or (2) any Registrable Securities in respect of this Note and the Other Notes to not be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes) and no Current Public Information Failure exists or is continuing; (viii) on each day during the Equity Conditions Measuring Period, the Company otherwise shall have been in compliance with each, and shall not have breached any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any Transaction Document; (ix) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and the applicable Required Minimum Securities Amount of shares of Common Shares are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (B) all shares of Common Shares to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (x) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default; (xi) no bona fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Shares of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document; and (xii) the shares of Common Shares issuable pursuant the event requiring the satisfaction of the Equity Conditions (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination at the Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

32.42 "***Equity Conditions Failure***" means, as applicable, that (i) on any day during the period commencing twenty (20) Trading Days prior to the applicable Company Optional Redemption Notice Date through the applicable Company Optional Redemption Date or (ii) with respect to any other date of determination, any day during the period commencing twenty (20) Trading Days prior to such date of determination, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

32.43 "***Event of Default***" has the meaning specified in Section 4.1.

32.44 "***Event of Default Notice***" has the meaning specified in Section 4.2.

32.45 "***Event of Default Redemption Date***" has the meaning specified in Section 11.1.

32.46 "***Event of Default Redemption Notice***" has the meaning specified in Section 4.2.

32.47 "***Event of Default Redemption Price***" has the meaning specified in Section 4.2.

32.48 "***Event of Default Right Expiration Date***" has the meaning specified in Section 4.2.

32.49 "***Excess Shares***" has the meaning specified in Section 3.4.

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

32.51 "***FDA Approval***" has the meaning specified in the Securities Purchase Agreement.

32.52 "***Federal Funds Effective Rate***" means, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Holder from three Federal funds brokers of recognized standing reasonably selected by it.

32.53 "***Filing Deadline***" has the meaning specified in the Securities Purchase Agreement.

32.54 "***First Closing Date***" has the meaning specified in the Securities Purchase Agreement.

32.55 "***First Closing Notes***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.56 "***Fourth Closing Notes***" has the meaning specified in the Securities Purchase Agreement.

32.57 "***Fundamental Transaction***" means (A) that the Company shall, directly or indirectly, including through any of its subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Shares be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Shares, (y) 50% of the outstanding shares of Common Shares calculated as if any shares of Common Shares held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Shares such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Shares, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Shares, (y) at least 50% of the outstanding shares of Common Shares calculated as if any shares of Common Shares held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock or share purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Shares such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Shares, or (v) reorganize, recapitalize or reclassify its Common Shares, (B) that the Company shall, directly or indirectly, including through any of its subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Shares, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Shares, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Shares not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Shares held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Shares or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Shares without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

32.58 "***GAAP***" means United States generally accepted accounting principles, consistently applied.

32.59 "***Guaranty Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.60 "***Group***" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

32.61 "***Holder***" has the meaning specified in the preamble to this Note.

32.62 "***Indebtedness***" means, with respect to any Person, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, and (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by such Person, even though such Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness.

32.63 "***Intellectual Property***" means all patents, trademarks, service marks, logos and other business identifiers, trade names, trade styles, trade dress, copyrights, proprietary know-how, processes, computer software and all registrations, applications and licenses therefor.

32.64 "***Interest***" has the meaning specified in the preamble to this Note.

32.65 "***Interest Date***" has the meaning specified in Section 2.1.

32.66 "***Investment***" means, with respect to any Person, any loan, advance or extension of credit (other than to customers in the ordinary course of business) by such Person to, or any guarantee of any obligation of or other contingent liability with respect to the capital stock, Indebtedness or other obligations of, or any contributions to the capital of, any other Person, or any ownership, purchase or other acquisition by such Person of any interest in any capital stock, limited partnership interest, general partnership interest, or other securities of any such other Person.

32.67 "***Investor Label Approval Notice***" has the meaning specified in the Securities Purchase Agreement.

32.68 "***Issuance Date***" has the meaning specified in the preamble to this Note.

32.69 "***Late Charge***" has the meaning specified in Section 24.3.

32.70 "***Lien***" has the meaning specified in Section 13.3.

32.71 "***Liquidity***" means, as of any date, an amount equal to the aggregate amount of the unrestricted cash of the Company and the Subsidiary Guarantors (excluding for this purpose cash held in restricted accounts or otherwise unavailable for unrestricted use by the Company or any of the Subsidiary Guarantors for any reason) as of such date of determination held in bank accounts of financial banking institutions in Canada or the United States of America.

32.72 "***Maturity Date***" shall mean August 19, 2027; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is the earlier of the consummation or, to the extent that the Maturity Date had previously been extended upon the public announcement of a Fundamental Transaction, termination of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date; provided further that if a Holder elects to convert a portion of this Note pursuant to Section 3 hereof that represents the maximum Conversion Amount permitted under Section 3.4 at such time, and the Conversion Amount remains limited pursuant to Section 3.4 hereunder as at the Maturity Date, the Maturity Date may be extended at the option of the Holder until such time as such provision shall not limit the conversion of this Note.

32.73 "***Maximum Percentage***" has the meaning specified in Section 3.4.

32.74 "***Note***" has the meaning specified in the preamble to this Note.

32.75 "***Options***" means any rights, warrants, grants or options to subscribe for or purchase shares of Common Shares or Convertible Securities.

32.76 "***Other Notes***" has the meaning specified in the preamble to this Note.

32.77 "***Other Redemption Notice***" has the meaning specified in Section 11.2.

32.78 "***Parent Entity***" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose Common Shares or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

32.79 "***Permitted Indebtedness***" means (i) Indebtedness evidenced by this Note, the Other Notes, any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement prior to the Issuance Date that are referred to in the Securities Purchase Agreement as the First Closing Notes, and any Senior Secured Convertible Notes issued pursuant to the Securities Purchase Agreement following the Issuance Date that are referred to in the Securities Purchase Agreement as the Third Closing Notes or Fourth Closing Notes, (ii) Indebtedness secured by Permitted Liens under clause (iii) of the definition of Permitted Liens in an aggregate amount outstanding not to exceed $250,000, (iii) Indebtedness incurred in the ordinary course of business, not to exceed $100,000 in any one transaction or $250,000 in the aggregate outstanding at any time, and (iv) any unsecured Indebtedness, so long as the aggregate amount of Indebtedness at any time outstanding under this clause (iv) shall not exceed $250,000.

32.80 "***Permitted Liens***" means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any Lien created by operation of law, such as materialmen's liens, mechanics' liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iii) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, or (C) in respect of capitalized lease obligations, provided that the Lien is confined solely to the property leased by the Company or any of its Subsidiaries pursuant to the applicable capital lease, in the case of any of clause (A), (B) or (C), with respect to Indebtedness in an aggregate amount not to exceed $250,000, and (iv) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods.

32.81 "***Permitted Securities Transaction***" has the meaning specified in Section 3.3(a).

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

32.83 "***PIK Interest***" has the meaning specified in the preamble to this Note.

32.84 "***Prime Rate***" means, as of any date, the rate quoted by The Wall Street Journal as the "Prime Rate" in the United States on such date.

32.85 "***Principal***" has the meaning specified in the preamble to this Note.

32.86 "***Principal Market***" means the Nasdaq Capital Market.

32.87 "***Redemption Automatic Conversion***" has the meaning specified in Section 8.1(c)(iii).

32.88 "***Redemption Date***" means, as applicable, the Event of Default Redemption Date, the Change of Control Redemption Date or Company Optional Redemption Date.

32.89 "***Redemption Notice***" means, as applicable, an Event of Default Redemption Notice, a Company Optional Redemption Notices and a Change of Control Redemption Notice.

32.90 "***Redemption Premium***" means:

(a) as of any date after August 19, 2025 but prior to August 19, 2026, the sum of (i) 100.00%, plus (ii) 10.00%; and

(b) as of any date on or after August 19, 2026, the sum of (i) 100.00%, plus (ii) 7.50%.

32.91 "***Redemption Price***" means, as applicable, the Event of Default Redemption Price, the Change of Control Redemption Price and the Company Optional Redemption Price.

32.92 "***Register***" has the meaning specified in Section 3.3(c).

32.93 "***Registered Notes***" has the meaning specified in Section 3.3(c).

32.94 "***Registrable Securities***" has the meaning specified in the Securities Purchase Agreement.

32.95 "***Registration Statement***" has the meaning specified in the Securities Purchase Agreement.

32.96 "***Regulatory Authorizations***" means all governmental licenses, authorizations, registrations, permits, consents and approvals required under all applicable laws and regulations in order to carry on the business of the Company and its Subsidiaries as currently conducted or proposed to be conducted, including any newly introduced or revised applicable laws and regulations as they may become introduced, altered or otherwise evolve over time.

32.97 "***Reported Outstanding Share Number***" has the meaning specified in Section 3.4.

32.98 "***Required Dispute Documentation***" has the meaning specified in Section 23.1(b).

32.99 "***Required Holders***" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding.

32.100 "***Required Reserve Amount***" has the meaning specified in Section 10.1.

32.101 "***Restricted Payment***" has the meaning specified in Section 13.4.

32.102 "***Rule 144***" has the meaning specified in the Securities Purchase Agreement.

32.103 "***SEC***" means the United States Securities and Exchange Commission or the successor thereto.

32.104 "***Securities Purchase Agreement***" means that certain Securities Purchase Agreement, dated as of August 1, 2022, among the Company and the investors identified therein, pursuant to which the Company issued, among other securities, the Notes, as such agreement may be amend, restated or otherwise modified from time to time.

32.105 "***Security Agreement***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.106 "***Security Documents***" shall have the meaning as set forth in the Securities Purchase Agreement.

32.107 "***Share Delivery Deadline***" has the meaning specified in Section 3.3(a).

32.108 "***Subject Entity***" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

32.109 "***Subsidiary***" means any Person in which the Company, directly or indirectly, (i) owns more than 50% of the outstanding capital stock or any equity or similar interest of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person.

32.110 "***Subsidiary Guarantor***" means each Subsidiary of the Company that is, or that becomes, (i) a party to the Guaranty Agreement as a "Subsidiary Guarantor" thereunder, and (ii) a party to the Security Agreement as a "Grantor" thereunder.

32.111 "***Successor Entity***" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

32.112 "***Third Closing Notes***" has the meaning specified in the Securities Purchase Agreement.

32.113 "***Trading Day***" has the meaning specified in the Securities Purchase Agreement.

32.114 "***Transaction Documents***" means the Securities Purchase Agreement, including the schedules, annexes and exhibits attached hereto, the Notes, the Security Agreement, the other Security Documents and each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by the Securities Purchase Agreement.

32.115 "***Transfer Agent***" has the meaning specified in Section 3.1.

32.116 "***VWAP***" means, for any security as of any date or period, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by FactSet, or, if no dollar volume-weighted average price is reported for such security by FactSet for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the VWAP cannot be calculated for such security on such date or period on any of the foregoing bases, the VWAP of such security on such date or period shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any share dividend, share split, share combination, recapitalization or other similar transaction during such period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Senior Secured Convertible Note as of the Issuance Date set out above.

FENNEC PHARMACEUTICALS INC.

By: /s/ Robert Andrade
Name: Robert Andrade
Title: CFO

Accepted and Agreed:

PETRICHOR OPPORTUNITIES FUND I LP
By PETRICHOR OPPORTUNITIES FUND I GP LLC

By: /s/ Tadd Wessel
Name: Tadd Wessel
Title: Managing Member

EXHIBIT I

FENNEC PHARMACEUTICALS INC.
CONVERSION NOTICE

Reference is made to the Senior Secured Convertible Note (the "***Note***") issued to the undersigned by Fennec Pharmaceuticals Inc., a British Columbia corporation (the "***Company***"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Shares, no par value (the "***Common Shares***"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted:_____

Aggregate accrued and unpaid Interest
and accrued and unpaid Late Charges
with respect to such portion of the
Principal and such Interest to be converted:_____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price:_____

Number of shares of Common Shares to be issued (the "***Shares***"):_____

☐ Check here if the Holder does not intend to resell the Shares to be issued either (x) prior to, (y) contemporaneously with or (z) no later than thirty days after, as applicable, the date of this Conversion Notice

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty days after the date of this Conversion Notice.

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Note submitting this Conversion Notice that after giving effect to the Conversion provided for in this Conversion Notice, such Holder (together with its Attribution Parties) will not have beneficial ownership (together with the beneficial ownership of such Person's Attribution Parties) of a number of shares Common Shares which exceeds the Maximum Percentage (as defined in the Note) of the total outstanding shares of Common Shares of the Company as determined pursuant to the provisions of Section 3.4 of the Note.

Please issue the Common Shares into which the Note is being converted to Holder, or for its benefit, as follows:

☐ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

☐ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number: _____
Account Number: _____

Date:_____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID:_____

Facsimile:_____

Email Address:_____

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

FENNEC PHARMACEUTICALS INC.

_____ ___, 20__

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Shares of Fennec Pharmaceuticals Inc.

Ladies and Gentlemen:

Reference is made to (A) the Securities Purchase Agreement, dated as of August 1, 2022, as amended, by and among Fennec Pharmaceuticals Inc., a British Columbia corporation (the "***Company***"), and the investors who are parties thereto, pursuant to which the Company is issuing to the purchasers (collectively, the "***Holders***") senior secured convertible notes (the "***Notes***"), which are convertible into shares of the Company's Common Shares, no par value (the "***Common Shares***"); (B) the related Transfer Agent Instructions, dated as of [●], 20**[22]** (the "***20[22] Instruction***"); (C) the conversion notice attached hereto (the "***Conversion Notice***"); and (D) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (1) a registration statement covering the resale of the shares of the Common Shares, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "***1933 Act***"), (2) the Holders may transfer such shares of the Common Shares under Rule 144 promulgated under the 1933 Act ("***Rule 144***"), or (3) the Holders may transfer such shares of the Common Shares under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Shares as set forth under "Number of shares of the Common Shares to be issued" in the Conversion Notice,
- out of the Transfer Agent Reserve (as defined in the 20[22] Instruction), and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at [_____].

Very Truly Yours,

FENNEC PHARMACEUTICALS INC.

By: _____
Name:
Title:

Exhibit 4.8

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR THE SECURITIES LAWS OF ANY U.S. STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE ISSUE DATE.

THE COMMON SHARES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE; HOWEVER, THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF SUCH EXCHANGE SINCE THEY ARE NOT FREELY TRANSFERABLE, AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT 'GOOD DELIVERY' IN SETTLEMENT OF TRANSACTIONS ON THE TORONTO STOCK EXCHANGE.

THIS WARRANT WILL BE VOID AND OF NO VALUE UNLESS EXERCISED WITHIN THE TIME LIMITS PROVIDED HEREIN.

WARRANT TO PURCHASE COMMON SHARES

Company: FENNEC PHARMACEUTICALS INC., a corporation continued under the laws of the Province of British Columbia
Number of Shares: 55,498
Type/Series of Shares: Common Shares
Warrant Price: US$8.11 per Common Share
Issue Date: August 19, 2022
Expiration Date: August 19. 2027, subject to earlier expiration as set forth herein
Securities Purchase Agreement: This Warrant to Purchase Common Shares ("**Warrant**") is issued in connection with that certain Securities Purchase Agreement dated August 1, 2022 between Petrichor Opportunities Fund I LP and Fennec Pharmaceuticals Inc. (as amended and/or modified and in effect from time to time, the "**SPA**").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, **PETRICHOR OPPORTUNITIES FUND I LP** (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, "**Holder**") is entitled to purchase the number of fully paid and non-assessable shares (the "**Shares**") of the above-stated Type/Series of Shares (the "**Common Shares**") in the capital of the above-named company (the "**Company**") at the above-stated Warrant Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company (i) the original of this Warrant; (ii) a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1; and (iii) unless Holder is exercising this Warrant pursuant to a cashless exercise as set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company) or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

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

where:

X = the number of Shares to be issued to the Holder;

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

A = the fair market value (as determined pursuant to Section 1.3 below) (the "**Fair Market Value**") of one Share; and

B = the Warrant Price.

1.3 Fair Market Value. If the Company's Shares are then traded or quoted on a U.S. or Canadian nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market, including the Nasdaq Capital Market ("**Nasdaq**") or, failing which, the Toronto Stock Exchange (the "**TSX**") (each, a "**Trading Market**"), the Fair Market Value of a Share shall be the closing price or last sale price of a Share, expressed in US dollars, reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company's Shares are not traded in a Trading Market, the Board of Directors of the Company shall determine the Fair Market Value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, "**Acquisition**" means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company; (ii) any merger, amalgamation or consolidation of the Company into or with another person or entity (other than a merger, amalgamation or consolidation effected exclusively to change the Company's domicile), or any other corporate reorganization, in which the shareholders of the Company in their capacity as such immediately prior to such merger, amalgamation, consolidation or reorganization, own less than a majority of the Company's (or the surviving or successor entity's) outstanding voting power immediately after such merger, amalgamation, consolidation or reorganization; or (iii) any sale or other transfer by the shareholders of the Company of shares representing at least a majority of the votes attaching to the Company's then-total outstanding combined voting equity securities.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition in which the consideration to be received by the Company's shareholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a "**Cash/Public Acquisition**"), and the Fair Market Value of one Share as determined in accordance with Section 1.3 above would be greater than the Warrant Price in effect on such date immediately prior to such Cash/Public Acquisition, and Holder has not exercised this Warrant pursuant to Section 1.1 above as to all Shares, then this Warrant shall automatically be deemed to be exercised in a Cashless Exercise pursuant to Section 1.2 above as to all Shares effective immediately prior to and contingent upon the consummation of a Cash/Public Acquisition. In connection with such Cashless Exercise, Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as at the date thereof and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon exercise. In the event of a Cash/Public Acquisition where the Fair Market Value of one Share as determined in accordance with Section 1.3 above would be less than the Warrant Price in effect immediately prior to such Cash/Public Acquisition, then this Warrant will expire immediately prior to the consummation of such Cash/Public Acquisition.

(c) Upon the closing of any Acquisition other than a Cash/Public Acquisition, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(d) As used in this Warrant, "**Marketable Securities**" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or similar reporting requirements of applicable securities laws in Canada, and is then current in its filing of all required reports and other information under the Act and the Exchange Act or under such applicable securities laws in Canada; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in a Trading Market; and (iii) if such Trading Market is a Canada Trading Market, Holder would be able to publicly re-sell, immediately following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise this Warrant in full on or prior to the closing of such Acquisition, or if such Trading Market is a U.S. Trading Market, Holder would be able to publicly re-sell, within six (6) months and one day following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise this Warrant in full on or prior to the closing of such Acquisition.

SECTION 2. ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Share Dividends, Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding Common Shares payable in Shares or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding Common Shares by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding Common Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding Common Shares are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

2.3 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the Fair Market Value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.4 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, class/type and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, class/type and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with an officer's certificate of an authorized officer of the Company, including computations of such adjustment and the Warrant Price, Class and number of Shares in effect upon the date of such adjustment.

SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder that all Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Common Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable U.S. and Canadian federal, provincial and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital such number of Common Shares and other securities as will be sufficient to permit the exercise in full of this Warrant.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares in the capital of the Company, whether in cash, property, shares, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares any additional shares (of any class or series) in the capital of the Company;

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding Common Shares; or

(d) effect an Acquisition or to liquidate, dissolve or wind up; or

then, in connection with each such event, the Company shall give Holder:

(1) in the case of the matters referred to in (a) and (b) above, at least seven (7) Business Days prior written notice of the earlier to occur of the effective date thereof or the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of outstanding Common Shares will be entitled thereto) or for determining rights to vote, if any; and

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding Common Shares will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event and such reasonable information as Holder may reasonably require regarding the treatment of this Warrant in connection with such event giving rise to the notice).

The Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

SECTION 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the Shares to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act, the *Securities Act (British Columbia)* (the "**Securities Act**") or any other applicable securities law in Canada. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act and of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"), and is purchasing the Warrant pursuant to an exemption from the prospectus requirements of applicable securities laws.

4.5 Registration Exemptions. Holder understands that this Warrant and the Shares issued upon exercise of this Warrant and any securities such Shares may be convertible or exchangeable into have not been registered with the Securities and Exchange Commission of the United States or the securities commission of any state or any securities authority in any Province or Territory in Canada by reason of their issuance in a transaction either: (i) exempt from the registration requirements of the Act pursuant to Section 4(2) thereof or Rule 506 promulgated thereunder; or (ii) not subject to the registration requirements of the Act pursuant to Regulation S, nor have they been qualified by a prospectus under the laws of any province or territory of Canada and, accordingly, are subject to resale restrictions and may not be offered or sold except pursuant to an effective registration statement under the Act or receipted final prospectus under provincial or territorial laws unless offered or sold pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Act or the prospectus or other requirements of the laws of the applicable province or territory and in accordance with applicable state, provincial and territorial securities laws. In addition, Holder represents that it is familiar with Rule 144 promulgated pursuant to the Act and understands the resale limitations imposed hereby and by the Act. Holder understands that no public market presently exists for any securities of the Company, and there can be no assurance that any such market will be created.

4.6 No Shareholder Rights. Without limiting any term or provision of this Warrant, Holder agrees that it will not have any rights as a shareholder of the Company (including, without limitation, voting rights) until the exercise of this Warrant.

SECTION 5. MISCELLANEOUS.

5.1 Term; Automatic Cashless Exercise Upon Expiration.

(a) Term. Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, U.S. Pacific time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the Fair Market Value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

5.2 Legends. Each certificate evidencing Shares (and each certificate evidencing securities issued upon conversion of any Shares, if any) shall be imprinted with legends in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA. A NEW CERTIFICATE, BEARING NO LEGEND, DELIVERY OF WHICH WILL CONSTITUTE "GOOD DELIVERY", MAY BE OBTAINED FROM THE COMPANY UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN FORM SATISFACTORY TO THE COMPANY, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATIONS UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED.

If the Shares are issued prior to _____, 2022:

[UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE ISSUE DATE.

THE COMMON SHARES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE; HOWEVER, THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF SUCH EXCHANGE SINCE THEY ARE NOT FREELY TRANSFERABLE, AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT 'GOOD DELIVERY' IN SETTLEMENT OF TRANSACTIONS ON THE TORONTO STOCK EXCHANGE.]

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issued upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part except in compliance with applicable U.S. and Canadian federal, provincial and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act and NI 45-106. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. Subject to the provisions of Section 5.3, the Holder and any subsequent Holder may transfer all or part of this Warrant or the Shares issued upon exercise of this Warrant (or the securities issuable upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer any subsequent Holder will give the Company notice of the portion of the Warrant and/or Shares (and/or securities issuable upon conversion of the Shares) being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further, that any subsequent transferee shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant.

5.5 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally; (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid; (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient; or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Petrichor Opportunities Fund I LP
885 Third Avenue, Suite 2403
New York, NY 10022
Attn: Michael Beecham
Email: mbeecham@petrichorcap.com

With a copy to, which shall not constitute notice:

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Todd E. Bowen
Email: bowent@gtlaw.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Fennec Pharmaceuticals Inc.
68 TW Alexander Drive
Research Triangle Park, NC 27709
Attn: Robert Andrade, CEO
EMAIL: randrade@fennecpharma.com

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. Any such amendment under this Section 5.6 will be subject to the prior approval of Nasdaq and/or the TSX or of any regulator of any other Trading Market having jurisdiction.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable legal fees. In addition, the Company shall pay any reasonable legal fees of the Holder in connection with the exercise of the Warrant.

5.8 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

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

5.11 Business Days. "**Business Day**" is any day that is not a Saturday, Sunday or a day on which the banks in North Carolina are closed.

5.12 Currency. As used herein, "$" and "dollars" shall refer to United States Dollars.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Common Shares to be executed by their duly authorized representatives effective as of the Issue Date written above.

"COMPANY"

FENNEC PHARMACEUTICALS INC.

By: /s/ Robert Andrade
Name: Robert Andrade
Title: CFO

"HOLDER"

PETRICHOR OPPORTUNITIES FUND I LP
by PETRICHOR OPPORTUNITIES FUND I GP LLC

By: /s/ Tadd Wessel
Name: Tadd Wessel
Title: Managing Member

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase _____ Common Shares (the "**Shares**") in the capital of Fennec Pharmaceuticals Inc. (the "**Company**") in accordance with the attached Warrant to Purchase Common Shares and tenders payment of the aggregate Warrant Price for such shares as follows:

[ ] check in the amount of $_____ payable to order of the Company enclosed herewith

[ ] Wire transfer of immediately available funds to the Company's account

[ ] Cashless Exercise pursuant to Section 1.2 of the Warrant

[ ] Other [Describe] _____

2. Please issue a certificate or certificates representing the Shares in the name specified below:

_____
Holder's Name

_____

_____
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Common Shares as of the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

Exhibit 4.9

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR THE SECURITIES LAWS OF ANY U.S. STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE ISSUE DATE.

THE COMMON SHARES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE; HOWEVER, THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF SUCH EXCHANGE SINCE THEY ARE NOT FREELY TRANSFERABLE, AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT 'GOOD DELIVERY' IN SETTLEMENT OF TRANSACTIONS ON THE TORONTO STOCK EXCHANGE.

THIS WARRANT WILL BE VOID AND OF NO VALUE UNLESS EXERCISED WITHIN THE TIME LIMITS PROVIDED HEREIN.

WARRANT TO PURCHASE COMMON SHARES

Company: FENNEC PHARMACEUTICALS INC., a corporation continued under the laws of the Province of British Columbia
Number of Shares: 55,498
Type/Series of Shares: Common Shares
Warrant Price: US$8.11 per Common Share
Issue Date: September 23, 2022
Expiration Date: September 23, 2027, subject to earlier expiration as set forth herein
Securities Purchase Agreement: This Warrant to Purchase Common Shares ("**Warrant**") is issued in connection with that certain Securities Purchase Agreement dated August 1, 2022 between Petrichor Opportunities Fund I LP and Fennec Pharmaceuticals Inc. (as amended and/or modified and in effect from time to time, the "**SPA**").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, **PETRICHOR OPPORTUNITIES FUND I LP** (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, "**Holder**") is entitled to purchase the number of fully paid and non-assessable shares (the "**Shares**") of the above-stated Type/Series of Shares (the "**Common Shares**") in the capital of the above-named company (the "**Company**") at the above-stated Warrant Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company (i) the original of this Warrant; (ii) a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1; and (iii) unless Holder is exercising this Warrant pursuant to a cashless exercise as set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company) or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

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

where:

X = the number of Shares to be issued to the Holder;

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

A = the fair market value (as determined pursuant to Section 1.3 below) (the "**Fair Market Value**") of one Share; and

B = the Warrant Price.

1.3 Fair Market Value. If the Company's Shares are then traded or quoted on a U.S. or Canadian nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market, including the Nasdaq Capital Market ("**Nasdaq**") or, failing which, the Toronto Stock Exchange (the "**TSX**") (each, a "**Trading Market**"), the Fair Market Value of a Share shall be the closing price or last sale price of a Share, expressed in US dollars, reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company's Shares are not traded in a Trading Market, the Board of Directors of the Company shall determine the Fair Market Value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, "**Acquisition**" means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company; (ii) any merger, amalgamation or consolidation of the Company into or with another person or entity (other than a merger, amalgamation or consolidation effected exclusively to change the Company's domicile), or any other corporate reorganization, in which the shareholders of the Company in their capacity as such immediately prior to such merger, amalgamation, consolidation or reorganization, own less than a majority of the Company's (or the surviving or successor entity's) outstanding voting power immediately after such merger, amalgamation, consolidation or reorganization; or (iii) any sale or other transfer by the shareholders of the Company of shares representing at least a majority of the votes attaching to the Company's then-total outstanding combined voting equity securities.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition in which the consideration to be received by the Company's shareholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a "**Cash/Public Acquisition**"), and the Fair Market Value of one Share as determined in accordance with Section 1.3 above would be greater than the Warrant Price in effect on such date immediately prior to such Cash/Public Acquisition, and Holder has not exercised this Warrant pursuant to Section 1.1 above as to all Shares, then this Warrant shall automatically be deemed to be exercised in a Cashless Exercise pursuant to Section 1.2 above as to all Shares effective immediately prior to and contingent upon the consummation of a Cash/Public Acquisition. In connection with such Cashless Exercise, Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as at the date thereof and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon exercise. In the event of a Cash/Public Acquisition where the Fair Market Value of one Share as determined in accordance with Section 1.3 above would be less than the Warrant Price in effect immediately prior to such Cash/Public Acquisition, then this Warrant will expire immediately prior to the consummation of such Cash/Public Acquisition.

(c) Upon the closing of any Acquisition other than a Cash/Public Acquisition, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(d) As used in this Warrant, "**Marketable Securities**" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or similar reporting requirements of applicable securities laws in Canada, and is then current in its filing of all required reports and other information under the Act and the Exchange Act or under such applicable securities laws in Canada; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in a Trading Market; and (iii) if such Trading Market is a Canada Trading Market, Holder would be able to publicly re-sell, immediately following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise this Warrant in full on or prior to the closing of such Acquisition, or if such Trading Market is a U.S. Trading Market, Holder would be able to publicly re-sell, within six (6) months and one day following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise this Warrant in full on or prior to the closing of such Acquisition.

SECTION 2. ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Share Dividends, Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding Common Shares payable in Shares or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding Common Shares by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding Common Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding Common Shares are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

2.3 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the Fair Market Value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.4 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, class/type and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, class/type and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with an officer's certificate of an authorized officer of the Company, including computations of such adjustment and the Warrant Price, Class and number of Shares in effect upon the date of such adjustment.

SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder that all Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Common Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable U.S. and Canadian federal, provincial and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital such number of Common Shares and other securities as will be sufficient to permit the exercise in full of this Warrant.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares in the capital of the Company, whether in cash, property, shares, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares any additional shares (of any class or series) in the capital of the Company;

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding Common Shares; or

(d) effect an Acquisition or to liquidate, dissolve or wind up; or

then, in connection with each such event, the Company shall give Holder:

(1) in the case of the matters referred to in (a) and (b) above, at least seven (7) Business Days prior written notice of the earlier to occur of the effective date thereof or the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of outstanding Common Shares will be entitled thereto) or for determining rights to vote, if any; and

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding Common Shares will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event and such reasonable information as Holder may reasonably require regarding the treatment of this Warrant in connection with such event giving rise to the notice).

The Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

SECTION 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the Shares to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act, the *Securities Act (British Columbia)* (the "**Securities Act**") or any other applicable securities law in Canada. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act and of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"), and is purchasing the Warrant pursuant to an exemption from the prospectus requirements of applicable securities laws.

4.5 Registration Exemptions. Holder understands that this Warrant and the Shares issued upon exercise of this Warrant and any securities such Shares may be convertible or exchangeable into have not been registered with the Securities and Exchange Commission of the United States or the securities commission of any state or any securities authority in any Province or Territory in Canada by reason of their issuance in a transaction either: (i) exempt from the registration requirements of the Act pursuant to Section 4(2) thereof or Rule 506 promulgated thereunder; or (ii) not subject to the registration requirements of the Act pursuant to Regulation S, nor have they been qualified by a prospectus under the laws of any province or territory of Canada and, accordingly, are subject to resale restrictions and may not be offered or sold except pursuant to an effective registration statement under the Act or receipted final prospectus under provincial or territorial laws unless offered or sold pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Act or the prospectus or other requirements of the laws of the applicable province or territory and in accordance with applicable state, provincial and territorial securities laws. In addition, Holder represents that it is familiar with Rule 144 promulgated pursuant to the Act and understands the resale limitations imposed hereby and by the Act. Holder understands that no public market presently exists for any securities of the Company, and there can be no assurance that any such market will be created.

4.6 No Shareholder Rights. Without limiting any term or provision of this Warrant, Holder agrees that it will not have any rights as a shareholder of the Company (including, without limitation, voting rights) until the exercise of this Warrant.

SECTION 5. MISCELLANEOUS.

5.1 Term; Automatic Cashless Exercise Upon Expiration.

(a) Term. Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, U.S. Pacific time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the Fair Market Value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

5.2 Legends. Each certificate evidencing Shares (and each certificate evidencing securities issued upon conversion of any Shares, if any) shall be imprinted with legends in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA. A NEW CERTIFICATE, BEARING NO LEGEND, DELIVERY OF WHICH WILL CONSTITUTE "GOOD DELIVERY", MAY BE OBTAINED FROM THE COMPANY UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN FORM SATISFACTORY TO THE COMPANY, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATIONS UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED.

If the Shares are issued prior to _____, 2022:

[UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE ISSUE DATE.

THE COMMON SHARES REPRESENTED BY THIS CERTIFICATE ARE LISTED ON THE TORONTO STOCK EXCHANGE; HOWEVER, THE SAID SECURITIES CANNOT BE TRADED THROUGH THE FACILITIES OF SUCH EXCHANGE SINCE THEY ARE NOT FREELY TRANSFERABLE, AND CONSEQUENTLY ANY CERTIFICATE REPRESENTING SUCH SECURITIES IS NOT 'GOOD DELIVERY' IN SETTLEMENT OF TRANSACTIONS ON THE TORONTO STOCK EXCHANGE.]

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issued upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part except in compliance with applicable U.S. and Canadian federal, provincial and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act and NI 45-106. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. Subject to the provisions of Section 5.3, the Holder and any subsequent Holder may transfer all or part of this Warrant or the Shares issued upon exercise of this Warrant (or the securities issuable upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer any subsequent Holder will give the Company notice of the portion of the Warrant and/or Shares (and/or securities issuable upon conversion of the Shares) being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further, that any subsequent transferee shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant.

5.5 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally; (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid; (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient; or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Petrichor Opportunities Fund I LP
885 Third Avenue, Suite 2403
New York, NY 10022
Attn: Michael Beecham
Email: mbeecham@petrichorcap.com

With a copy to, which shall not constitute notice:

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Todd E. Bowen
Email: bowent@gtlaw.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Fennec Pharmaceuticals Inc.
68 TW Alexander Drive
Research Triangle Park, NC 27709
Attn: Robert Andrade, CEO
EMAIL: randrade@fennecpharma.com

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. Any such amendment under this Section 5.6 will be subject to the prior approval of Nasdaq and/or the TSX or of any regulator of any other Trading Market having jurisdiction.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable legal fees. In addition, the Company shall pay any reasonable legal fees of the Holder in connection with the exercise of the Warrant.

5.8 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

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

5.11 Business Days. "**Business Day**" is any day that is not a Saturday, Sunday or a day on which the banks in North Carolina are closed.

5.12 Currency. As used herein, "$" and "dollars" shall refer to United States Dollars.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Common Shares to be executed by their duly authorized representatives effective as of the Issue Date written above.

"COMPANY"

FENNEC PHARMACEUTICALS INC.

By: /s/ Robert Andrade
Name: Robert Andrade
Title: CFO

"HOLDER"

PETRICHOR OPPORTUNITIES FUND I LP
by PETRICHOR OPPORTUNITIES FUND I GP LLC

By: /s/ Tadd Wessel
Name: Tadd Wessel
Title: Managing Member

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase _____ Common Shares (the "**Shares**") in the capital of Fennec Pharmaceuticals Inc. (the "**Company**") in accordance with the attached Warrant to Purchase Common Shares and tenders payment of the aggregate Warrant Price for such shares as follows:

[ ] check in the amount of $_____ payable to order of the Company enclosed herewith

[ ] Wire transfer of immediately available funds to the Company's account

[ ] Cashless Exercise pursuant to Section 1.2 of the Warrant

[ ] Other [Describe] _____

2. Please issue a certificate or certificates representing the Shares in the name specified below:

_____
Holder's Name

_____

_____
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Common Shares as of the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

Exhibit 5.1

A Business Law Firm
515 Legget Drive
Suite 800
Ottawa, Ontario
K2K 3G4
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info@lwlaw.com
www.lwlaw.com

December 1, 2022

Fennec Pharmaceuticals Inc.
PO Box 13628, 68 TW Alexander Drive
Research Triangle Park, NC 27709

Ladies and Gentlemen:

Re: Fennec Pharmaceuticals Inc. - Registration Statement on Form S-3

We have acted as counsel to Fennec Pharmaceuticals Inc., a corporation incorporated pursuant to the laws of British Columbia (the "Company"), in connection with a Registration Statement on Form S-3 filed on or about December 1, 2022, with the Securities and Exchange Commission (the "Registration Statement") for the purpose of registering the resale from time to time of up to an aggregate of 3,914,850 common shares of the Company (the "Shares") comprised of (i) up to 3,781,654 Shares (the "Note Shares") issuable upon the conversion of certain convertible notes (the "Notes"); and (ii) up to 133,196 Shares (the "Warrant Shares") issuable upon the exercise of outstanding warrants (the "Warrants").

In rendering this opinion, we have examined: (i) the Articles of the Company, as amended; (ii) certain resolutions of the Board of Directors of the Company (the "Board") evidencing the corporate proceedings taken by the Company to authorize the issuance of the Notes, the Note Shares, the Warrants and the Warrant Shares, and (iii) such other documents as we have deemed appropriate or necessary as a basis for the opinion hereinafter expressed.

In rendering the opinion expressed below, we assumed the legal capacity of natural persons signing or delivering any instrument, the authenticity of all documents and records examined, the conformity with the original documents of all documents submitted to us as copies, and the genuineness of all signatures.

Based upon and subject to the foregoing, and such legal considerations as we deem relevant, we are of the opinion that

1. The Notes have been duly authorized by appropriate corporate action and are valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

2. The Note Shares have been duly authorized by appropriate corporate action, and when issued and delivered against proper conversion of the Notes, the Note Shares will be validly issued, fully paid and non-assessable.

3. The Warrants have been duly authorized by appropriate corporate action and are valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

4. The Warrant Shares have been duly authorized by appropriate corporate action, and when issued and delivered against payment therefor upon due and proper exercise of the Warrants, the Warrant Shares will be validly issued, fully paid and non-assessable.

The foregoing opinion is based solely on the present laws and applicable regulations of the Province of British Columbia and the laws of Canada in force therein. We express no opinion as to matters involving the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as an Exhibit to the Registration Statement and to references made to this firm in the Registration Statement and all amendments thereto. In giving such consent we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the *Securities Act of 1933*, as amended, or the rules and regulations promulgated thereunder. The opinions set forth in this letter are based upon the facts in existence and laws in effect on the date hereof and we expressly disclaim any obligation to update our opinions herein, regardless of whether changes in such facts or laws come to our attention after the delivery hereof.

Yours very truly,

/s/ LaBarge Weinstein LLP

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-3 of Fennec Pharmaceuticals Inc. (the "Company") of our report dated February 28, 2022, relating to our audits of the Company's consolidated financial statements as of December 31, 2021 and 2020, and for the years ended December 31, 2021 and 2020, included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021. We also consent to the reference to us under the heading "Experts" in this Registration Statement.

/s/ HASKELL & WHITE LLP

HASKELL & WHITE LLP

Irvine, California
December 1, 2022

Exhibit 107

Calculation of Filing Fee Tables

Form S-3
(Form Type)

FENNEC PHARMACEUTICALS INC.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial effective date	Filing Fee Previously Paid In Connection with Unsold Securities to be Carried Forward
Newly Registered Securities												
Fees to Be Paid	Equity	Common Shares, no par value per share	Rule 457(c)	3,914,850 (2)	$9.50 (3)	$37,191,075.00 (3)	.0001102	$4,098.46				
Fees Previously Paid	—	—	—	—	—	—		—				
Carry Forward Securities												
Carry Forward Securities	—	—	—	—		—			—	—	—	—
	Total Offering Amounts					$37,191,075.00						
	Total Fees Previously Paid							—				
	Total Fee Offsets							—				
	Net Fee Due							$4,098.46				

(1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), the registration statement to which this exhibit relates (the "Registration Statement) also covers an indeterminate number of additional common shares that may be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Represents common shares of Fennec Pharmaceuticals Inc. (the "Registrant") to be offered for resale by the selling stockholder named in the Registration Statement. Consists of up to 3,781,654 common shares issuable upon the potential conversion of $25 million of senior secured floating rate convertible notes held by the selling stockholder and up to 133,196 common shares issuable upon the potential exercise of warrants to purchase common shares held by the selling stockholder.

(3) Estimated in accordance with Rule 457(c) under the Securities Act solely for the purpose of calculating the registration fee, based on the average of the high and low prices of the Registrant's common shares as reported on The Nasdaq Stock Market LLC on November 28, 2022.