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

**FORM 10-Q**

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2023

OR

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

For the transition period from \_\_\_\_ to \_\_\_\_

Commission File Number: 001-39130

**TELA Bio, Inc.**

(Exact name of registrant as specified in its charter)

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

**45-5320061**  
(I.R.S. Employer  
Identification No.)

**1 Great Valley Parkway, Suite 24  
Malvern, Pennsylvania**  
(Address of principal executive offices)

**19355**  
(Zip Code)

**(484) 320-2930**

(Registrant's telephone number, including area code)

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

| <u>Title of each class</u>                | <u>Trading Symbol</u> | <u>Name of each exchange on which registered</u> |
|---|-----------------------|--|
| Common Stock, \$0.001 par value per share | TELA                  | The Nasdaq Global Market                         |

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

As of November 3, 2023, the registrant had 24,488,803 shares of Common Stock, \$0.001 par value per share, outstanding.

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (this “Quarterly Report”) and the documents incorporated by reference herein contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. In addition, we may, through our officers and other authorized representatives, make certain forward-looking statements in publicly released materials, both written and oral, including statements contained in filings with the Securities and Exchange Commission, press releases, and our communications with our stockholders.

Forward-looking statements are neither statements of historical facts nor assurances of future performance, but instead discuss the future of our business, operations, future financial performance and financial condition, plans, anticipated growth strategies, anticipated or perceived trends in our business, the industry in which we operate or the broader economy, and other objectives of management. In some cases, you can identify forward-looking statements by terminology such as “aim,” “anticipate,” “assume,” “believe,” “contemplate,” “continue,” “could,” “design,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “positioned,” “potential,” “seek,” “should,” “target,” “will,” “would,” the negative of such terms, and other similar expressions although not all forward-looking statements contain these identifying words.

You should understand that the following important factors could affect our future results and could cause those results or other outcomes to differ materially from those expressed or implied in our forward-looking statements:

- the ongoing and possible future effects arising from the COVID-19 pandemic, or other pandemics, epidemics or outbreaks of a contagious illness, and associated economic disruptions, including the frequency of surgical procedures using our products, labor and hospital staffing shortages, supply chain integrity, and inflation, impacting our business, financial condition, results of operations and cash flows;
- estimates regarding future results of operations, financial position, research and development costs, capital requirements and our needs for additional financing;
- the commercial success and degree of market acceptance of our products;
- the introduction of new products or product enhancements by us or others in our industry, including new products which may be perceived to negatively impact the demand for our products now or in the future;
- our ability to expand, manage and maintain our direct sales and marketing organization and to market and sell our products in the U.S. and Europe;
- the performance of our exclusive contract manufacturer for our OviTex portfolio products, Aroa Biosurgery Ltd. (“Aroa”), in connection with the supply of product and in the development of additional products and product configurations within these product lines;
- our ability to maintain our supply chain integrity and expand our supply chain to manage increased demand for our products;
- our ability to compete successfully with larger competitors in our highly competitive industry;
- our ability to achieve and maintain adequate levels of coverage or reimbursement for our current products and any future products we may seek to commercialize;
- our ability to enhance our products, expand our indications and develop and commercialize additional products;
- the development, regulatory approval, efficacy and commercialization of competing products;
- our business model and strategic plans for our products, technologies and business, including our implementation thereof;
- the size of the markets for our current and future products;
- our ability to recruit and retain senior management and other highly qualified personnel;
- our ability to obtain additional capital to finance our planned operations;
- our ability to maintain regulatory approval for our products;
- our ability to commercialize or obtain regulatory approvals for our future products, or the effect of delays in commercializing or obtaining regulatory approvals;
- decreasing selling prices and pricing pressures;
- regulatory developments in the U.S. and European markets;

- the potential impact of healthcare reform in the U.S., including the Inflation Reduction Act of 2022, and measures being taken worldwide designed to reduce healthcare costs;
- the volatility of capital markets and other adverse macroeconomic factors, including due to inflationary pressures, interest rate and currency rate fluctuations, economic slowdown or recession, banking instability, geopolitical tensions or the outbreak of hostilities or war, including from the Russia-Ukraine conflict and the evolving events in Israel and Gaza;
- our ability to develop and maintain our corporate infrastructure, including our internal controls;
- our ability to establish and maintain intellectual property protection for our products, as well as our ability to operate our business without infringing the intellectual property rights of others;
- our expectations regarding the use of proceeds from recent and any future financings, if any;
- the occurrence of adverse safety events, restrictions on use with our products or product liability claims; and
- other risks and uncertainties, including those listed under the caption “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022 (our “Annual Report”), our subsequent Quarterly Reports on Form 10-Q and the other documents we file with the Securities and Exchange Commission (the “SEC”).

These forward-looking statements are based on management's current expectations, estimates, forecasts and projections about our business and the industry in which we operate, and management's beliefs and assumptions are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. In light of the significant uncertainties in these forward-looking statements, you should not rely upon forward-looking statements as predictions of future events. Although we believe the expectations reflected in the forward-looking statements are reasonable, the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements may not be achieved or occur at all.

You should refer to the section titled “Risk Factors” in our Annual Report, this Quarterly Report and any subsequent Quarterly Reports for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. Except as required by law, we undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

**PART I — FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**TELA Bio, Inc.**  
**Consolidated Balance Sheets**  
(In thousands, except share and per share amounts)  
(Unaudited)

|   | <u>September 30,</u><br>2023 | <u>December 31,</u><br>2022 |
|---|------------------------------|-----------------------------|
| <b>Assets</b>   |                              |                             |
| Current assets:   |                              |                             |
| Cash and cash equivalents   | \$ 58,202                    | \$ 42,019                   |
| Accounts receivable, net  | 8,072                        | 6,621                       |
| Inventory   | 14,323                       | 11,792                      |
| Prepaid expenses and other assets   | 1,655                        | 2,015                       |
| Total current assets  | <u>82,252</u>                | <u>62,447</u>               |
| Property and equipment, net   | 1,749                        | 1,682                       |
| Intangible assets, net  | 2,214                        | 2,499                       |
| Right-of-use assets   | 1,102                        | 1,227                       |
| Total assets  | <u>\$ 87,317</u>             | <u>\$ 67,855</u>            |
| <b>Liabilities and stockholders' equity</b>   |                              |                             |
| Current liabilities:  |                              |                             |
| Accounts payable  | \$ 3,091                     | \$ 1,534                    |
| Accrued expenses and other current liabilities  | 12,243                       | 10,869                      |
| Total current liabilities   | <u>15,334</u>                | <u>12,403</u>               |
| Long-term debt  | 40,363                       | 39,916                      |
| Other long-term liabilities   | 1,068                        | 1,231                       |
| Total liabilities   | <u>56,765</u>                | <u>53,550</u>               |
| Stockholders' equity:   |                              |                             |
| Preferred stock; \$0.001 par value: 10,000,000 shares authorized; no shares issued and outstanding  | —                            | —                           |
| Common stock; \$0.001 par value: 200,000,000 shares authorized; 24,487,578 and 19,165,027 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively | 24                           | 19                          |
| Additional paid-in capital  | 338,392                      | 288,361                     |
| Accumulated other comprehensive income  | 135                          | 150                         |
| Accumulated deficit   | (307,999)                    | (274,225)                   |
| Total stockholders' equity  | <u>30,552</u>                | <u>14,305</u>               |
| Total liabilities and stockholders' equity  | <u>\$ 87,317</u>             | <u>\$ 67,855</u>            |

See accompanying notes to unaudited interim consolidated financial statements.

**TELA Bio, Inc.**  
**Consolidated Statements of Operations and Comprehensive Loss**  
(In thousands, except share and per share amounts)  
(Unaudited)

|   | <u>Three months ended September 30,</u> |                    | <u>Nine months ended September 30,</u> |                    |
|---|---|--------------------|--|--------------------|
|   | <u>2023</u>                             | <u>2022</u>        | <u>2023</u>                            | <u>2022</u>        |
| Revenue   | \$ 15,052                               | \$ 11,159          | \$ 41,455                              | \$ 29,796          |
| Cost of revenue (excluding amortization of intangible assets) | 4,568                                   | 3,745              | 12,682                                 | 10,219             |
| Amortization of intangible assets                             | 95                                      | 95                 | 285                                    | 709                |
| Gross profit  | <u>10,389</u>                           | <u>7,319</u>       | <u>28,488</u>                          | <u>18,868</u>      |
| Operating expenses:   |   |                    |  |                    |
| Sales and marketing   | 14,474                                  | 11,172             | 42,517                                 | 31,605             |
| General and administrative                                    | 3,728                                   | 3,532              | 10,834                                 | 10,620             |
| Research and development                                      | 2,368                                   | 2,102              | 6,934                                  | 6,211              |
| Total operating expenses                                      | <u>20,570</u>                           | <u>16,806</u>      | <u>60,285</u>                          | <u>48,436</u>      |
| Loss from operations  | <u>(10,181)</u>                         | <u>(9,487)</u>     | <u>(31,797)</u>                        | <u>(29,568)</u>    |
| Other expense:  |   |                    |  |                    |
| Interest expense  | (1,334)                                 | (1,032)            | (3,878)                                | (2,877)            |
| Loss on extinguishment of debt                                | —                                       | —                  | —                                      | (1,228)            |
| Other income (expense)  | 558                                     | (195)              | 1,901                                  | (644)              |
| Total other expense   | <u>(776)</u>                            | <u>(1,227)</u>     | <u>(1,977)</u>                         | <u>(4,749)</u>     |
| Net loss  | <u>\$ (10,957)</u>                      | <u>\$ (10,714)</u> | <u>\$ (33,774)</u>                     | <u>\$ (34,317)</u> |
| Net loss per common share, basic and diluted                  | <u>\$ (0.45)</u>                        | <u>\$ (0.64)</u>   | <u>\$ (1.51)</u>                       | <u>\$ (2.24)</u>   |
| Weighted average common shares outstanding, basic and diluted | <u>24,483,664</u>                       | <u>16,758,573</u>  | <u>22,322,256</u>                      | <u>15,293,094</u>  |
| Comprehensive loss:   |   |                    |  |                    |
| Net loss  | \$ (10,957)                             | \$ (10,714)        | \$ (33,774)                            | \$ (34,317)        |
| Foreign currency translation adjustment                       | 51                                      | 133                | (15)                                   | 314                |
| Comprehensive loss  | <u>\$ (10,906)</u>                      | <u>\$ (10,581)</u> | <u>\$ (33,789)</u>                     | <u>\$ (34,003)</u> |

See accompanying notes to unaudited interim consolidated financial statements.

**TELA Bio, Inc.**  
**Consolidated Statements of Stockholders' Equity**  
**Three and Nine Months Ended September 30, 2023**  
(In thousands, except share amounts)  
(Unaudited)

|   | Common stock      |              | Additional paid-in capital | Accumulated other comprehensive income | Accumulated deficit | Total            |
|---|-------------------|--------------|----------------------------|--|---------------------|------------------|
|   | Shares            | Amount       |                            |  |                     |                  |
| <b>Balance at July 1, 2023</b>                                  | 24,475,504        | \$ 24        | \$ 336,939                 | \$ 84                                  | \$ (297,042)        | \$ 40,005        |
| Vesting of share-based awards and exercise of stock options     | 2,002             | —            | 1                          | —                                      | —                   | 1                |
| Issuance of common stock under the employee stock purchase plan | 10,602            | —            | 88                         | —                                      | —                   | 88               |
| Shares withheld for employee taxes                              | (530)             | —            | (5)                        | —                                      | —                   | (5)              |
| Foreign currency translation adjustment                         | —                 | —            | —                          | 51                                     | —                   | 51               |
| Stock-based compensation expense                                | —                 | —            | 1,369                      | —                                      | —                   | 1,369            |
| Net loss  | —                 | —            | —                          | —                                      | (10,957)            | (10,957)         |
| <b>Balance at September 30, 2023</b>                            | <u>24,487,578</u> | <u>\$ 24</u> | <u>\$ 338,392</u>          | <u>\$ 135</u>                          | <u>\$ (307,999)</u> | <u>\$ 30,552</u> |

|   | Common stock      |              | Additional paid-in capital | Accumulated other comprehensive income | Accumulated deficit | Total            |
|---|-------------------|--------------|----------------------------|--|---------------------|------------------|
|   | Shares            | Amount       |                            |  |                     |                  |
| <b>Balance at January 1, 2023</b>   | 19,165,027        | \$ 19        | \$ 288,361                 | \$ 150                                 | \$ (274,225)        | \$ 14,305        |
| Vesting of share-based awards and exercise of stock options                         | 119,240           | —            | 101                        | —                                      | —                   | 101              |
| Issuance of common stock under the employee stock purchase plan                     | 10,602            | —            | 88                         | —                                      | —                   | 88               |
| Shares withheld for employee taxes  | (26,481)          | —            | (285)                      | —                                      | —                   | (285)            |
| Foreign currency translation adjustment   | —                 | —            | —                          | (15)                                   | —                   | (15)             |
| Stock-based compensation expense  | —                 | —            | 3,791                      | —                                      | —                   | 3,791            |
| Sale of common stock, net of underwriting discounts, commissions and offering costs | 5,219,190         | 5            | 46,336                     | —                                      | —                   | 46,341           |
| Net loss  | —                 | —            | —                          | —                                      | (33,774)            | (33,774)         |
| <b>Balance at September 30, 2023</b>  | <u>24,487,578</u> | <u>\$ 24</u> | <u>\$ 338,392</u>          | <u>\$ 135</u>                          | <u>\$ (307,999)</u> | <u>\$ 30,552</u> |

See accompanying notes to unaudited interim consolidated financial statements.

**TELA Bio, Inc.**  
**Consolidated Statements of Stockholders' Equity (Deficit)**  
**Three and Nine Months Ended September 30, 2022**  
(In thousands, except share amounts)  
(Unaudited)

|   | Common stock      |              | Additional paid-in capital | Accumulated other comprehensive income | Accumulated deficit | Total            |
|---|-------------------|--------------|----------------------------|--|---------------------|------------------|
|   | Shares            | Amount       |                            |  |                     |                  |
| <b>Balance at July 1, 2022</b>  | 14,557,560        | \$ 15        | \$ 251,846                 | \$ 129                                 | \$ (253,532)        | \$ (1,542)       |
| Vesting of share-based awards and exercise of stock options                         | 2,115             | —            | 1                          | —                                      | —                   | 1                |
| Shares withheld for employee taxes  | (530)             | —            | (4)                        | —                                      | —                   | (4)              |
| Foreign currency translation adjustment   | —                 | —            | —                          | 133                                    | —                   | 133              |
| Stock-based compensation expense  | —                 | —            | 1,027                      | —                                      | —                   | 1,027            |
| Sale of common stock, net of underwriting discounts, commissions and offering costs | 4,600,000         | 4            | 34,396                     | —                                      | —                   | 34,400           |
| Net loss  | —                 | —            | —                          | —                                      | (10,714)            | (10,714)         |
| <b>Balance at September 30, 2022</b>  | <u>19,159,145</u> | <u>\$ 19</u> | <u>\$ 287,266</u>          | <u>\$ 262</u>                          | <u>\$ (264,246)</u> | <u>\$ 23,301</u> |

|   | Common stock      |              | Additional paid-in capital | Accumulated other comprehensive income (loss) | Accumulated deficit | Total            |
|---|-------------------|--------------|----------------------------|---|---------------------|------------------|
|   | Shares            | Amount       |                            |   |                     |                  |
| <b>Balance at January 1, 2022</b>   | 14,529,577        | \$ 15        | \$ 250,064                 | \$ (52)                                       | \$ (229,929)        | \$ 20,098        |
| Vesting of common stock previously subject to repurchase                            | 29                | —            | —                          | —   | —                   | —                |
| Vesting of share-based awards and exercise of stock options                         | 42,987            | —            | 13                         | —   | —                   | 13               |
| Shares withheld for employee taxes  | (13,448)          | —            | (157)                      | —   | —                   | (157)            |
| Foreign currency translation adjustment   | —                 | —            | —                          | 314   | —                   | 314              |
| Stock-based compensation expense  | —                 | —            | 2,950                      | —   | —                   | 2,950            |
| Sale of common stock, net of underwriting discounts, commissions and offering costs | 4,600,000         | 4            | 34,396                     | —   | —                   | 34,400           |
| Net loss  | —                 | —            | —                          | —   | (34,317)            | (34,317)         |
| <b>Balance at September 30, 2022</b>  | <u>19,159,145</u> | <u>\$ 19</u> | <u>\$ 287,266</u>          | <u>\$ 262</u>                                 | <u>\$ (264,246)</u> | <u>\$ 23,301</u> |

See accompanying notes to unaudited interim consolidated financial statements.



**TELA Bio, Inc.**  
**Consolidated Statements of Cash Flows**  
(In thousands)  
(Unaudited)

|   | <b>Nine months ended September 30,</b> |                  |
|---|--|------------------|
|   | <b>2023</b>                            | <b>2022</b>      |
| <b>Cash flows from operating activities:</b>  |  |                  |
| Net loss  | \$ (33,774)                            | \$ (34,317)      |
| Adjustments to reconcile net loss to net cash used in operating activities:                       |  |                  |
| Depreciation expense  | 362                                    | 271              |
| Noncash interest expense  | 447                                    | 507              |
| Noncash loss on extinguishment of debt  | —                                      | 1,228            |
| Amortization of intangible assets   | 285                                    | 709              |
| Net changes in operating lease ROU assets and liabilities   | (33)                                   | (26)             |
| Inventory excess and obsolescence charge  | 992                                    | 1,809            |
| Stock-based compensation expense  | 3,791                                  | 2,950            |
| Change in operating assets and liabilities:   |  |                  |
| Accounts receivable, net  | (1,456)                                | (1,531)          |
| Inventory   | (3,503)                                | (6,540)          |
| Prepaid expenses and other current assets   | 361                                    | 1,322            |
| Accounts payable  | 1,535                                  | 2,291            |
| Accrued expenses and other current and long-term liabilities                                      | 1,373                                  | 799              |
| Foreign currency remeasurement (gain) loss  | (186)                                  | 763              |
| Net cash used in operating activities   | <u>(29,806)</u>                        | <u>(29,765)</u>  |
| <b>Cash flows from investing activities:</b>  |  |                  |
| Purchase of property and equipment  | (406)                                  | (826)            |
| Net cash used in investing activities   | <u>(406)</u>                           | <u>(826)</u>     |
| <b>Cash flows from financing activities:</b>  |  |                  |
| Proceeds from sale of common stock, net of underwriting discounts, commissions and offering costs | 46,341                                 | 34,675           |
| Proceeds from issuance of long-term debt  | —                                      | 40,000           |
| Repayment of long-term debt   | —                                      | (30,000)         |
| Payment of debt financing costs   | —                                      | (3,460)          |
| Proceeds from exercise of stock options   | 101                                    | 13               |
| Payment of withholding taxes related to stock-based compensation to employees                     | (285)                                  | (157)            |
| Proceeds from issuance of common stock under the employee stock purchase plan                     | 88                                     | —                |
| Net cash provided by financing activities   | 46,245                                 | 41,071           |
| Effect of exchange rate on cash and cash equivalents  | 150                                    | (185)            |
| Net increase in cash and cash equivalents   | 16,183                                 | 10,295           |
| Cash and cash equivalents, beginning of period  | 42,019                                 | 43,931           |
| Cash and cash equivalents, end of period  | <u>\$ 58,202</u>                       | <u>\$ 54,226</u> |
| <b>Supplemental disclosure of cash flow information:</b>  |  |                  |
| Cash paid during the period for interest  | <u>\$ 3,431</u>                        | <u>\$ 2,370</u>  |
| <b>Supplemental disclosures of noncash investing and financing activities:</b>                    |  |                  |
| Property and equipment in accounts payable and accrued expenses and other current liabilities     | <u>\$ 23</u>                           | <u>\$ 8</u>      |
| Offering costs in accounts payable and accrued expenses and other current liabilities             | <u>\$ —</u>                            | <u>\$ 275</u>    |
| Intangible asset in accrued expenses and other liabilities  | <u>\$ —</u>                            | <u>\$ 1,000</u>  |
| Operating lease ROU asset exchanged for operating lease liabilities                               | <u>\$ —</u>                            | <u>\$ 1,376</u>  |
| Tenant improvement and deferred rent reclassified to operating lease liabilities                  | <u>\$ —</u>                            | <u>\$ 380</u>    |
| Operating lease liabilities assumed for operating lease ROU assets                                | <u>\$ —</u>                            | <u>\$ 1,756</u>  |

See accompanying notes to unaudited interim consolidated financial statements.

**TELA Bio, Inc.**

**Notes to Unaudited Interim Consolidated Financial Statements**

**(1) Background**

TELA Bio, Inc. (the “Company”) was incorporated in the state of Delaware on April 17, 2012 and wholly owns TELA Bio Limited, a company incorporated in the United Kingdom. The Company is a commercial-stage medical technology company focused on providing innovative soft-tissue reconstruction solutions that optimize clinical outcomes by prioritizing the preservation and restoration of the patient’s own anatomy. OviTex Reinforced Tissue Matrix (“OviTex”), the Company’s first portfolio of products, addresses unmet needs in hernia repair and abdominal wall reconstruction by combining the benefits of biologic matrices and polymer materials while minimizing their shortcomings, at a cost-effective price. OviTex PRS Reinforced Tissue Matrix (“OviTex PRS”), the Company’s second portfolio of products, addresses unmet needs in plastic and reconstructive surgery. The Company’s principal corporate office and research facility is located in Malvern, Pennsylvania.

The Company has been directly impacted by the COVID-19 pandemic since the onset of the pandemic in 2020. To date, among other impacts on the Company’s business related to the pandemic, physicians and their patients have been required by state mandates, or have chosen to, defer elective surgery procedures in which the Company’s products otherwise would be used. There remains uncertainty and lack of visibility regarding the Company’s near-term revenue growth prospects and product development plans due to the volatility in the frequency of surgical procedures using the Company’s products, including through labor and hospital staffing shortages and the allocation of hospital resources due to financial strain experienced during the COVID-19 pandemic. Although the Company continues to monitor developments related to hospital capacity and the volume of elective procedures, there is uncertainty regarding the pace to which surgical volumes will normalize to their pre-pandemic levels and the timing to address the backlog of deferred procedures. The full extent of the impact of the COVID-19 pandemic on the Company’s business, results of operations and financial condition, including revenue, expenses, manufacturing capability, supply chain integrity, staffing availability, research and development costs and employee-related compensation, will depend on future developments that are highly uncertain.

**(2) Risks and Liquidity**

The Company’s operations to date have focused on commercializing products, developing and acquiring technology and assets, business planning, raising capital and organization and staffing. The Company has incurred recurring losses and negative cash flows from operations since inception and has an accumulated deficit of \$308.0 million as of September 30, 2023. The Company anticipates incurring additional losses until such time, if ever, it can generate sufficient revenue from its products to cover its expenses.

On April 21, 2023, the Company completed an underwritten public offering in which the Company sold 5,219,190 shares of its common stock (including 469,190 shares sold pursuant to the underwriters’ overallotment option on May 5, 2023) at a public offering price of \$9.50 per share, receiving net proceeds of approximately \$46.3 million after deducting underwriting discounts, commissions and other offering expenses.

The operations of the Company are subject to certain risks and uncertainties including, among others, the uncertainty of product development, the impact of macroeconomic conditions, including the COVID-19 pandemic or other public health crises, general economic uncertainty, including as a result of inflationary pressures and the measures undertaken by various governments to address them, banking instability, geopolitical factors such as the ongoing war in Ukraine and the evolving events in Israel and Gaza, technological uncertainty, commercial acceptance of any developed products, alternative competing technologies, dependence on collaborative partners, uncertainty regarding patents and proprietary rights, comprehensive government regulations, and dependence on key personnel.

**(3) Summary of Significant Accounting Policies**

The Company’s complete summary of significant accounting policies can be found in “Note 3, Summary of Significant Accounting Policies” in the consolidated financial statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022. Any reference in these notes to applicable guidance is meant to refer to generally

**TELA Bio, Inc.**

**Notes to Unaudited Interim Consolidated Financial Statements (Continued)**

accepted accounting principles (“GAAP”) in the U.S. as found in the Accounting Standards Codification (“ASC”) and Accounting Standards Updates (“ASU”) promulgated by the Financial Accounting Standards Board (“FASB”).

*Interim Financial Statements*

The accompanying unaudited interim consolidated financial statements have been prepared from the books and records of the Company in accordance with GAAP for interim financial information and Rule 10-01 of Regulation S-X promulgated by the Securities and Exchange Commission (“SEC”), which permits reduced disclosures for interim periods. All adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the accompanying consolidated balance sheets and statements of operations and comprehensive loss, stockholders’ equity and cash flows have been made. Although these interim consolidated financial statements do not include all of the information and footnotes required for complete annual consolidated financial statements, management believes the disclosures are adequate to make the information presented not misleading. The unaudited interim results of operations and cash flows are not necessarily indicative of the results that may be expected for the full year. The unaudited interim consolidated financial statements and footnotes should be read in conjunction with the consolidated financial statements and footnotes included in the Annual Report on Form 10-K for the year ended December 31, 2022.

*Use of Estimates*

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and contingent liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. The most significant judgments are employed in estimates used to determine the recoverability of the carrying value of the Company’s inventory. As future events and their effects cannot be determined with precision, actual results may differ significantly from these estimates.

*Revenue Recognition*

Under ASC Topic 606, *Revenue from Contracts with Customers*, (“ASC 606”), an entity recognizes revenue when its customer obtains control of the promised good, in an amount that reflects the consideration that the entity expects to be entitled in exchange for those goods. The Company performs the following five steps to recognize revenue under ASC 606: (i) identify the contract(s) with a customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations in the contract, and (v) recognize revenue when (or as) the entity satisfies a performance obligation. The Company only recognizes revenue when it is probable that it will collect the consideration to which it is entitled in exchange for the goods or services that will be transferred to the customer.

A significant portion of the Company’s revenue is generated from product shipped to customers or from consigned inventory maintained at hospitals or other surgical facilities. Revenue from the sale of consigned products is recognized when control is transferred to the customer, which occurs at the time the product is used in a surgical procedure. For product that is not held on consignment, the Company recognizes revenue when control transfers to the customer, which occurs at the time the product is shipped or delivered. For all of the Company’s customer contracts, the only identified performance obligation is providing the product to the customer.

Revenue is recognized at the estimated net sales price which includes estimates of variable consideration. The Company enters into contracts with certain third-party payors for the payment of rebates with respect to the utilization of its products. These rebates are based on contractual percentages. The Company estimates and records these rebates in the same period the related revenue is recognized, resulting in a reduction of product revenue.

Payment terms with customers do not exceed one year and, therefore, the Company does not account for a financing component in these arrangements. There are no incremental costs of obtaining a contract that would rise to or enhance an asset other than product costs, which are a component of inventory. The Company expenses incremental costs of

## TELA Bio, Inc.

## Notes to Unaudited Interim Consolidated Financial Statements (Continued)

obtaining a contract with a customer (e.g., sales commissions) when incurred as the period of benefit is less than one year. Fees charged to customers for shipping are recognized as revenue.

The following table presents revenue disaggregated by the Company's portfolio of products (in thousands):

|               | Three months ended September 30, |                  | Nine months ended September 30, |                  |
|---------------|----------------------------------|------------------|---------------------------------|------------------|
|               | 2023                             | 2022             | 2023                            | 2022             |
| OviTex        | \$ 10,159                        | \$ 7,839         | \$ 28,240                       | \$ 20,528        |
| OviTex PRS    | 4,812                            | 3,287            | 13,063                          | 9,188            |
| Other         | 81                               | 33               | 152                             | 80               |
| Total revenue | <u>\$ 15,052</u>                 | <u>\$ 11,159</u> | <u>\$ 41,455</u>                | <u>\$ 29,796</u> |

Sales outside of the U.S. were \$1.7 million and \$4.2 million for the three and nine months ended September 30, 2023, respectively, and immaterial for the three and nine months ended September 30, 2022.

*Fair value of financial instruments*

Fair value is the price that could be received to sell an asset or paid to transfer a liability in an orderly transaction among market participants. Fair value determination in accordance with applicable accounting guidance requires that a number of significant judgments are made. Additionally, fair value is used on a nonrecurring basis to evaluate assets for impairment or as required for disclosure purposes by applicable accounting guidance on disclosures about fair value of financial instruments. Depending on the nature of the assets and liabilities, various valuation techniques and assumptions are used when estimating fair value. The carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, other assets, and accounts payable are shown at cost, which approximates fair value due to the short-term nature of these instruments. The carrying amounts of the Company's current Credit and Security Agreement approximated its fair value due to its variable interest rate.

The Company follows the provisions of FASB ASC Topic 820, *Fair Value Measurement*, for financial assets and liabilities measured on a recurring basis. The guidance requires fair value measurements be classified and disclosed in one of the following three categories:

- *Level 1:* Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.
- *Level 2:* Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liabilities.
- *Level 3:* Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

## TELA Bio, Inc.

## Notes to Unaudited Interim Consolidated Financial Statements (Continued)

The following fair value hierarchy table presents information about each major category of the Company's financial assets and liabilities measured at fair value on a recurring basis (in thousands):

|                                      | Fair value measurement at reporting date using                 |   |   |
|--------------------------------------|--|---|---|
|                                      | Quoted prices in active markets for identical assets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
| <b>September 30, 2023:</b>           |  |   |   |
| Cash equivalents – money market fund | \$ 55,385  | \$ —  | \$ —                                      |
| <b>December 31, 2022:</b>            |  |   |   |
| Cash equivalents – money market fund | \$ 39,010  | \$ —  | \$ —                                      |

*Net loss per common share*

Basic and diluted net loss per common share is determined by dividing net loss by the weighted-average shares of common stock outstanding during the reporting period. In periods in which the Company reports a net loss, diluted net loss per share is the same as basic net loss per share since dilutive shares are not assumed to have been issued if their effect is antidilutive. Therefore, the weighted-average shares used to calculate both basic and diluted net loss per share are the same.

The following potentially dilutive securities have been excluded from the computation of diluted weighted-average shares outstanding for the periods presented, as they would be antidilutive.

|  | Three and Nine months ended September 30, |           |
|--|---|-----------|
|  | 2023                                      | 2022      |
| Stock options (including shares subject to repurchase) | 2,202,264                                 | 2,009,189 |
| Unvested restricted stock units                        | 864,427                                   | 306,722   |
| Common stock warrants                                  | 88,556                                    | 88,556    |
| Total  | 3,155,247                                 | 2,404,467 |

*Recently Issued Accounting Pronouncements*

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act, until such time as those standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

In June 2016, the FASB issued ASU No. 2016-13, *Measurement of Credit Losses on Financial Instruments*, which provides guidance for recognizing credit losses on financial instruments based on an estimate of current expected credit losses model. The standard was effective for the Company beginning January 1, 2023, and the adoption of this guidance did not have a significant impact on the consolidated financial statements and related disclosures.

In August 2020, the FASB issued ASU No. 2020-06, *Debt - Debt with Conversion and Other Options and Derivatives and Hedging - Contracts in Entity's Own Equity* (“ASU 2020-06”). ASU 2020-06 eliminates the beneficial conversion and cash conversion accounting models for convertible instruments. It also amends the accounting for certain contracts

**TELA Bio, Inc.****Notes to Unaudited Interim Consolidated Financial Statements (Continued)**

in an entity's own equity that are currently accounted for as derivatives because of specific settlement provisions. The new guidance also modifies how particular convertible instruments and certain contracts that may be settled in cash or shares impact the diluted EPS computation. ASU 2020-06 is effective for fiscal years beginning after December 15, 2023, including interim periods within those annual periods. The adoption of this guidance is not expected to have a significant impact on the consolidated financial statements and related disclosures.

**(4) Leases**

The Company leases office and laboratory space in Malvern, Pennsylvania under a noncancelable lease (the "Malvern Lease"). The Malvern Lease, which was concluded to be an operating lease, was amended in October 2023, as described in Note 9 "Subsequent Events," to extend the term of the lease from May 2028 to May 2030. The Malvern Lease has annual scheduled payment increases and provides the Company a renewal option for an additional term of 60 months at the end of the lease term. The Company evaluates renewal options at lease inception and on an ongoing basis and includes renewal options that it is reasonably certain to exercise in its expected lease terms when classifying leases and measuring lease liabilities. As the Company is not reasonably certain to exercise the renewal option, the additional 60-month term has been excluded.

The Company's lease does not provide an implicit rate, and therefore, the Company uses its incremental borrowing rate as the discount rate when measuring operating lease liabilities. The incremental borrowing rate represents an estimate of the interest rate the Company would incur at lease commencement to borrow an amount equal to the lease payments on a collateralized basis over the term of a lease. The Company used an incremental borrowing rate of 9.75% to discount the Malvern Lease payments included in the operating lease liabilities recognized.

The Company recognized \$0.1 million and \$0.2 million of lease cost during both the three and nine months ended September 30, 2023 and 2022, respectively. Cash paid for amounts included in the measurement of operating lease liabilities was \$0.1 million and \$0.3 million for both the three and nine months ended September 30, 2023 and 2022, respectively, and these amounts are included in operating activities in the consolidated statements of cash flows. As of September 30, 2023, the remaining lease term for the Malvern Lease was 4.7 years.

The following table reconciles the undiscounted future minimum lease payments (displayed in aggregate by year) under non-cancelable operating leases with terms of more than one year to the total operating lease liabilities recognized on the consolidated balance sheets as of September 30, 2023 (in thousands):

|  |    |       |
|--|----|-------|
| Remainder of 2023                                | \$ | 90    |
| 2024   |    | 366   |
| 2025   |    | 375   |
| 2026   |    | 383   |
| 2027   |    | 392   |
| Thereafter                                       |    | 165   |
| Total undiscounted future minimum lease payments | \$ | 1,771 |
| Less imputed interest                            |    | (358) |
| Total operating lease liabilities                | \$ | 1,413 |

As of September 30, 2023, \$0.3 million representing the current portion of operating lease liabilities is included in accrued expenses and other current liabilities in the consolidated balance sheets and \$1.1 million representing the long-term portion of operating lease liabilities is included in other long-term liabilities in the consolidated balance sheets.

## TELA Bio, Inc.

## Notes to Unaudited Interim Consolidated Financial Statements (Continued)

**(5) Accrued Expenses and Other Current Liabilities**

Accrued expenses and other current liabilities consisted of the following (in thousands):

|  | <u>September 30,</u><br><u>2023</u> | <u>December 31,</u><br><u>2022</u> |
|--|-------------------------------------|------------------------------------|
| Compensation and related benefits                    | \$ 7,088                            | \$ 6,420                           |
| Third-party and professional fees                    | 2,535                               | 2,563                              |
| Amounts due to contract manufacturer                 | 1,780                               | 1,263                              |
| Current portion of operating lease liabilities       | 345                                 | 340                                |
| Research and development expenses                    | 217                                 | 137                                |
| Other  | 278                                 | 146                                |
| Total accrued expenses and other current liabilities | <u>\$ 12,243</u>                    | <u>\$ 10,869</u>                   |

**(6) Long-term Debt**

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

|   | <u>September 30,</u><br><u>2023</u> | <u>December 31,</u><br><u>2022</u> |
|---|-------------------------------------|------------------------------------|
| MidCap Term Loan                                  | \$ 40,000                           | \$ 40,000                          |
| End of term charge                                | 2,000                               | 2,000                              |
| Unamortized end of term charge and issuance costs | (1,637)                             | (2,084)                            |
| Long-term debt                                    | <u>\$ 40,363</u>                    | <u>\$ 39,916</u>                   |

*MidCap Term Loan*

On May 26, 2022, the Company entered into the Credit and Security Agreement (the “MidCap Credit Agreement”) with MidCap Financial Trust, as agent, and certain lender parties thereto. The MidCap Credit Agreement provides for up to \$50.0 million in term loans (the “MidCap Term Loans”), consisting of a \$40.0 million Tranche 1 (“Tranche 1”) and a \$10.0 million Tranche 2 (“Tranche 2”). Upon closing, the Company borrowed \$40.0 million of Tranche 1 and used a portion of the proceeds to repay borrowings under the OrbiMed Credit Facility (described below) and intends to use the remaining proceeds to fund operations and other general corporate purposes. The Company will be eligible to borrow Tranche 2 at the Company’s option if certain conditions are met, including, but not limited to, reaching \$65.0 million of net product revenue over the preceding four quarters by fiscal year end 2023.

Pursuant to the MidCap Credit Agreement, the Company provided a first priority security interest in all existing and future acquired assets, including intellectual property, owned by the Company. The MidCap Credit Agreement contains certain covenants that limit the Company’s ability to engage in certain transactions that may be in the Company’s long-term best interests, including the incurrence of additional indebtedness, effecting certain corporate changes, making certain investments, acquisitions or dispositions and paying dividends.

The MidCap Credit Agreement also contains customary indemnification obligations and customary events of default, including, among other things, (i) non-payment, (ii) breach of warranty, (iii) non-performance of covenants and obligations, (iv) default on other indebtedness, (v) judgments, (vi) change of control, (vii) bankruptcy and insolvency, (viii) impairment of security, (ix) key permit events, (x) termination of a pension plan, (xi) regulatory matters, (xii) material adverse effect and (xiii) breach of material contracts.

In addition, the Company must maintain minimum net revenue levels tested quarterly. In the event of default under the MidCap Credit Agreement, the Company would be required to pay interest on principal and all other due and unpaid obligations at the current rate in effect plus 2%.

**TELA Bio, Inc.**

**Notes to Unaudited Interim Consolidated Financial Statements (Continued)**

The MidCap Term Loans mature on May 1, 2027 and bear interest at a rate equal to 6.25% plus the greater of one-month Term SOFR (as defined in the MidCap Credit Agreement) or 1.0%. The Company is required to make 36 monthly interest payments beginning on June 1, 2022 (the “Interest-Only Period”). If the Company is in covenant compliance at the end of the Interest-Only Period, the Company will have the option to extend the Interest-Only Period by 12 months to 48 monthly interest payments, followed by 12 months of straight-line amortization, with the entire principal payment due at maturity. If the Company is not in covenant compliance at the end of the Interest-Only Period, the Company is required to make 24 months of straight-line amortization payments, with the entire principal amount due at maturity.

Subject to certain limitations, the MidCap Term Loans have a prepayment fee equal to 3.0% of the prepaid principal amount for the first year following the closing date of the MidCap Term Loans, 2.0% of the prepaid principal amount for the second year following the closing date and 1.0% of the prepaid principal amount for the third year following the closing date and thereafter. The Company is also required to pay an exit fee at the time of maturity or prepayment event equal to 5% of all principal borrowings (the “End of Term Charge”) (or in the event of a prepayment event, the amount of principal being prepaid). Interest expense associated with the MidCap Credit Facility recorded for the three and nine months ended September 30, 2023 was \$1.3 million and \$3.9 million, respectively, of which \$0.2 million and \$0.4 million, respectively, was related to the amortization of debt issuance costs. Interest expense associated with the MidCap Credit Facility recorded for the nine months ended September 30, 2022 was \$1.4 million, of which \$0.2 million was related to the amortization of debt issuance costs.

*OrbiMed Term Loan (Related Party)*

In November 2018, the Company entered into a senior secured term loan facility with OrbiMed (the “OrbiMed Credit Facility”), a related party as the lender is affiliated with a stockholder of the Company, which consisted of up to \$35.0 million in term loans (the “OrbiMed Term Loans”). The OrbiMed Term Loans consisted of two tranches, a \$30.0 million Tranche 1 (“First Tranche”) and a \$5.0 million Tranche 2 (“Second Tranche”). In November 2018, the Company borrowed \$30.0 million of the First Tranche. The Company elected not to borrow the Second Tranche prior to its expiration on December 31, 2019. On May 26, 2022, the Company entered into the MidCap Credit Agreement and upon closing used a portion of the proceeds to repay all borrowings under the OrbiMed Credit Facility.

The OrbiMed Term Loan bore interest at a rate equal to 7.75% plus the greater of one-month LIBOR or 2.0% until the aggregate principal, interest and End of Term Charge of \$3.0 million were paid with part of the proceeds received from the MidCap Credit Agreement. As a result of these payments, a \$1.2 million loss on extinguishment was recorded during the nine months ended September 30, 2022. Interest expense associated with the OrbiMed Credit Facility recorded for the nine months ended September 30, 2022 was \$1.5 million, of which \$0.3 million was related to the amortization of debt issuance costs.

**(7) Stockholders’ Equity**

In December 2020, the Company entered into an Equity Distribution Agreement (the “2020 Equity Agreement”) with Piper Sandler & Co, (the “Sales Agent”) in connection with the establishment of an at-the-market offering program under which the Company may sell up to an aggregate of \$50.0 million of shares of the Company’s common stock, from time to time through the Sales Agent. No sales were made under the Equity Agreement during the nine months ended September 30, 2023. The 2020 Equity Agreement was subsequently terminated on November 13, 2023.

In August 2022, the Company completed an underwritten public offering in which the Company issued and sold 4,600,000 shares of its common stock at a public offering price of \$8.00 per share. The Company received net proceeds of approximately \$34.4 million after deducting underwriting discounts, commissions and other offering expenses.

In April 2023, the Company completed an underwritten public offering in which the Company issued and sold 5,219,190 shares of its common stock (including 469,190 shares sold pursuant to the underwriters’ overallotment option in May 2023) at a public offering price of \$9.50 per share. The Company received net proceeds of approximately \$46.3 million after deducting underwriting discounts, commissions and other offering expenses.



## TELA Bio, Inc.

## Notes to Unaudited Interim Consolidated Financial Statements (Continued)

## Warrants

The Company had the following warrants outstanding to purchase common stock at September 30, 2023:

|                       | <u>Outstanding</u> | <u>Exercise price</u> | <u>Expiration dates</u> |
|-----------------------|--------------------|-----------------------|-------------------------|
| Common stock warrants | 8,379              | \$ 28.65              | 2028                    |
| Common stock warrants | 80,177             | 28.65                 | 2027                    |
|                       | <u>88,556</u>      |                       |                         |

**(8) Stock-Based Compensation**

The Company has two equity incentive plans: the 2012 Stock Incentive Plan and the Amended and Restated 2019 Equity Incentive Plan. New awards can only be granted under the Amended and Restated 2019 Equity Incentive Plan (the "Plan"). At September 30, 2023, 660,643 shares of common stock were available for future issuances under the Plan. The Plan is subject to an annual increase, subject to prior approval by the Company's board of directors, equal to the lesser of (i) 432,442 shares, (ii) 4% of the shares outstanding on the last day of the immediately preceding fiscal year and (iii) such smaller number of shares as determined by the board of directors. The Plan provides for the grant of incentive stock options, nonqualified stock options, restricted stock awards, restricted stock units and/or stock appreciation rights to employees, directors, and other persons, as determined by the Company's board of directors. The Company estimates forfeitures that it expects will occur and adjusts expense for actual forfeitures in the periods they occur.

The Company measures employee and nonemployee stock-based awards at grant-date fair value and records compensation expense ratably over the vesting period of the award. The Company recorded stock-based compensation expense in the following expense categories of the accompanying consolidated statements of operations and comprehensive loss (in thousands):

|                                | <u>Three months ended September 30,</u> |                 | <u>Nine months ended September 30,</u> |                 |
|--------------------------------|---|-----------------|--|-----------------|
|                                | 2023                                    | 2022            | 2023                                   | 2022            |
| Sales and marketing            | \$ 507                                  | \$ 353          | \$ 1,375                               | \$ 1,000        |
| General and administrative     | 670                                     | 522             | 1,861                                  | 1,521           |
| Research and development       | 192                                     | 152             | 555                                    | 429             |
| Total stock-based compensation | <u>\$ 1,369</u>                         | <u>\$ 1,027</u> | <u>\$ 3,791</u>                        | <u>\$ 2,950</u> |

*Stock Options*

The Company's stock options vest based on the terms in each award agreement and generally vest over four years and have a term of 10 years.

## TELA Bio, Inc.

## Notes to Unaudited Interim Consolidated Financial Statements (Continued)

The following table summarizes stock option activity:

|   | Number of shares | Weighted average exercise price per share | Weighted average remaining contractual term (years) |
|---|------------------|---|---|
| Outstanding at January 1, 2023                    | 2,071,848        | \$ 11.49                                  |   |
| Granted   | 212,960          | 10.50                                     |   |
| Exercised   | (19,556)         | 5.17                                      |   |
| Canceled/forfeited                                | (62,988)         | 11.18                                     |   |
| Outstanding at September 30, 2023                 | <u>2,202,264</u> | \$ 11.46                                  | 6.68  |
| Vested and expected to vest at September 30, 2023 | <u>2,163,822</u> | \$ 11.46                                  | 6.64  |
| Exercisable at September 30, 2023                 | <u>1,547,113</u> | \$ 11.43                                  | 5.87  |

Included in outstanding options at September 30, 2023 were 357,425 stock options granted outside of the Plan. These grants were made pursuant to the Nasdaq inducement grant exception in accordance with Nasdaq listing rule 5635(c)(4). At September 30, 2023, the aggregate intrinsic value of both outstanding options and exercisable options was \$0.8 million.

The weighted average grant-date fair value per share of options granted was \$7.19 during the nine months ended September 30, 2023. The aggregate intrinsic value of options exercised was immaterial and \$0.1 million for the three and nine months ended September 30, 2023, respectively. At September 30, 2023, the total unrecognized compensation expense related to unvested employee and nonemployee stock option awards was \$4.2 million, which is expected to be recognized in expense over a weighted-average period of approximately 2.3 years.

*Estimating Fair Value of Stock Options*

The fair value of each grant of stock options was determined by the Company using the methods and assumptions discussed below. Certain of these inputs are subjective and generally require judgment to determine.

*Expected term* – The expected term of stock options represents the weighted-average period the stock options are expected to be outstanding. The Company uses the simplified method for estimating the expected term as provided by the SEC. The simplified method calculates the expected term as the average time to vesting and the contractual term of the options.

*Expected volatility* – Due to the Company's limited operating history and lack of sufficient company-specific historical or implied volatility, the expected volatility assumption was determined by examining the historical volatilities of a group of industry peers, as well as the Company's, whose share prices are publicly available.

*Risk-free interest rate* – The risk-free rate assumption is based on U.S. Treasury instruments, the terms of which were consistent with the expected term of the Company's stock options.

*Expected dividend* – The Company has not paid and does not intend to pay dividends.

## TELA Bio, Inc.

## Notes to Unaudited Interim Consolidated Financial Statements (Continued)

The fair value of each option was estimated on the date of grant using the Black-Scholes option pricing model and the weighted average assumptions in the table below:

|                          | <u>Nine months ended</u><br><u>September 30, 2023</u> |
|--------------------------|---|
| Expected dividend yield  | —   |
| Expected volatility      | 74.3 %  |
| Risk-free interest rate  | 3.99 %  |
| Expected term (in years) | 6.15  |

*Restricted Stock Units*

The Company has issued service-based and performance-based restricted stock units (“RSUs”). During the nine months ended September 30, 2023, the Company granted 415,110 service-based awards at a weighted average grant-date fair value of \$10.55 per RSU. Vesting of the service-based RSUs is based on the terms in each award agreement and is generally over four years. During the nine months ended September 30, 2023, the Company granted 250,149 performance-based RSUs at a weighted average grant-date fair value of \$10.95 per RSU. Vesting of these performance-based RSUs is subject to continued service through 2026 and the achievement of certain performance milestones for fiscal year 2026. The amount of RSUs that will vest can range from 0% to 110% of the original number of RSUs granted. Expense for the performance-based RSUs is not recognized until the performance conditions are deemed probable of achievement. The Company did not record any expense related to the performance-based RSUs during the nine months ended September 30, 2023. The following table summarizes RSUs for the Plan:

|                                     | <u>Number of</u><br><u>shares</u> |
|-------------------------------------|-----------------------------------|
| Unvested balance at January 1, 2023 | 311,991                           |
| Granted                             | 665,259                           |
| Vested                              | (99,684)                          |
| Canceled/forfeited                  | (13,139)                          |
| Outstanding at September 30, 2023   | <u>864,427</u>                    |

Included in outstanding RSUs at September 30, 2023 were 66,750 RSUs granted outside of the Plan. These grants were made pursuant to the Nasdaq inducement grant exception in accordance with Nasdaq listing rule 5635(c)(4). The aggregate intrinsic value of RSUs outstanding was \$6.9 million at September 30, 2023. The total unrecognized compensation expense at September 30, 2023 related to RSUs was \$5.1 million, which is expected to be recognized in expense over a weighted-average period of approximately 3.0 years.

**(9) Subsequent Events**

On October 18, 2023, the Company amended its Malvern lease to extend the term of the lease from May 31, 2028 to May 31, 2030 (the “Lease Amendment”). Pursuant to the Lease Amendment, the Company has also leased an additional 15,881 square feet at the Company’s corporate headquarters commencing on December 1, 2023 (the “Expansion Premises”) and will relinquish 4,652 square feet of non-contiguous space currently subject to the lease agreement on June 30, 2025 (the “Relinquished Space”). The Expansion Premises will increase the Company’s total leased square footage in the building from 24,725 square feet to 40,606 square feet, which will be subsequently reduced to 35,954 square feet as of June 30, 2025 following removal of the Relinquished Space. The Lease Amendment also required the Company to pay an additional security deposit of \$0.3 million.

On November 13, 2023, the Company entered into a new Equity Distribution Agreement (the “2023 Equity Agreement”) with Piper Sandler & Co. as Sales Agent in connection with the establishment of an at-the-market offering program under which the Company may sell shares of the Company’s common stock, from time to time through the Sales Agent. The Company terminated the previous 2020 Equity Agreement in connection with its entry into the 2023 Equity Agreement.

## **Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following Management’s Discussion and Analysis of Financial Condition and Results of Operations, as well as other sections in this Quarterly Report, should be read in conjunction with our unaudited interim consolidated financial statements and related notes thereto included elsewhere herein and the consolidated financial statements and notes thereto for the year ended December 31, 2022 and the related Management’s Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report filed with the SEC on March 23, 2023. In addition to historical financial information, some of the information contained in the following discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical facts, including statements regarding our future results of operations and financial position, business strategy, current and prospective products, product approvals, research and development costs, current and prospective collaborations, timing and likelihood of success, plans and objectives of management for future operations and future results of current and anticipated products, are forward-looking statements. These statements involve known and unknown risks, uncertainties, assumptions and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.*

### **Overview**

We are a commercial-stage medical technology company focused on providing innovative soft-tissue reconstruction solutions that optimize clinical outcomes by prioritizing the preservation and restoration of the patient’s own anatomy. Our growing product portfolio is purposefully designed to leverage the patient’s natural healing response while minimizing long-term exposure to permanent synthetic materials. We are committed to delivering our advanced technologies with a strong economic value proposition to assist surgeons and institutions in providing next-generation soft-tissue repair solutions to more patients worldwide.

We are dedicated to building true partnerships with surgeons and healthcare providers to deliver solutions that provide both clinical and economic improvements. We believe that genuine collaboration with surgeons and healthcare providers results in the development of new solutions that empower patient care.

Our first portfolio of products, the OviTex Reinforced Tissue Matrix (“OviTex”), which we first commercialized in the U.S. in July 2016, addresses unmet needs in hernia repair and abdominal wall reconstruction by combining the benefits of biologic matrices and polymer materials while minimizing their shortcomings, at a cost-effective price.

Hernia repair is one of the most common surgeries performed in the U.S., representing approximately 1.1 million procedures annually. Based on the volume weighted average selling price of our OviTex products, we estimate the annual U.S. total addressable market opportunity for our OviTex products to be approximately \$1.5 billion.

Our OviTex portfolio consists of multiple product configurations intended to address various surgical procedures within hernia repair and abdominal wall reconstruction, including ventral, inguinal, and hiatal hernia repair. In addition, we have also designed an OviTex product specifically for use in laparoscopic and robotic-assisted hernia repair, which we market as OviTex LPR and began commercializing this product in November 2018. In February 2023, we launched two new, larger configurations of OviTex LPR, designed for ventral and incisional hernias.

We have also focused on evaluating and publishing clinical data on the effectiveness and safety of our OviTex products. To date, there have been over thirty published or presented works relating to these clinical findings, either by us or a third-party evaluating the OviTex product. In October 2022, the 24-month results of our single arm, multicenter post-market clinical study, which we refer to as our BRAVO study, were published in the *Annals of Medicine and Surgery*. The BRAVO study was designed to evaluate the clinical performance of OviTex for primary or recurrent ventral hernias using open, laparoscopic, or robotic techniques in 92 enrolled patients. The recurrence rate at the 24-month time point was 2.6%, and surgical site occurrences (“SSOs”) were observed in 38% of the study population. Of the enrolled patients, 78% were characterized as high risk for experiencing an SSO based on at least one known risk factor, which

included obesity, active smoking, COPD, diabetes mellitus, coronary artery disease, or advanced age ( $\geq 75$  years). The results also indicated that BRAVO patients experienced statistically significant and clinically meaningful improvements in their quality of life and perceived health based on patient responses to the EuroQol-5 Dimension (EQ-5D) health assessment and the validated 12-question Hernia-Related Quality of Life survey (HerQLes). In addition to the BRAVO study and other current clinical initiatives, we also commenced enrollment in May 2021 for our BRAVO II study, a prospective study evaluating the use of OviTex in robot-assisted ventral and inguinal hernia repairs.

Our second portfolio of products, the OviTex PRS Reinforced Tissue Matrix (“OviTex PRS”), which we first commercialized in the U.S. in May 2019, addresses unmet needs in plastic and reconstructive surgery. OviTex PRS is indicated for use in implantation to reinforce soft-tissue where weakness exists in patients requiring soft-tissue repair or reinforcement in plastic and reconstructive surgery. Our OviTex PRS portfolio is supported by non-human primate data that demonstrated more rapid tissue integration and tissue remodeling compared to the market leading biologic matrix used in this indication. Based on the current sales of biologic matrices in the U.S., we estimate the annual U.S. current addressable market opportunity for our OviTex PRS products to be approximately \$700 million.

Our OviTex products have received 510(k) clearances from the U.S. Food and Drug Administration (“FDA”), which clearances were obtained and are currently held by our exclusive contract manufacturer of these products, Aroa. In April 2019, our first OviTex PRS products received 510(k) clearance from the FDA, which clearance was initially obtained by Aroa and is currently held by us. In March 2023, we received an additional 510(k) clearance, which expands the OviTex PRS portfolio to include OviTex PRS Long-Term Resorbable. We have also engaged in discussions with the FDA regarding an Investigational Device Exemption protocol to study the safety and effectiveness of our OviTex PRS product for an indication in breast reconstruction surgery. The FDA has stated that a premarket approval, rather than 510(k) clearance will be required for such an indication. We have also commenced a retrospective clinical study evaluating the effectiveness and safety of our OviTex PRS products.

We also continue to expand our service offerings and diversify our supplier base as we continue to create a soft tissue restoration portfolio, including through the development of complimentary solutions targeting surgical wound management and infection control. In September 2023, we entered into a distribution agreement with Advanced Medical Solutions Limited, a company registered in England, to be their exclusive distributor of certain hernia mesh fixation devices. We will market and distribute LiquiFix Hernia Mesh Fixation Devices (LiquiFix FIX8™ and LiquiFix Precision™) via our sales force across the U.S. Additionally in January 2023, we announced an exclusive development and distribution partnership with Regenity Biosciences, pursuant to which we launched the commercialization of our NIVIS Fibrillar Collagen Pack, an absorbent matrix of Type I and Type III bovine collagen designed to manage moderately to heavily exudating wounds and to control minor bleeding. We are assessing additional strategic partnerships with medical device companies whereby we may enter into distribution, product development and/or licensing agreements for new products complimentary to, or related to, existing and future products in our distribution channel.

We have a broad portfolio of intellectual property protecting our products that we believe, when combined with the proprietary manufacturing processes associated with our products and our know-how, provides significant barriers to entry. Our intellectual property applies to our differentiated product construction and materials. In addition, we believe our exclusive manufacturing and long-term supply and license agreement (the “Aroa License”) with Aroa creates a competitive advantage by allowing us to secure an exclusive supply of ovine rumen at a low cost. Ovine rumen, the forestomach of a sheep, is the source of the biologic material used in our OviTex portfolio products. We use biologic material from ovine rumen because of its plentiful supply, optimal biomechanical profile and open collagen architecture that allows for rapid cellular infiltration. Our OviTex products are manufactured by Aroa at their FDA registered and ISO 13485 compliant facility in Auckland, New Zealand. We purchase product from Aroa at a fixed cost equal to 27% of our net sales of licensed products. This revenue sharing arrangement allows us to competitively price our products and pass along cost-savings to our customers.

We market our products through a single direct sales force, predominantly in the U.S., as augmented by a smaller number of sales representatives and distributors in certain European countries. We have invested in our direct sales and marketing infrastructure to expand our presence and to promote awareness and adoption of our products. As of September 30, 2023, we had 85 sales territories in the U.S. As part of our commercial strategy, we plan to continue to

invest in our commercial organization by hiring additional territory managers and administrative and field-based support employees to support and service new accounts for soft-tissue reconstruction procedures. We believe we can enhance the productivity of our sales force by improving customer segmentation and targeting, implementing and further refining our proprietary training programs, leveraging support from our medical education and clinical development functions to drive physician awareness and education on our products, and utilizing engagement analytics to support product development. Additionally, we have contracted with three national group purchasing organizations (“GPOs”) covering our OviTex product and plan to continue to contract with additional GPOs and other integrated delivery networks to increase access to and penetration of hospital accounts.

We are currently devoting research and development resources to develop additional versions of our OviTex hernia product lines, including self-adhering technology to further enhance product compatibility in robotic procedures, as well as additional configurations of our OviTex PRS product lines. We are also working to develop new product features and designs for both our existing OviTex and OviTex PRS products, as well as new packaging technology to increase the shelf life of these products. We are also exploring additional technologies that may complement our existing products, or expand the number of our product lines, in each case within the hernia, plastic and reconstruction, and broader soft-tissue reconstruction and preservation market. We intend to continue to make investments in research and development efforts to develop improvements and enhancements. We are also assessing strategic partnerships with medical device companies whereby we may enter into distribution, product development and/or licensing agreements for products complimentary to, or related to, existing and future products in our distribution channel, which could result in the payment of single digit percentage royalties or other product acquisition costs.

Our business was directly impacted by the COVID-19 pandemic. We experienced volatility in demand for our products which primarily resulted from government and hospital restrictions, as well as patient health and safety concerns, decreasing the volume of elective procedures using our products. We anticipate that procedure volumes will continue to normalize to pre-pandemic levels yet we continue to monitor the potential impact of the COVID-19 pandemic on labor and hospital staffing levels, procedural volumes and ultimately on our results.

The vast majority of our revenue to date has been generated by the sale of our OviTex products. Our revenue increased by \$3.9 million, or 35%, from \$11.2 million for the three months ended September 30, 2022 to \$15.1 million for the three months ended September 30, 2023 and by \$11.7 million, or 39%, from \$29.8 million for the nine months ended September 30, 2022 to \$41.5 million for the nine months ended September 30, 2023. Our net loss increased by \$0.2 million, or 2%, from \$10.7 million for the three months ended September 30, 2022 to \$11.0 million for the three months ended September 30, 2023 and decreased by \$0.5 million, or 2%, from \$34.3 million for the nine months ended September 30, 2022 to \$33.8 million for the nine months ended September 30, 2023. We have not been profitable since inception and as of September 30, 2023, we had an accumulated deficit of \$308.0 million. We expect to incur losses for the foreseeable future.

#### ***Business Update Regarding Macroeconomic Conditions and COVID-19***

Our business, results of operations and commercial operations have been impacted by macroeconomic conditions, including the COVID-19 pandemic, as well as, to a lesser extent, inflationary pressures, fluctuations in foreign currency in the jurisdictions in which we operate, banking instability and geopolitical conflicts. These factors have and may continue to impact us in the following ways:

**COVID-19:** We have been directly impacted by the COVID-19 pandemic since the onset of the pandemic in 2020. Over the past year, regional surges of the COVID-19 variants resulted in some government restrictions on elective procedures and surgical staffing challenges leading to the deferral of elective surgeries and lower surgical procedural volumes overall. While we anticipate the normalization of surgical procedures to pre-pandemic levels, the pace of increased procedural volume remains unknown as hospitals allocate to address staffing shortages to prioritize any backlog of non-elective procedures. Additionally, other labor and financial strains on healthcare systems may continue to reduce procedural volumes.

**General Economic Uncertainty:** Continued concerns about the systemic impact of potential long-term and wide-spread recession, increasing interest rates, further economic downturn or banking instability and geopolitical issues, including

the ongoing war in Ukraine and the evolving events in Israel and Gaza, have contributed to increased market volatility and diminished expectations for economic growth in the world. As a result, we have experienced high volatility in our stock price over the prior year. Continued uncertainty, perception of worsening market conditions and the introduction of new products which may be perceived to negatively impact the demand for our products now or in the future could result in a decline in our stock price, high inflation, an increase in our cost of capital and an adverse effect on our ability to access the capital markets in the future on terms acceptable to us or at all.

*Financial Strain:* Market acceptance of our medical products in the U.S. and other countries is dependent upon the procurement practices of our customers, patient need for our products and procedures and the reimbursement of patients' medical expenses by government healthcare programs and third-party payors. The continuing uncertainty surrounding global economic conditions and financial markets, including the financial strain suffered by hospital customers during the COVID-19 pandemic, may adversely affect demand for our products and procedures and result in lower reimbursement rates or coverage for our products, resulting in lower sales volume and downward pricing pressure on our products and slower adoption of new products.

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

### ***Revenue***

Substantially all our revenue consists of direct sales of our products to hospital accounts in the U.S. Depending on the terms of our agreements with our customers, we recognize revenue related to product sales either when control transfers, which generally occurs when the product is shipped to the customer, or when the product is utilized in a surgical procedure in the case of consignment agreements. Fees charged to customers for shipping are recognized as revenue. Recent revenue growth has been driven by increasing revenue from product sales due to our expanding customer base, although it is unclear at this point what long-term effect the COVID-19 pandemic and macroeconomic pressures will have on our ability to continue to generate revenue and expand our customer base.

### ***Cost of Revenue (excluding amortization of intangible assets)***

Cost of revenue primarily consists of the costs of licensed products, charges related to excess and obsolete inventory adjustments, royalties and costs related to shipping. We purchase product from Aroa at a fixed cost equal to 27% of our net sales of licensed products. The initial term of our Aroa License terminates on the expiration of the last patent covering bovine and ovine products, with an option to extend for an additional ten-year period. We expect our cost of revenue to increase in absolute dollars as, and to the extent, our sales volume grows, although it is unclear at this point what long-term effect, if any, the COVID-19 pandemic and related macroeconomic pressures will have on our product demand which could lead to additional charges to excess and obsolete inventory.

### ***Amortization of Intangible Assets***

Amortization of intangible assets relates to the amortization of capitalized milestone amounts paid or probable to be paid to Aroa related to license fees or commercialization rights after future economic benefit has been established for a product. These capitalized milestone amounts relate to regulatory clearances, the receipt of certain supply quantities of product, and amounts based upon aggregate net sales thresholds within a specified territory, and are amortized over the remaining useful life of the intellectual property.

### ***Gross Profit and Gross Margin***

Our gross profit is calculated by subtracting our cost of revenue and amortization of intangible assets from our revenue. We calculate our gross margin percentage as our gross profit divided by our revenue. Our gross margin has been, and we expect it will continue to be, affected by a variety of factors, including sales volume, royalties and inventory excess and obsolescence costs. Our gross profit may increase to the extent our revenue grows.

### ***Sales and Marketing Expenses***

Sales and marketing expenses consist of commercial activities related to the sale of our products, along with the salaries and related benefits, including sales commissions and stock-based compensation for employees focused on these efforts. Other significant sales and marketing expenses include costs incurred with post-market clinical studies, conferences and trade shows, promotional and marketing activities, market research, as well as travel and training expenses.

Over time we expect our sales and marketing expenses to increase in absolute dollars as we continue to expand our commercial organization to both drive and support our planned growth in revenue. We expect our sales and marketing expenses to continue to decrease as a percentage of revenue, as and to the extent, our revenue grows.

### ***General and Administrative Expenses***

General and administrative expenses consist primarily of salaries and related benefits, including stock-based compensation, for personnel in executive, finance, information technology and administrative functions. General and administrative expenses also include professional service fees for legal, accounting, consulting, investor and public relations, insurance costs and direct and allocated facility-related costs.

We expect that our general and administrative expenses will increase in absolute dollars as we execute our growth initiatives and expand our business and headcount to support these initiatives. We expect our general and administrative expenses to decrease as a percentage of revenue primarily as, and to the extent, our revenue grows.

### ***Research and Development Expenses***

Research and development expenses consist primarily of product research, engineering, product development, regulatory compliance and clinical development. These expenses include salaries and related benefits, including stock-based compensation, for employees focused on these efforts, consulting services, costs associated with our preclinical studies, costs incurred with our manufacturing partner under development agreements related to technology transfer, costs incurred from license agreements with no alternative future uses, laboratory materials and supplies and an allocation of related facilities costs. We expense research and development costs as they are incurred.

We expect research and development expenses in absolute dollars to increase in the future as we develop new products and enhance existing products. We expect research and development expenses as a percentage of revenue to vary over time depending on the level and timing of new product development initiatives.

### ***Interest Expense***

Interest expense consists of cash interest related to our credit facilities, non-cash interest attributable to the amortization of final payment fees and the amortization of deferred financing costs related to our indebtedness.

### ***Other Income (Expense)***

Other income (expense) consists primarily of income earned on our cash and cash equivalents offset by miscellaneous tax expenses and foreign currency exchange gains and losses.



## Results of Operations

### Comparison of the Three Months Ended September 30, 2023 and 2022

|   | <b>Three months ended September 30,</b> |             | <b>Change</b> |                   |
|---|---|-------------|---------------|-------------------|
|   | <b>2023</b>                             | <b>2022</b> | <b>Dollar</b> | <b>Percentage</b> |
|   | (in thousands, except percentages)      |             |               |                   |
| Revenue   | \$ 15,052                               | \$ 11,159   | \$ 3,893      | 35 %              |
| Cost of revenue (excluding amortization of intangible assets) | 4,568                                   | 3,745       | 823           | 22                |
| Amortization of intangible assets                             | 95                                      | 95          | —             | —                 |
| Gross profit  | 10,389                                  | 7,319       | 3,070         | 42                |
| Gross margin  | 69 %                                    | 66 %        |               |                   |
| Operating expenses:   |   |             |               |                   |
| Sales and marketing   | 14,474                                  | 11,172      | 3,302         | 30                |
| General and administrative                                    | 3,728                                   | 3,532       | 196           | 6                 |
| Research and development                                      | 2,368                                   | 2,102       | 266           | 13                |
| Total operating expenses                                      | 20,570                                  | 16,806      | 3,764         | 22                |
| Loss from operations  | (10,181)                                | (9,487)     | (694)         | 7                 |
| Other expense:  |   |             |               |                   |
| Interest expense  | (1,334)                                 | (1,032)     | (302)         | 29                |
| Other income (expense)  | 558                                     | (195)       | 753           | (386)             |
| Total other expense   | (776)                                   | (1,227)     | 451           | (37)              |
| Net loss  | \$ (10,957)                             | \$ (10,714) | \$ (243)      | 2 %               |

### Revenue

Revenue increased by \$3.9 million, or 35%, to \$15.1 million for the three months ended September 30, 2023 from \$11.2 million for the three months ended September 30, 2022. The increase in revenue was primarily driven by an increase in unit sales of our products due to the ongoing expansion of our commercial organization, which resulted in the addition of new customers, increased penetration within existing customer accounts and growing international sales. During the three months ended September 30, 2023, we sold 3,426 units of OviTex as compared to 2,631 units of OviTex during the three months ended September 30, 2022, a 30% increase in unit sales volume. Additionally, we sold 896 units of OviTex PRS during the three months ended September 30, 2023 as compared to 618 units during the three months ended September 30, 2022, a 45% increase in unit sales volume.

### Cost of Revenue

Cost of revenue (excluding amortization of intangible assets) increased by \$0.8 million, or 22%, to \$4.6 million for the three months ended September 30, 2023 from \$3.7 million for the three months ended September 30, 2022. The increase in cost of revenue was primarily the result of an increase in products purchased to support demand from our higher unit sales, partially offset by a lower charge for excess and obsolete inventory.

### Amortization of Intangible Assets

Amortization of intangible assets was \$95,000 for both the three months ended September 30, 2023 and 2022.

### Gross Margin

Gross margin increased to 69% for the three months ended September 30, 2023 from 66% for the three months ended September 30, 2022. The increase was primarily due to a lower charge for excess and obsolete inventory as a percentage of revenue due to improvements in inventory management.

***Sales and Marketing***

Sales and marketing expenses increased by \$3.3 million, or 30%, to \$14.5 million for the three months ended September 30, 2023 from \$11.2 million for the three months ended September 30, 2022. The increase was primarily due to higher compensation costs as a result of the expansion of our commercial organization, increased travel and consulting expenses and additional employee-related costs due to an increase in headcount.

***General and Administrative***

General and administrative expenses increased by \$0.2 million, or 6%, to \$3.7 million for the three months ended September 30, 2023 from \$3.5 million for the three months ended September 30, 2022. The increase was primarily due to higher compensation costs and employee-related costs due to an increase in headcount which offset a decrease in insurance expense.

***Research and Development***

Research and development expenses increased by \$0.3 million, or 13%, to \$2.4 million for the three months ended September 30, 2023 from \$2.1 million for the three months ended September 30, 2022. The increase was primarily due to higher compensation costs due to an increase in headcount and increased testing and development expenses.

***Interest Expense***

Interest expense increased by \$0.3 million, or 29%, to \$1.3 million for the three months ended September 30, 2023 from \$1.0 million for the three months ended September 30, 2022 due to the increased levels of borrowings under our Credit and Security Agreement (the “MidCap Credit Agreement”) with MidCap Financial Trust, as agent and certain lender parties thereto, and an increase to the variable component of our interest rate.

***Other Income (Expense)***

Other income increased \$0.8 million to \$0.6 million for the three months ended September 30, 2023. The increase was primarily due to higher interest income on increased cash balances and favorable foreign currency translation adjustments.

**Comparison of the Nine Months Ended September 30, 2023 and 2022**

|   | <b>Nine Months Ended September 30,</b> |             | <b>Change</b> |                   |
|---|--|-------------|---------------|-------------------|
|   | <b>2023</b>                            | <b>2022</b> | <b>Dollar</b> | <b>Percentage</b> |
|   | (in thousands, except percentages)     |             |               |                   |
| Revenue   | \$ 41,455                              | \$ 29,796   | \$ 11,659     | 39 %              |
| Cost of revenue (excluding amortization of intangible assets) | 12,682                                 | 10,219      | 2,463         | 24                |
| Amortization of intangible assets                             | 285                                    | 709         | (424)         | (60)              |
| Gross profit  | 28,488                                 | 18,868      | 9,620         | 51                |
| Gross margin  | 69 %                                   | 63 %        |               |                   |
| Operating expenses:   |  |             |               |                   |
| Sales and marketing   | 42,517                                 | 31,605      | 10,912        | 35                |
| General and administrative                                    | 10,834                                 | 10,620      | 214           | 2                 |
| Research and development                                      | 6,934                                  | 6,211       | 723           | 12                |
| Total operating expenses                                      | 60,285                                 | 48,436      | 11,849        | 24                |
| Loss from operations  | (31,797)                               | (29,568)    | (2,229)       | 8                 |
| Other expense:  |  |             |               |                   |
| Interest expense  | (3,878)                                | (2,877)     | (1,001)       | 35                |
| Loss on extinguishment of debt                                | —                                      | (1,228)     | 1,228         | (100)             |
| Other income (expense)  | 1,901                                  | (644)       | 2,545         | (395)             |
| Total other expense   | (1,977)                                | (4,749)     | 2,772         | (58)              |
| Net loss  | \$ (33,774)                            | \$ (34,317) | \$ 543        | (2)%              |

**Revenue**

Revenue increased by \$11.7 million, or 39%, to \$41.5 million for the nine months ended September 30, 2023 from \$29.8 million for the nine months ended September 30, 2022. The increase in revenue was primarily driven by an increase in unit sales of our products due to the ongoing expansion of our commercial organization, which resulted in the addition of new customers, increased penetration within existing customer accounts and growing international sales. During the nine months ended September 30, 2023, we sold 9,704 units of OviTex as compared to 7,096 units of OviTex during the nine months ended September 30, 2022, a 37% increase in unit sales volume. Additionally, we sold 2,484 units of OviTex PRS during the nine months ended September 30, 2023 as compared to 1,733 units during the nine months ended September 30, 2022, a 43% increase in unit sales volume.

**Cost of Revenue**

Cost of revenue (excluding amortization of intangible assets) increased by \$2.5 million, or 24%, to \$12.7 million for the nine months ended September 30, 2023 from \$10.2 million for the nine months ended September 30, 2022. The increase in cost of revenue was primarily the result of an increase in products purchased to support demand from our higher unit sales, partially offset by a lower charge for excess and obsolete inventory.

**Amortization of Intangible Assets**

Amortization of intangible assets decreased by \$0.4 million, or 60% to \$0.3 million for the nine months ended September 30, 2023 from \$0.7 million for the nine months ended September 30, 2022. In June 2022, we determined that our final milestone target under our licensing agreement with Aroa was probable of being met and recorded the payment obligation as an intangible asset, resulting in a cumulative amortization charge of \$0.5 million for the nine months ended September 30, 2022.

### **Gross Margin**

Gross margin increased to 69% for the nine months ended September 30, 2023 from 63% for the nine months ended September 30, 2022. The increase was primarily due to a lower charge for excess and obsolete inventory as a percentage of revenue due to improvements in inventory management.

### **Sales and Marketing**

Sales and marketing expenses increased by \$10.9 million, or 35%, to \$42.5 million for the nine months ended September 30, 2023 from \$31.6 million for the nine months ended September 30, 2022. The increase was primarily due to higher compensation costs as a result of the expansion of our commercial organization, increased travel and consulting expenses and additional employee-related costs due to an increase in headcount.

### **General and Administrative**

General and administrative increased by \$0.2 million, or 2%, to \$10.8 million for the nine months ended September 30, 2023 from \$10.6 million for the nine months ended September 30, 2022. Higher compensation costs and employee related expenses due to an increase in headcount offset decreases in insurance expenses and professional fees.

### **Research and Development**

Research and development expenses increased by \$0.7 million, or 12%, to \$6.9 million for the nine months ended September 30, 2023 from \$6.2 million for the nine months ended September 30, 2022. The increase was primarily due to higher compensation costs due to an increase in headcount and increased study costs.

### **Interest Expense**

Interest expense increased by \$1.0 million, or 35%, to \$3.9 million for the nine months ended September 30, 2023 from \$2.9 million for the nine months ended September 30, 2022 due to the increased levels of borrowings under our Credit and Security Agreement (the "MidCap Credit Agreement") with MidCap Financial Trust, as agent and certain lender parties thereto, and an increase to the variable component of our interest rate.

### **Loss on Extinguishment of Debt**

We recorded a loss on the extinguishment of debt of \$1.2 million during the nine months ended September 30, 2022 related to the repayment of borrowings of our credit facilities with OrbiMed in May 2022. The losses were primarily comprised of the write-off of unamortized debt discounts and prepayment penalties at the time of extinguishment.

### **Other Income (Expense)**

Other income increased \$2.5 million to \$1.9 million for the nine months ended September 30, 2023. The increase was primarily due to higher interest income on increased cash balances and favorable foreign currency translation adjustments.

## Liquidity and Capital Resources

### Overview

As of September 30, 2023, we had cash and cash equivalents of \$58.2 million, working capital of \$66.9 million and an accumulated deficit of \$308.0 million. As of December 31, 2022, we had cash and cash equivalents of \$42.0 million, working capital of \$50.0 million and an accumulated deficit of \$274.2 million.

In April 2023, we completed an underwritten public offering in which we issued and sold 5,219,190 shares of our common stock (including 469,190 shares sold pursuant to the underwriters' overallotment option in May 2023) at a public offering price of \$9.50 per share. We received net proceeds of approximately \$46.3 million after deducting underwriting discounts, commissions and other offering expenses.

We have incurred operating losses since our inception, and we anticipate that our operating losses will continue in the near term as we seek to invest in our sales and marketing initiatives to support our growth in existing and new markets and in additional research and development activities. As of September 30, 2023, we had \$40.0 million of borrowings outstanding under the MidCap Credit Agreement. The MidCap Credit Agreement matures in May 2027 and provides for up to \$50.0 million in term loans (the "MidCap Term Loans"), consisting of a \$40.0 million Tranche 1 ("Tranche 1") and a \$10.0 million Tranche 2 ("Tranche 2"). Upon closing, we borrowed \$40.0 million of Tranche 1 and used a portion of the proceeds to repay borrowings under the OrbiMed Credit Facility and intend to use the remaining proceeds to fund operations and other general corporate purposes. We will be eligible to borrow Tranche 2 at our option if certain conditions are met, including, but not limited to, reaching \$65.0 million of net product revenue over the preceding four quarters by fiscal year end 2023.

Based on our current business plan, we believe that our existing cash resources will be sufficient to meet our capital requirements and fund our operations for at least the next 12 months from the issuance of this Quarterly Report. If these sources are insufficient to satisfy our liquidity requirements, we may seek to sell common or preferred equity or debt securities or enter into a new credit facility. In November 2023, we entered into a new Equity Distribution Agreement (the "2023 Equity Agreement") with Piper Sandler & Co, (the "Agent") in connection with the establishment of an at-the-market offering program under which we may sell shares of our common stock, from time to time through the Agent as sales agent. The 2023 Equity Agreement supersedes and replaces the Company's previous Equity Distribution Agreement with the Agent dated December 18, 2020 (the "2020 Equity Agreement"), which is no longer effective. No sales were made under the 2020 Equity Agreement during the nine months ended September 30, 2023. If we raise additional funds by issuing equity or equity-linked securities, our stockholders would experience dilution and any new equity securities could have rights, preferences and privileges superior to those of holders of our common stock. Debt financing, if available, may involve covenants restricting our operations or our ability to incur additional debt. We cannot be assured that additional equity, equity-linked or debt financing will be available on terms favorable to us or our stockholders, or at all, including as a result of market volatility following the COVID-19 pandemic, recent banking instability, increasing interest rates or other factors. If we are unable to obtain adequate financing, we may be required to delay or reduce the current development, commercialization and marketing plans for our products.

### Cash Flows

The following table summarizes our sources and uses of cash for each of the periods presented:

| (in thousands)   | Nine Months Ended September 30, |                  |
|--|---------------------------------|------------------|
|  | 2023                            | 2022             |
| Cash used in operating activities                            | \$ (29,806)                     | \$ (29,765)      |
| Cash used in investing activities                            | (406)                           | (826)            |
| Cash provided by financing activities                        | 46,245                          | 41,071           |
| Effect of exchange rate changes on cash and cash equivalents | 150                             | (185)            |
| Net increase in cash and cash equivalents                    | <u>\$ 16,183</u>                | <u>\$ 10,295</u> |

### ***Operating Activities***

During the nine months ended September 30, 2023, we used \$29.8 million of cash in operating activities, resulting from our net loss of \$33.8 million and the change in operating assets and liabilities of \$1.9 million, offset by non-cash charges of \$5.8 million. Our non-cash charges were comprised of stock-based compensation expense of \$3.8 million, our excess and obsolete inventory charge of \$1.0 million, depreciation and amortization expense of \$0.6 million and noncash interest expense of \$0.4 million. The change in our operating assets and liabilities was primarily related to increases in accounts receivable and inventory partially offset by increases in accounts payable and accrued expenses and other current and long-term liabilities.

During the nine months ended September 30, 2022, we used \$29.8 million of cash in operating activities, resulting from our net loss of \$34.3 million and the change in operating assets and liabilities of \$2.9 million, offset by non-cash charges of \$7.4 million. Our non-cash charges were comprised of stock-based compensation expense of \$3.0 million, our excess and obsolete inventory charge of \$1.8 million, a loss on debt extinguishment of \$1.2 million, depreciation and amortization expense of \$1.0 million and noncash interest expense of \$0.5 million. The change in our operating assets and liabilities was primarily related to an increase in our inventory and accounts receivable offset by increases in accounts payable and accrued expenses and other current and long-term liabilities.

### ***Investing Activities***

During the nine months ended September 30, 2023, cash used in investing activities was \$0.4 million consisting of purchases of property and equipment.

During the nine months ended September 30, 2022, cash used in investing activities was \$0.8 million, consisting of purchases of property and equipment.

### ***Financing Activities***

During the nine months ended September 30, 2023, cash provided by financing activities was \$46.2 million, consisting primarily of \$46.3 million in proceeds received from the sale of our common stock partially offset by the payment of withholding taxes related to stock-based compensation to employees.

During the nine months ended September 30, 2022, cash provided by financing activities was \$41.1 million, consisting primarily of \$34.7 million in proceeds from an underwritten public offering, \$40.0 million in proceeds received from the issuance of long-term debt offset by \$30.0 million in repayments of long-term debt and \$3.5 million in payments of issuance costs.

### ***Indebtedness***

On May 26, 2022, we entered into the MidCap Credit Agreement with MidCap Financial Trust, as agent and certain lender parties thereto. The MidCap Credit Agreement provides for up to \$50.0 million in MidCap Term Loans, consisting of a \$40.0 million Tranche 1 and a \$10.0 million Tranche 2. Upon closing, we borrowed \$40.0 million of Tranche 1 and used a portion of the proceeds to repay borrowings under the OrbiMed Credit Facility and intend to use the remaining proceeds to fund operations and other general corporate purposes. We will be eligible to borrow Tranche 2 at our option if certain conditions are met, including, but not limited to, reaching \$65.0 million of net product revenue over the preceding four quarters by fiscal year end 2023.

Pursuant to the MidCap Credit Agreement, we provided a first priority security interest in all existing and future acquired assets, including intellectual property, owned by us. The MidCap Credit Agreement contains certain covenants that limit our ability to engage in certain transactions that may be in our long-term best interests, including the incurrence of additional indebtedness, effecting certain corporate changes, making certain investments, acquisitions or dispositions and paying dividends.

The MidCap Credit Agreement also contains customary indemnification obligations and customary events of default, including, among other things, (i) non-payment, (ii) breach of warranty, (iii) non-performance of covenants and obligations, (iv) default on other indebtedness, (v) judgments, (vi) change of control, (vii) bankruptcy and insolvency, (viii) impairment of security, (ix) key permit events, (x) termination of a pension plan, (xi) regulatory matters, (xii) material adverse effect and (xiii) breach of material contracts.

In addition, we must maintain minimum net revenue levels tested quarterly. In the event of default under the MidCap Credit Agreement, we would be required to pay interest on principal and all other due and unpaid obligations at the current rate in effect plus 2%.

The MidCap Term Loans mature on May 1, 2027 and bear interest at a rate equal to 6.25% plus the greater of one-month Term SOFR (as defined in the MidCap Credit Agreement) or 1.0%. We are required to make 36 monthly interest payments beginning on June 1, 2022 (the “Interest-Only Period”). If we are in covenant compliance at the end of the Interest-Only Period, we will have the option to extend the Interest-Only Period by 12 months to 48 monthly interest payments, followed by 12 months of straight-line amortization, with the entire principal payment due at maturity. If we are not in covenant compliance at the end of the Interest-Only Period, we are required to make 24 months of straight-line amortization payments, with the entire principal amount due at maturity.

Subject to certain limitations, the MidCap Term Loans have a prepayment fee equal to 3.0% of the prepaid principal amount for the first year following the closing date of the MidCap Term Loans, 2.0% of the prepaid principal amount for the second year following the closing date and 1.0% of the prepaid principal amount for the third year following the closing date and thereafter. We are also required to pay an exit fee at the time of maturity or prepayment event equal to 5% of all principal borrowings (or in the event of a prepayment event, the amount of principal being prepaid).

#### **Contractual Obligations and Commitments**

On October 18, 2023, we amended our Malvern lease as described in Note 9 “Subsequent Events.” The amended lease will increase our commitments and future minimum contractual obligations by approximately \$2.0 million in the aggregate during the period from December 1, 2023 through May 31, 2030.

#### **Critical Accounting Policies and Significant Judgments and Estimates**

The Critical Accounting Policies and Significant Judgements and Estimates included in our Annual Report have not materially changed.

#### **Off-Balance Sheet Arrangements**

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

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

Our cash is held on deposit in demand accounts at high-credit-quality financial institutions in amounts in excess of the Federal Deposit Insurance Corporation (“FDIC”) insurance coverage limit of \$250,000 per depositor, per FDIC-insured bank, per ownership category. On March 10, 2023, the California Department of Financial Protection and Innovation closed Silicon Valley Bank (“SVB”) and appointed the FDIC as receiver. On March 12, 2023, the U.S. Department of the Treasury, the Federal Reserve and the FDIC released a joint statement confirming that all depositors of SVB would have access to all of their money after only one business day of closure, including funds held in uninsured deposit accounts. On March 27, 2023, First Citizens BancShares, Inc. announced that it had purchased all of the assets and liabilities of SVB.

In addition, on March 10, 2023, the Bank of England (the “BOE”) announced that it intended to seek the placement of Silicon Valley Bank UK Limited (“SVBUK”), an affiliate of SVB, into a Bank Insolvency Procedure, which ultimately

resulted in the acquisition of SVBUK by HSBC UK Bank Plc ("HSBC") on March 13, 2023. On August 7, 2023, all accounts associated with SVBUK were fully transitioned over to HSBC.

During the course of these events, a portion of our cash was held in accounts at SVB and SVBUK, with the remainder at another high-credit-quality financial institution. We have recently established additional redundant accounts with another high-credit-quality financial institution to mitigate liquidity risk to our cash and cash equivalents from any further instability in the financial industry. We have reviewed the consolidated financial statements of this financial institution and believe they have sufficient assets and liquidity to conduct their operations in the ordinary course of business with little or no credit risk to us.

Financial instruments that potentially subject us to concentrations of credit risk principally consist of cash equivalents and accounts receivable. We limit our credit risk associated with cash equivalents by placing investments in highly-rated money market funds. We limit our credit risk with respect to accounts receivable by performing credit evaluations when deemed necessary, but we do not require collateral to secure amounts owed to us by our customers.

As discussed above in the section of this Quarterly Report entitled "Liquidity and Capital Resources — Indebtedness," the MidCap Credit Facility bears interest at a floating rate of interest, which resets monthly and is equal to 6.25% plus the greater of one-month Term SOFR or 1.0%. As a result, we are exposed to risks from changes in interest rates. A 1% increase in interest rates would have resulted in a \$0.3 million increase to our interest expense for the nine months ended September 30, 2023.

Inflationary factors, such as increases in our cost of revenue and operating expenses, may adversely affect our operating results. Although we do not believe inflation has had a material impact on our financial condition, results of operations or cash flows to date, a high rate of inflation in the future may have an adverse effect on our ability to maintain and increase our gross margin or decrease our operating expenses as a percentage of our revenue if our selling prices of our products do not increase as much or more than our costs increase.

We do not currently have any material exposure to foreign currency fluctuations and do not engage in any hedging activities as part of our normal course of business.

#### **Item 4. Controls and Procedures.**

##### **Evaluation of Disclosure Controls and Procedures**

Our management, with the participation and supervision of our Chief Executive Officer and our Chief Operating Officer and Chief Financial Officer, have evaluated our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of the end of the period covered by this Quarterly Report. Based on that evaluation, our Chief Executive Officer and Chief Operating Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report, our disclosure controls and procedures are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Operating Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

##### **Changes in Internal Control Over Financial Reporting**

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this Quarterly Report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.



## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

We are not currently subject to any material legal proceedings.

### Item 1A. Risk Factors.

You should carefully consider the risk factors described in our Annual Report, under the caption “Item 1A. Risk Factors.” There have been no material changes in our risk factors disclosed in our Annual Report.

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

#### Recent Sales of Unregistered Securities

None.

#### Purchase of Equity Securities

None.

### Item 3. Defaults Upon Senior Securities.

None.

### Item 4. Mine Safety Disclosures.

Not applicable.

### Item 5. Other Information.

#### *2023 Equity Distribution Agreement*

On November 13, 2023, we entered into an Equity Distribution Agreement with Piper Sandler & Co., as the Agent (the “2023 Equity Agreement”), in connection with the establishment of an “at-the-market” offering program under which it may sell shares of our common stock, par value \$0.001 per share (the “Shares”), from time to time through the Agent, as sales agent (the “Offering”). The 2023 Equity Agreement supersedes and replaces our previous Equity Distribution Agreement with the Agent dated December 18, 2020 (the “2020 Equity Agreement”), which is no longer effective.

Under the 2023 Equity Agreement, we will set the parameters for the sale of Shares, including the number of Shares to be issued, the time period during which sales are requested to be made, limitations on the number of Shares that may be sold in any one trading day and any minimum price below which sales may not be made. The Agent will use its commercially reasonable efforts to sell the Shares requested by us to be sold on our behalf, consistent with the Agent’s normal trading and sales practices, under the terms and subject to the conditions set forth in the 2023 Equity Agreement. Sales of the Shares, if any, under the 2023 Equity Agreement may be made in transactions that are deemed to be “at-the-market offerings” as defined in Rule 415 under the Securities Act of 1933, as amended. The 2023 Equity Agreement provides that we will pay the Agent a commission of up to 3.0% of the gross proceeds of any Shares sold through the Agent and has agreed to reimburse the Agent for certain specified expenses. The 2023 Equity Agreement contains customary representations, warranties and agreements by us, indemnification obligations of us and the Agent, other obligations of the parties and termination provisions. We have no obligation to sell any of the Shares, and may at any time suspend offers under the 2023 Equity Agreement.

The Shares will be offered and sold pursuant to our Registration Statement on Form S-3 filed by us on November 13, 2023 (the “Registration Statement”), and the sales agreement prospectus that forms a part of such Registration

Statement, following such time as the Registration Statement is declared effective by the Securities and Exchange Commission.

The 2023 Equity Agreement is filed as Exhibit 10.2 to this Quarterly Report. The description of the 2023 Equity Agreement does not purport to be complete and is qualified in its entirety by reference to the 2023 Equity Agreement filed herewith.

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

*Termination of 2020 Equity Distribution Agreement*

On November 13, 2023, we terminated the 2020 Equity Agreement in order to enter into the 2023 Equity Agreement described above. We are not subject to any termination penalties in connection with the termination of the 2020 Equity Agreement.

A description of the 2020 Equity Agreement was included in our Current Report on Form 8-K filed with the SEC on December 18, 2020, which is incorporated herein by reference.

*Third Amended and Restated Bylaws*

In connection with the effectiveness of new SEC rules regarding universal proxy cards and a periodic review of our Second Amended and Restated Bylaws, our Board approved and adopted the Third Amended and Restated Bylaws (the “Third A&R Bylaws”), effective November 8, 2023. The amendments primarily address matters relating to Rule 14a-19 under the Exchange Act (the “Universal Proxy Rules”), providing, among other things, that:

- a stockholder delivering a notice of nomination must include a representation that it intends to solicit proxies from stockholders representing at least 67% of the voting power of shares entitled to vote on the election of directors;
- a stockholder delivering a notice of nomination must certify to the Company in writing that it has complied with the Universal Proxy Rules requirements;
- the Company may disqualify a stockholder’s nomination if such stockholder fails to satisfy the Universal Proxy Rules requirements;
- a stockholder providing notice pursuant to the Company’s advance notice bylaws must inform the Company if the stockholder no longer plans to solicit proxies in accordance with the Universal Proxy Rules; and
- the stockholder to use a proxy card color other than white, which is reserved for the exclusive use of the Board.

The above description of the Third A&R Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Third A&R Bylaws, which is filed as Exhibit 3.1 hereto and incorporated herein by reference.

**Item 6. Exhibits.**

The following exhibits are being filed herewith:

**EXHIBIT INDEX**

| <b><u>Exhibit No.</u></b> | <b><u>Exhibit</u></b>  |
|---------------------------|--|
| 3.1                       | <a href="#">Third Amended and Restated Bylaws (filed herewith).</a>  |
| 10.1                      | <a href="#">Employment Agreement, dated August 3, 2023, by and between the Company and Gregory Firestone (incorporated by reference to exhibit 10.1 of the Company's Quarterly Report on Form 10-Q, filed on August 10, 2023).</a> |
| 10.2                      | <a href="#">Equity Distribution Agreement, dated November 13, 2023, by and between the Company and Piper Sandler &amp; Co. (filed herewith).</a>   |
| 31.1                      | <a href="#">Certification of Chief Executive Officer pursuant to Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).</a>   |
| 31.2                      | <a href="#">Certification of Chief Financial Officer pursuant to Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).</a>   |
| 32.1                      | <a href="#">Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith).</a>  |
| 32.2                      | <a href="#">Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith).</a>  |
| 101 INS                   | Inline XBRL Instance Document (filed herewith).  |
| 101 SCH                   | Inline XBRL Taxonomy Extension Schema Document (filed herewith).   |
| 101 CAL                   | Inline XBRL Taxonomy Extension Calculation Linkbase Document (filed herewith).   |
| 101 DEF                   | Inline XBRL Taxonomy Extension Definition Linkbase Document (filed herewith).  |
| 101 LAB                   | Inline XBRL Taxonomy Extension Label Linkbase Document (filed herewith).   |
| 101 PRE                   | Inline XBRL Taxonomy Extension Presentation Linkbase Document (filed herewith).  |
| 104                       | Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).  |



**THIRD AMENDED AND RESTATED****BYLAWS****OF****TELA BIO, INC.**

(the "Corporation")

*Adopted and effective as of November 8, 2023*

**ARTICLE I****Stockholders**

Section 1.1. Annual Meeting. The annual meeting of stockholders (any such meeting being referred to in these Bylaws as an "Annual Meeting") shall be held at the hour, date and place within or without the United States which is fixed by the Corporation's Board of Directors (the "Board of Directors"), which time, date and place may subsequently be changed at any time by vote of the Board of Directors. If no Annual Meeting has been held for a period of thirteen (13) months after the Corporation's last Annual Meeting, a special meeting in lieu thereof may be held, and such special meeting shall have, for the purposes of these Bylaws or otherwise, all the force and effect of an Annual Meeting. Any and all references hereafter in these Bylaws to an Annual Meeting or Annual Meetings also shall be deemed to refer to any special meeting(s) in lieu thereof.

Section 1.2. Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be brought before an Annual Meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who was a stockholder of record at the time of giving notice provided for in this Bylaw, who is entitled to vote at the meeting, who is present (in person or by proxy) at the meeting and who complies with the notice procedures set forth in this Bylaw as to such nomination or business. For the avoidance of doubt, the foregoing clause (ii) shall be the exclusive means for a stockholder to bring nominations or business properly before an Annual Meeting (other than matters properly brought under Rule 14a-8 (or any successor rule) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), and such stockholder must comply with the notice and other procedures set forth in Section 1.2(a)(2) and (3) of this Bylaw to bring such nominations or business properly before an Annual Meeting. In addition to the other requirements set forth in this Bylaw, for any proposal of business to be considered at an Annual Meeting, it must be a proper subject for action by stockholders of the Corporation under Delaware law.

(2) For nominations or other business to be properly brought before an Annual Meeting by a stockholder pursuant to clause (ii) of Section 1.2(a)(1) of this Bylaw, the stockholder must (i) have given Timely Notice (as defined below) thereof in writing to the Secretary of the Corporation, (ii) have provided any updates or supplements to such notice at the times and in the forms required by

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this Bylaw and (iii) together with the beneficial owner(s), if any, on whose behalf the nomination or business proposal is made, have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) required by this Bylaw. To be timely, a stockholder's written notice shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the one-year anniversary of the preceding year's Annual Meeting; provided, however, that in the event the Annual Meeting is first convened more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no Annual Meeting were held in the preceding year, notice by the stockholder to be timely must be received by the Secretary of the Corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such Annual Meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made (such notice within such time periods shall be referred to as "Timely Notice"). Such stockholder's Timely Notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest in such business of each Proposing Person (as defined below);

(C) (i) the name and address of the stockholder giving the notice, as they appear on the Corporation's books, and the names and addresses of the other Proposing Persons (if any) and (ii) as to each Proposing Person, the following information: (a) the class or series and number of all shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Proposing Person or any of its affiliates or associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), including any shares of any class or series of capital stock of the Corporation as to which such Proposing Person or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future, (b) all Synthetic Equity Interests (as defined below) in which such Proposing Person or any of its affiliates or associates, directly or indirectly, holds an interest including a description of the material terms of each such Synthetic Equity Interest, including without limitation, identification of the counterparty to each such Synthetic Equity Interest and disclosure, for each such Synthetic Equity Interest, as to (x) whether or not such Synthetic Equity Interest conveys any voting rights, directly or indirectly, in such shares to such Proposing Person, (y) whether or not such Synthetic Equity Interest is required to be, or is capable of being, settled through delivery of such shares and (z) whether or not such Proposing Person and/or, to the extent known, the counterparty to such Synthetic Equity Interest has entered into other transactions that hedge or mitigate the economic effect of such Synthetic Equity Interest, (c) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to, directly or indirectly, vote any shares of any class or series of capital

stock of the Corporation, (d) any rights to dividends or other distributions on the shares of any class or series of capital stock of the Corporation, directly or indirectly, owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, and (e) any performance-related fees (other than an asset based fee) that such Proposing Person, directly or indirectly, is entitled to based on any increase or decrease in the value of shares of any class or series of capital stock of the Corporation or any Synthetic Equity Interests (the disclosures to be made pursuant to the foregoing clauses (a) through (e) are referred to, collectively, as “Material Ownership Interests”) and (iii) a description of the material terms of all agreements, arrangements or understandings (whether or not in writing) entered into by any Proposing Person or any of its affiliates or associates with any other person for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the Corporation;

(D) (i) a description of all agreements, arrangements or understandings by and among any of the Proposing Persons, or by and among any Proposing Persons and any other person (including with any proposed nominee(s)), pertaining to the nomination(s) or other business proposed to be brought before the meeting of stockholders (which description shall identify the name of each other person who is party to such an agreement, arrangement or understanding), and (ii) identification of the names and addresses of other stockholders (including beneficial owners) known by any of the Proposing Persons to support such nominations or other business proposal(s), and to the extent known the class and number of all shares of the Corporation’s capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); and

(E) a statement (i) whether or not the stockholder giving the notice and/or the other Proposing Person(s), if any, will deliver a proxy statement and form of proxy to holders of, in the case of a business proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to approve the proposal or, in the case of a nomination or nominations, made pursuant to Article I, Section 1.2(b), at least 67 percent of the voting power of all of the shares of capital stock of the Corporation entitled to vote on the election of directors (such statement, the “Solicitation Statement”), or otherwise solicit proxies or votes from stockholders in support of such proposal or nomination, as applicable, and (ii) providing a representation as to whether or not such Proposing Person or Nominating Person (as defined below) intends to solicit proxies in support of director nominees other than the Corporation’s director nominees in accordance with Rule 14a-19 promulgated under the Exchange Act. Notwithstanding the foregoing, if a Proposing Person or Nominating Person no longer plans to solicit proxies in accordance with its representation pursuant to this Section 1.2(a)(2), such Proposing Person or Nominating Person shall inform the Corporation of this change by delivering a written notice to the Secretary at the principal executive offices of the Corporation no later than two (2) business days after making the determination not to proceed with a solicitation of proxies.

For purposes of this Article I of these Bylaws, the term “Proposing Person” shall mean the following persons: (i) the stockholder of record providing the notice of nominations or business proposed to be brought before a stockholders’ meeting, and (ii) the beneficial owner(s), if different, on whose behalf the nominations or business proposed to be brought before a stockholders’ meeting is made. For purposes of this Article I of these Bylaws, the term “Nominating Person” shall mean (a) the stockholder providing the notice of the nomination proposed to be made at the meeting, (b) the beneficial owner or beneficial owners, if different, on

whose behalf the notice of the nomination proposed to be made at the meeting is made, and (c) any other participant in such solicitation. For purposes of this Section 1.2 of these Bylaws, the term “Synthetic Equity Interest” shall mean any transaction, agreement or arrangement (or series of transactions, agreements or arrangements), including, without limitation, any derivative, swap, hedge, repurchase or so-called “stock borrowing” agreement or arrangement, the purpose or effect of which is to, directly or indirectly: (a) give a person or entity economic benefit and/or risk similar to ownership of shares of any class or series of capital stock of the Corporation, in whole or in part, including due to the fact that such transaction, agreement or arrangement provides, directly or indirectly, the opportunity to profit or avoid a loss from any increase or decrease in the value of any shares of any class or series of capital stock of the Corporation, (b) mitigate loss to, reduce the economic risk of or manage the risk of share price changes for, any person or entity with respect to any shares of any class or series of capital stock of the Corporation, (c) otherwise provide in any manner the opportunity to profit or avoid a loss from any decrease in the value of any shares of any class or series of capital stock of the Corporation, or (d) increase or decrease the voting power of any person or entity with respect to any shares of any class or series of capital stock of the Corporation.

(3) To be eligible to be a nominee of any stockholder for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for nominations of persons for election to the Board of Directors by stockholders under this Section 1.2) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such individual and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made (which questionnaire shall be provided by the Secretary upon written request), all information relating to such person that would be required to be disclosed in solicitations of proxies by the Corporation for election of such person as a director in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, and a written representation and agreement (in the form provided by the Secretary upon written request) that such individual (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation and (2) any Voting Commitment that could limit or interfere with such individual’s ability to comply, if elected as a director of the Corporation, with such individual’s fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (c) in such individual’s personal capacity and on behalf of any person or entity on whose behalf, directly or indirectly, the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time and (d) consents to being named as a nominee in the Corporation’s proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director.

(4) A stockholder providing Timely Notice of nominations or business proposed to be brought before an Annual Meeting and any person providing information pursuant to Section 1.2(a)(3) shall, in each case,



further update and supplement such notice and information, if necessary, so that the information (including, without limitation, the Material Ownership Interests information) provided or required to be provided therein pursuant to this Bylaw shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to such Annual Meeting, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the fifth (5th) business day after the record date for the Annual Meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the Annual Meeting (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting).

(5) Notwithstanding anything in the second sentence of Section 1.2(a)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the second sentence of Section 1.2(a)(2), a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) General.

(1) Only such persons who are nominated in accordance with the provisions of this Bylaw shall be eligible for election and to serve as directors and only such business shall be conducted at an Annual Meeting as shall have been brought before the meeting in accordance with the provisions of this Bylaw or in accordance with Rule 14a-8 under the Exchange Act. The Board of Directors or a designated committee thereof shall have the power to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the provisions of this Bylaw. If neither the Board of Directors nor such designated committee makes a determination as to whether any stockholder proposal or nomination was made in accordance with the provisions of this Bylaw, the presiding officer of the Annual Meeting shall have the power and duty to determine whether the stockholder proposal or nomination was made in accordance with the provisions of this Bylaw. If the Board of Directors or a designated committee thereof or the presiding officer, as applicable, determines that any stockholder proposal or nomination was not made in accordance with the provisions of this Bylaw, such proposal or nomination shall be disregarded and shall not be presented for action at the Annual Meeting.

(2) Except as otherwise required by law, nothing in this Section 1.2 shall obligate the Corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the Corporation or the Board of Directors information with respect to any nominee for director or any other matter of business submitted by a stockholder.

(3) Notwithstanding the foregoing provisions of this Section 1.2, if the nominating or proposing stockholder (or a qualified representative of the stockholder) does not appear at the Annual Meeting to present a nomination or any business, such nomination or business shall be disregarded,

notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.2, to be considered a qualified representative of the proposing stockholder, a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, to the presiding officer at the meeting of stockholders.

(4) For purposes of this Bylaw, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(5) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, including, but not limited to, Rule 14a-19 of the Exchange Act, with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of (i) stockholders to have proposals included in the Corporation’s proxy statement pursuant to Rule 14a-8 (or any successor rule), as applicable, under the Exchange Act and, to the extent required by such rule, have such proposals considered and voted on at an Annual Meeting or (ii) the holders of any series of Undesignated Preferred Stock to elect directors under specified circumstances. If a stockholder fails to comply with any applicable requirements of the Exchange Act, including, but not limited to, Rule 14a-19 promulgated thereunder, such stockholder’s proposed nomination or proposed business shall be deemed to have not been made in compliance with this Bylaw and shall be disregarded.

(6) Further notwithstanding the foregoing provisions of this Bylaw, unless otherwise required by law, (i) no Proposing Person shall solicit proxies in support of director nominees other than the Corporation’s nominees unless such Proposing Person has complied with Rule 14a-19 promulgated under the Exchange Act in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder with timely notice, and (ii) if any Proposing Person (A) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act, including the provision to the Corporation of notices required thereunder with timely notice, and (C) no other Proposing Person has provided notice pursuant to, and in compliance with, Rule 14a-19 under the Exchange Act that it intends to solicit proxies in support of the election of such proposed nominee in accordance with Rule 14a-19(b) under the Exchange Act, then such proposed nominee shall be disqualified from nomination, the Corporation shall disregard the nomination of such proposed nominee and no vote on the election of such proposed nominee shall occur. Upon request by the Corporation, if any Proposing Person provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such Proposing Person shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting date, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

Section 1.3. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the

stockholders of the Corporation may be called only by (i) the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office, (ii) the Chairperson of the Board (as defined below) or (iii) the Chief Executive Officer of the Corporation. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

Nominations of persons for election to the Board of Directors of the Corporation and stockholder proposals of other business shall not be brought before a special meeting of stockholders to be considered by the stockholders unless such special meeting is held in lieu of an annual meeting of stockholders in accordance with Section 1.1 of these Bylaws, in which case such special meeting in lieu thereof shall be deemed an Annual Meeting for purposes of these Bylaws and the provisions of Section 1.2 of these Bylaws shall govern such special meeting.

Section 1.4. Notice of Meetings; Adjournments.

(a) A notice of each Annual Meeting stating the hour, date and place, if any, of such Annual Meeting and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not less than ten (10) days nor more than sixty (60) days before the Annual Meeting, to each stockholder entitled to vote thereat by delivering such notice to such stockholder or by mailing it, postage prepaid, addressed to such stockholder at the address of such stockholder as it appears on the Corporation's stock transfer books. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law ("DGCL").

(b) Notice of all special meetings of stockholders shall be given in the same manner as provided for Annual Meetings, except that the notice of all special meetings shall state the purpose or purposes for which the meeting has been called.

(c) Notice of an Annual Meeting or special meeting of stockholders need not be given to a stockholder if a waiver of notice is executed, or waiver of notice by electronic transmission is provided, before or after such meeting by such stockholder or if such stockholder attends such meeting, unless such attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

(d) The Board of Directors may postpone and reschedule or cancel any previously scheduled Annual Meeting or special meeting of stockholders and any record date with respect thereto, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 1.2 of these Bylaws or otherwise. In no event shall the public announcement of an adjournment, postponement or rescheduling of any previously scheduled meeting of stockholders commence a new time period for the giving of a stockholder's notice under this Article I of these Bylaws.

(e) When any meeting is convened, the presiding officer may adjourn the meeting if (i) no quorum is present for the transaction of business, (ii) the Board of Directors determines that adjournment is necessary or appropriate to enable the stockholders to consider fully information which the Board of Directors determines has not been made sufficiently or timely available to

stockholders, or (iii) the Board of Directors determines that adjournment is otherwise in the best interests of the Corporation. When any Annual Meeting or special meeting of stockholders is adjourned to another hour, date or place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), notice need not be given of the adjourned meeting if the time, place, if any, thereof and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are (i) announced at the meeting at which the adjournment is taken, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication, or (iii) set forth in the notice of meeting given in accordance with this Section 1.4; provided, however, that if the adjournment is for more than thirty (30) days from the meeting date, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote thereat and each stockholder who, by law or under the Certificate of Incorporation of the Corporation (as the same may hereafter be amended and/or restated, the "Certificate") or these Bylaws, is entitled to such notice.

Section 1.5. Quorum. A majority of the shares entitled to vote, present in person or by remote communication, or represented by proxy, shall constitute a quorum at any meeting of stockholders. If less than a quorum is present at a meeting, the holders of voting stock representing a majority of the voting power present at the meeting or the presiding officer may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice, except as provided in Section 1.4. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 1.6. Voting and Proxies.

(a) Stockholders shall have one vote for each share of stock entitled to vote owned by them of record according to the stock ledger of the Corporation as of the record date, unless otherwise provided by law or by the Certificate. Stockholders may vote either (i) in person, (ii) by written proxy or (iii) by a transmission permitted by Section 212 of the DGCL. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission permitted by Section 212 of the DGCL may be substituted for or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. Proxies shall be filed in accordance with the procedures established for the meeting of stockholders. Except as otherwise limited therein or as otherwise provided by law, proxies authorizing a person to vote at a specific meeting shall entitle the persons authorized thereby to vote at any adjournment of such meeting, but they shall not be valid after final adjournment of such meeting. A proxy with respect to stock held in the name of two or more persons shall be valid if executed by or on behalf of any one of them unless at or prior to the exercise of the proxy the Corporation receives a specific written notice to the contrary from any one of them.

(b) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

Section 1.7. Action at Meeting. When a quorum is present at any meeting of stockholders, any matter before any such meeting (other than an election of a director or directors) shall be decided by a majority of the votes properly cast for and against such matter, except where a larger vote is required by law, by the Certificate or by these Bylaws. Any election of directors by stockholders shall be determined by a plurality of the votes properly cast on the election of directors.

Section 1.8. Stockholder Lists. The Secretary or an Assistant Secretary (or the Corporation's transfer agent or other person authorized by these Bylaws or by law) shall prepare and make, at least ten (10) days before every Annual Meeting or special meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for a period of ten (10) days, ending on the day before the meeting date, in the manner provided by law.

Section 1.9. Presiding Officer. The Board of Directors shall designate a representative to preside over all Annual Meetings or special meetings of stockholders; provided that if the Board of Directors does not so designate such a presiding officer, then the Chairperson of the Board of Directors (the "Chairperson of the Board"), if one is elected, shall preside over such meetings. If the Board of Directors does not so designate such a presiding officer and there is no Chairperson of the Board or the Chairperson of the Board is unable to so preside or is absent, then the Chief Executive Officer, if one is elected, shall preside over such meetings, provided further that if there is no Chief Executive Officer or the Chief Executive Officer is unable to so preside or is absent, then the President shall preside over such meetings. The presiding officer at any Annual Meeting or special meeting of stockholders shall have the power, among other things, to adjourn such meeting at any time and from time to time, subject to Sections 1.4 and 1.5 of this Article I. The order of business and all other matters of procedure at any meeting of the stockholders shall be determined by the presiding officer.

Section 1.10. Inspectors of Elections. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer shall appoint one or more inspectors to act at the meeting. Any inspector may, but need not, be an officer, employee or agent of the Corporation. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall perform such duties as are required by the DGCL, including the counting of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. The presiding officer may review all determinations made by the inspectors, and in so doing the presiding officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any determinations made by the inspectors. All determinations by the inspectors and, if applicable, the presiding officer, shall be subject to further review by any court of competent jurisdiction.

ARTICLE II  
Directors

Section 2.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided by the Certificate or required by law.

Section 2.2. Number and Terms. The number of directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The directors shall hold office in the manner provided in the Certificate.

Section 2.3. Qualification. No director need be a stockholder of the Corporation.

Section 2.4. Vacancies. Vacancies in the Board of Directors shall be filled in the manner provided in the Certificate.

Section 2.5. Removal. Directors may be removed from office only in the manner provided in the Certificate.

Section 2.6. Resignation. A director may resign at any time by giving written notice to the Chairperson of the Board, if one is elected, the President or the Secretary. A resignation shall be effective upon receipt, unless the resignation otherwise provides.

Section 2.7. Regular Meetings. The regular annual meeting of the Board of Directors may be held, without notice other than this Section 2.7, on the same date and at the same place as the Annual Meeting following the close of such meeting of stockholders. Other regular meetings of the Board of Directors may be held at such hour, date and place as the Board of Directors may by resolution from time to time determine and publicize by means of reasonable notice given to any director who is not present at the meeting at which such resolution is adopted.

Section 2.8. Special Meetings. Special meetings of the Board of Directors may be called, orally or in writing, by or at the request of a majority of the directors, the Chairperson of the Board, if one is elected, or the President or Chief Executive Officer. The person calling any such special meeting of the Board of Directors may fix the hour, date and place thereof.

Section 2.9. Notice of Meetings. Notice of the hour, date and place of all special meetings of the Board of Directors shall be given to each director by the Secretary or an Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the Chairperson of the Board, if one is elected, or the President, Chief Executive Officer or such other officer designated by the Chairperson of the Board, if one is elected, or the President or Chief Executive Officer. Notice of any special meeting of the Board of Directors shall be given to each director in person, by telephone, or by electronic mail or other form of electronic communication, sent to his or her business or home address, at least forty-eight (48) hours in advance of the meeting. Such notice shall be deemed to be delivered when hand-delivered to such address, read to such director by telephone, or dispatched or transmitted if sent by electronic mail or other form of electronic communications. A written waiver of notice signed before or after a meeting by a director and filed with the records of the meeting shall be deemed to be equivalent to notice of the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except

where a director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because such meeting is not lawfully called or convened. Except as otherwise required by law, by the Certificate or by these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 2.10. Quorum. At any meeting of the Board of Directors, a majority of the total number of directors shall constitute a quorum for the transaction of business, but if less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice. Any business which might have been transacted at the meeting as originally noticed may be transacted at such adjourned meeting at which a quorum is present. For purposes of this section, the total number of directors includes any unfilled vacancies on the Board of Directors.

Section 2.11. Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present shall constitute action by the Board of Directors, unless otherwise required by law, by the Certificate or by these Bylaws.

Section 2.12. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such consent shall be treated as a resolution of the Board of Directors for all purposes.

Section 2.13. Manner of Participation. Directors may participate in meetings of the Board of Directors by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for purposes of these Bylaws.

Section 2.14. Presiding Director. The Board of Directors shall designate a representative to preside over all meetings of the Board of Directors, provided that if the Board of Directors does not so designate such a presiding director or such designated presiding director is unable to so preside or is absent, then the Chairperson of the Board, if one is elected, shall preside over all meetings of the Board of Directors. If both the designated presiding director, if one is so designated, and the Chairperson of the Board, if one is elected, are unable to preside or are absent, the Board of Directors shall designate an alternate representative to preside over a meeting of the Board of Directors.

Section 2.15. Committees. The Board of Directors, by vote of a majority of the directors then in office, may elect one or more committees, including, without limitation, a Compensation Committee, a Nominating & Corporate Governance Committee and an Audit Committee, and may delegate thereto some or all of its powers except those which by law, by the Certificate or by these Bylaws may not be delegated. Except as the Board of Directors may otherwise determine, any such committee may make rules for the conduct of its business, but unless otherwise provided by

the Board of Directors or in such rules, its business shall be conducted so far as possible in the same manner as is provided by these Bylaws for the Board of Directors; provided that for the avoidance of doubt, any meeting of a committee of the Board shall follow the notice procedures set forth in Section 1.9. All members of such committees shall hold such offices at the pleasure of the Board of Directors. The Board of Directors may abolish any such committee at any time. Any committee to which the Board of Directors delegates any of its powers or duties shall keep records of its meetings and shall report its action to the Board of Directors.

Section 2.16. Compensation of Directors. Directors shall receive such compensation for their services as shall be determined by a majority of the Board of Directors, or a designated committee thereof, provided that directors who are serving the Corporation as employees and who receive compensation for their services as such, shall not receive any salary or other compensation for their services as directors of the Corporation.

### ARTICLE III Officers

Section 3.1. Enumeration. The officers of the Corporation shall consist of a President, a Treasurer, a Secretary and such other officers, including, without limitation, a Chairperson of the Board of Directors, a Chief Executive Officer and one or more Vice Presidents, Assistant Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board of Directors may determine.

Section 3.2. Election. The Board of Directors shall elect, from time to time at a regular or special meeting, the President, the Treasurer and the Secretary. Other officers may be elected by the Board of Directors at any regular or special meeting.

Section 3.3. Qualification. No officer need be a stockholder or a director. Any person may occupy more than one office of the Corporation at any time.

Section 3.4. Tenure. Except as otherwise provided by the Certificate or by these Bylaws, each of the officers of the Corporation shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 3.5. Resignation. Any officer may resign by delivering his or her written resignation to the Corporation addressed to the President or the Secretary, and such resignation shall be effective upon receipt, unless the resignation otherwise provides.

Section 3.6. Removal. Except as otherwise provided by law, the Board of Directors may remove any officer with or without cause by the affirmative vote of a majority of the directors then in office.

Section 3.7. Absence or Disability. In the event of the absence or disability of any officer, the Board of Directors may designate another officer to act temporarily in place of such absent or disabled officer.

Section 3.8. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.



Section 3.9. President. The President shall, subject to the direction of the Board of Directors, have such powers and shall perform such duties as the Board of Directors may from time to time designate.

Section 3.10. Chairperson of the Board. The Chairperson of the Board, if one is elected, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

Section 3.11. Chief Executive Officer. The Chief Executive Officer, if one is elected, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

Section 3.12. Vice Presidents and Assistant Vice Presidents. Any Vice President and any Assistant Vice President shall have such powers and shall perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 3.13. Treasurer and Assistant Treasurers. The Treasurer shall, subject to the direction of the Board of Directors and except as the Board of Directors or the Chief Executive Officer may otherwise provide, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. The Treasurer shall have custody of all funds, securities, and valuable documents of the Corporation. He or she shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 3.14. Secretary and Assistant Secretaries. The Secretary shall record all the proceedings of the meetings of the stockholders and the Board of Directors (including committees of the Board of Directors) in books kept for that purpose. In his or her absence from any such meeting, a temporary secretary chosen at the meeting shall record the proceedings thereof. The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary shall have authority to affix it to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or that of an Assistant Secretary. The Secretary shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. In the absence of the Secretary, any Assistant Secretary may perform his or her duties and responsibilities. Any Assistant Secretary shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 3.15. Other Powers and Duties. Subject to these Bylaws and to such limitations as the Board of Directors may from time to time prescribe, the officers of the Corporation shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time may be conferred by the Board of Directors or the Chief Executive Officer.

ARTICLE IV  
Capital Stock

Section 4.1. Certificates of Stock. Each stockholder shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by any two authorized officers of the Corporation. The Corporation's seal and the signatures by the Corporation's officers, the transfer agent or the registrar may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law. Notwithstanding anything to the contrary provided in these Bylaws, the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation), and by the approval and adoption of these Bylaws the Board of Directors has determined that all classes or series of the Corporation's stock may be uncertificated, whether upon original issuance, re-issuance, or subsequent transfer.

Section 4.2. Transfers. Subject to any restrictions on transfer and unless otherwise provided by the Board of Directors, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

Section 4.3. Record Holders. Except as may otherwise be required by law, by the Certificate or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

Section 4.4. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting and (b) in the case of any other

action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (ii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 4.5. Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock of the Corporation, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe.

ARTICLE V  
Indemnification

Section 5.1. Definitions. For purposes of this Article:

(a) “Corporate Status” describes the status of a person who is serving or has served (i) as a Director of the Corporation, (ii) as an Officer of the Corporation, (iii) as a Non-Officer Employee of the Corporation, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 5.1(a), a Director, Officer or Non-Officer Employee of the Corporation who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, “Corporate Status” shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person’s activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) “Director” means any person who serves or has served the Corporation as a director on the Board of Directors;

(c) “Disinterested Director” means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director of the Corporation who is not and was not a party to such Proceeding;

(d) “Expenses” means all attorneys’ fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

- (e) “Liabilities” means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;
- (f) “Non-Officer Employee” means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;
- (g) “Officer” means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors;
- (h) “Proceeding” means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitrative or investigative; and
- (i) “Subsidiary” shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

Section 5.2. Indemnification of Directors and Officers.

(a) Subject to the operation of Section 5.4 of these Bylaws, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), and to the extent authorized in this Section 5.2.

(1) Actions, Suits and Proceedings Other than By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director’s or Officer’s behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director’s or Officer’s Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(2) Actions, Suits and Proceedings By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director’s or Officer’s behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director’s or Officer’s Corporate Status, if such Director or Officer acted in good faith and

in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made under this Section 5.2(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery or another court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(3) Survival of Rights. The rights of indemnification provided by this Section 5.2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(4) Actions by Directors or Officers. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors of the Corporation, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these Bylaws in accordance with the provisions set forth herein.

Section 5.3. Indemnification of Non-Officer Employees. Subject to the operation of Section 5.4 of these Bylaws, each Non-Officer Employee may, in the discretion of the Board of Directors, be indemnified by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 5.3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors.

Section 5.4. Determination. Unless ordered by a court, no indemnification shall be provided pursuant to this Article V to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such

Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

Section 5.5. Advancement of Expenses to Directors Prior to Final Disposition.

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within thirty (30) days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses.

Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these Bylaws.

(b) If a claim for advancement of Expenses hereunder by a Director is not paid in full by the Corporation within thirty (30) days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such advancement of Expenses under this Article V shall not be a defense to an action brought by a Director for recovery of the unpaid amount of an advancement claim and shall not create a presumption that such advancement is not permissible. The burden of proving that a Director is not entitled to an advancement of expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of Expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such Expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in the DGCL.

Section 5.6. Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition.

(a) The Corporation may, at the discretion of the Board of Directors, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any

Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in the DGCL.

Section 5.7. Contractual Nature of Rights.

(a) The provisions of this Article V shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article V is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal or modification of any provision of this Article V nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Article V shall eliminate or reduce any right conferred by this Article V in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article V shall continue notwithstanding that the person has ceased to be a Director or Officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(b) If a claim for indemnification hereunder by a Director or Officer is not paid in full by the Corporation within sixty (60) days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article V shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in the DGCL.

Section 5.8. Non-Exclusivity of Rights. The rights to indemnification and to advancement of Expenses set forth in this Article V shall not be exclusive of any other right which any Director, Officer, or Non-Officer Employee may have or hereafter acquire under any statute, provision of

the Certificate or these Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise.

Section 5.9. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL or the provisions of this Article V.

Section 5.10. Other Indemnification. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article V as a result of such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "Primary Indemnitor"). Any indemnification or advancement of Expenses under this Article V owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

## ARTICLE VI Miscellaneous Provisions

Section 6.1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 6.2. Seal. The Board of Directors shall have power to adopt and alter the seal of the Corporation.

Section 6.3. Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations to be entered into by the Corporation in the ordinary course of its business without director action may be executed on behalf of the Corporation by the Chairperson of the Board, if one is elected, the Chief Executive Officer, the President or the Treasurer or any other officer, employee or agent of the Corporation as the Board of Directors or a committee of the Board of Directors may authorize.

Section 6.4. Voting of Securities. Unless the Board of Directors otherwise provides, the Chairperson of the Board, if one is elected, the Chief Executive Officer, the President or the Treasurer may waive notice of and act on behalf of the Corporation, or appoint another person or persons to act as proxy or attorney in fact for the Corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by the Corporation.

Section 6.5. Resident Agent. The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the Corporation.



Section 6.6. Corporate Records. The original or attested copies of the Certificate, Bylaws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock transfer books, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, may be kept outside the State of Delaware and shall be kept at the principal office of the Corporation, at an office of its counsel, at an office of its transfer agent or at such other place or places as may be designated from time to time by the Board of Directors.

Section 6.7. Certificate. All references in these Bylaws to the Certificate shall be deemed to refer to the Fourth Amended and Restated Certificate of Incorporation of the Corporation, as amended and/or restated and in effect from time to time.

Section 6.8. Exclusive Jurisdiction of Delaware Courts. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the United States District Court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, the Certificate or the Bylaws or (iv) any action asserting a claim governed by the internal affairs doctrine, except, in each case, any claim (A) as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within ten (10) days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than such court, or (C) for which such court does not have subject matter jurisdiction, provided that, for the avoidance of doubt, nothing in this Section 6.8 shall preclude the filing of claims in the federal district courts of the United States of America under the Securities Act of 1933, as amended, or any successor thereto or under the Exchange Act, or any successor thereto. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 6.8.

Section 6.9. Amendment of Bylaws.

(a) Amendment by Directors. Except as provided otherwise by law, these Bylaws may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the directors then in office.

(b) Amendment by Stockholders. These Bylaws may be amended or repealed at any Annual Meeting, or special meeting of stockholders called for such purpose in accordance with these Bylaws, by the affirmative vote of at least sixty-six and two thirds percent (66 2/3%) of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class. Notwithstanding the foregoing, stockholder approval shall not be required unless mandated by the Certificate, these Bylaws, or other applicable law.

Section 6.10. Notices. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 6.11. Waivers. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in such a waiver.

TELA Bio, Inc.

## EQUITY DISTRIBUTION AGREEMENT

November 13, 2023

PIPER SANDLER & CO.  
U.S. Bancorp Center  
800 Nicollet Mall  
Minneapolis, Minnesota 55402

Ladies and Gentlemen:

As further set forth in this agreement (this “**Agreement**”), TELA Bio, Inc., a company organized under the laws of the State of Delaware (the “**Company**”), proposes to issue and sell from time to time through Piper Sandler & Co. (the “**Agent**”), as sales agent, shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**” and, such shares of Common Stock to be sold pursuant to this Agreement, the “**Shares**”) on terms set forth herein. Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitation set forth in Section 2 of this Agreement on the number of shares of Shares issued and sold under this Agreement shall be the sole responsibility of the Company, and the Agent shall have no obligation in connection with such compliance.

The Company hereby confirms its agreement with the Agent with respect to the sale of the Shares.

**1. Representations and Warranties of the Company.**

The Company represents and warrants to, and agrees with, the Agent that as of the date of this Agreement, each Representation Date (as defined in Section 3(o) below), each date on which a Placement Notice (as defined in Section 2(a)(i) below) is given (each, a “**Notice Date**”), each date on which Shares are sold hereunder (each, an “**Applicable Time**”), and each Settlement Date (as defined in Section 2(a)(vii) below) as follows:

(i) **Registration Statement and Prospectus.** The Company has filed, or will file, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the “**Securities Act**”), with the Securities and Exchange Commission (the “**Commission**”) a registration statement on Form S-3, including a base prospectus, relating to certain securities, including the Common Stock, to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the “**Exchange Act**”). The Company has prepared or will prepare a prospectus included as part of such registration statement or a prospectus supplement deemed part of or included in such registration statement specifically relating to the Shares (the “**Sales Prospectus**”). The Company has furnished, or will furnish, to the Agent, for use by the Agent, copies of the Sales Prospectus included as part of such registration

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statement, as supplemented by any applicable prospectus supplement, relating to the Shares. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and a Sales Prospectus with respect to the Shares, *provided*, that Agent is provided with a reasonable opportunity to review any such registration statement. Except where the context otherwise requires, such registration statement, as amended when it becomes effective, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below), subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B or 462(b) of the Securities Act, is herein called the “**Registration Statement**.” The Sales Prospectus, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by any prospectus supplement, in the form in which such Sales Prospectus, as supplemented by any prospectus supplement, if applicable, has most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any “**issuer free writing prospectus**,” as defined in Rule 433 of the Securities Act (“**Rule 433**”), relating to the Shares, if any, that (i) is required to be filed with the Commission by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i), in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g), is herein called the “**Prospectus**.” Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein.

For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant the Electronic Data Gathering Analysis and Retrieval System (“**EDGAR**”).

(ii) *Continuing Effectiveness of Registration Statement.* The Registration Statement and any Rule 462(b) Registration Statement has been, or will be, declared effective by the Commission under the Securities Act. The Company has complied, or will comply, to the Commission’s satisfaction, with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated or threatened by the Commission. The documents incorporated by reference in the Registration Statement and the Prospectus, at the time they were or hereafter are filed with the Commission, or became effective under the Exchange Act, as the case may be, complied or will comply, as applicable, in all material respects with the requirements of the Exchange Act at such time. At the time the Company’s Annual Report on Form 10-K for the year ended December 31, 2022 (the “Annual Report”) was filed with the Commission, or, if later, at the time the Registration Statement was originally filed with the Commission, the Company met the then-applicable

requirements for use of Form S-3 under the Securities Act. The sale of the Shares hereunder meets the requirements of General Instruction I.B.1. or I.B.6 of Form S-3.

(iii) *No Material Misstatements or Omissions.* The Prospectus when filed complied, and as amended or supplemented, if applicable, will comply in all material respects with the Securities Act. Each of the Registration Statement, any Rule 462(b) Registration Statement, the Prospectus and any post-effective amendments or supplements thereto, at the time it became effective or its date, as applicable, and as of each Settlement Date (as defined in Section 2(a)(vii) below), complied in all material respects with the Securities Act, and as of each effective date and each Settlement Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus as amended or supplemented as of its date, did not, and as of each Settlement Date, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with written information relating to the Agent furnished to the Company in writing by the Agent expressly for use therein, it being understood and agreed that the only such information consists of the information described in Section 5(b) below, unless otherwise agreed to by the Company and the Agent. There are no contracts or other documents required to be described in the Prospectus or to be filed as an exhibit to the Registration Statement which have not been described or filed as required.

(iv) *Eligible Issuer.* The Company is not an “ineligible issuer” (as defined in Rule 405 under the Securities Act) as of the eligibility determination date for purposes of Rules 164 and 433 under the Securities Act with respect to the offering of the Shares contemplated by the Registration Statement; the parties hereto agree and understand that the content of any and all “road shows” (as defined in Rule 433 under the Securities Act) related to the offering of the Shares contemplated hereby is solely the property of the Company.

(v) *Distribution of Offering Material By the Company.* The Company has not distributed and prior to any Settlement Date, will not distribute any offering material in connection with any Placement (as defined in Section 2(a)(i) below), other than any preliminary prospectus, the Prospectus, and any Permitted Free Writing Prospectus (as defined in Section 2(n) below) to which the Agent has consented.

(vi) *The Equity Distribution Agreement.* This Agreement has been duly authorized, executed and delivered by the Company.

(vii) *Authorization of the Shares.* The Shares have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company to the Agent against payment therefor pursuant to this Agreement, will be

validly issued, fully paid and not subject to calls for any additional payments (nonassessable), and the issuance and sale of the Shares is not subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase the Shares.

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

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

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

(xi) *Financial Statements.* The financial statements filed with the Commission as a part of the Registration Statement and the Prospectus present fairly, in all material respects, the consolidated financial position of the Company and its subsidiaries

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

(xii) *Company's Accounting System.* The Company and each of its subsidiaries make and keep books and records that are accurate in all material respects and maintain a system of internal accounting controls designed to, and which the Company believes is sufficient to, provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (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 existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xiii) *Disclosure Controls and Procedures; Deficiencies in or Changes to Internal Control Over Financial Reporting.* The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities; and (ii) are effective in all material respects to perform the functions for which they were established. Since the end of the Company's most recent audited fiscal year, other than as set forth or incorporated by reference in the Registration Statement and Prospectus, there have been no significant deficiencies or material weakness in the Company's internal control over financial reporting (whether or not remediated) and there has been no change in the Company's internal control over financial reporting that has materially affected, or

is reasonably likely to materially affect, the Company's internal control over financial reporting. Other than as set forth or incorporated by reference in the Registration Statement and Prospectus, the Company is not aware of any change in its internal control over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

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

(xv) *Subsidiaries.* Each of the Company's "subsidiaries" (for purposes of this Agreement, as defined in Rule 405 under the Securities Act) has been duly incorporated or organized, as the case may be, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and has the power and authority (corporate or other) to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus. Each of the Company's subsidiaries is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. All of the issued and outstanding capital stock or other equity or ownership interests of each of the Company's subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable (or equivalent in the applicable jurisdiction of the organization) and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or adverse claim. None of the outstanding capital stock or equity interest in any subsidiary was issued in violation of preemptive or similar rights of any security holder of such subsidiary. The constitutive or organizational documents of each of the subsidiaries comply in all material respects with the requirements of applicable laws of its jurisdiction of incorporation or organization and are in full force and effect. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21 to the Company's most recent Annual Report on Form 10-K, or as otherwise disclosed to the Agent.

(xvi) *Capitalization and Other Capital Stock Matters.* The Company has an authorized capitalization as set forth in the Registration Statement and the



Prospectus under the caption “Description of Capital Stock”. The Shares conform in all material respects to the description thereof contained in the Registration Statement and the Prospectus. All of the issued and outstanding Shares have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with all federal and state securities laws. None of the outstanding Shares was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in the Registration Statement and the Prospectus. The descriptions of the Company’s stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement and the Prospectus accurately and fairly present, in all material respects, the information required to be shown with respect to such plans, arrangements, options and rights.

(xvii) *Stock Exchange Listing.* The Shares are registered pursuant to Section 12(b) or 12(g) of the Exchange Act and are listed on The Nasdaq Global Market (“*Nasdaq*”). To the Company’s knowledge, it is in material compliance with all applicable listing requirements of the Nasdaq.

(xviii) *Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.* Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, or is in default (or, with the giving of notice or lapse of time, would be in default) (“*Default*”) under any indenture, loan, credit agreement, note, lease, license agreement, contract, franchise or other instrument (including, without limitation, any pledge agreement, security agreement, mortgage or other instrument or agreement evidencing, guaranteeing, securing or relating to indebtedness) to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of their respective properties or assets are subject (each, an “*Existing Instrument*”), except for such Defaults as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. The Company’s execution, delivery and performance of this Agreement, consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus and the issuance and sale of the Shares (including the use of proceeds from the sale of the Shares as described in the Registration Statement and the Prospectus under the caption “Use of Proceeds”) (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, of the Company or any subsidiary (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any of its subsidiaries, except in the case of clauses (ii) and (iii) as would not reasonably be expected,

individually or in the aggregate, to result in a Material Adverse Change. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act and such as may be required under applicable state securities or blue sky laws or the Financial Industry Regulatory Authority, Inc. ("**FINRA**"). As used herein, a "**Debt Repayment Triggering Event**" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

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

(xx) *No Material Actions or Proceedings.* There is no action, suit, proceeding, inquiry or investigation brought by or before any legal or governmental entity now pending or, to the knowledge of the Company, threatened, against the Company or any of its subsidiaries, which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change or materially and adversely affect the consummation of the transactions contemplated by this Agreement or the performance by the Company of its obligations hereunder. No material labor dispute with the employees of the Company or any of its subsidiaries, or with the employees of any principal supplier, manufacturer, customer or contractor of the Company, exists or, to the knowledge of the Company, is threatened or imminent, which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

(xxi) *Sarbanes-Oxley Compliance.* There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith that are applicable to the Company or its directors or officers in their capacities as directors or officers of the Company.

(xxii) *Intellectual Property Rights.* The Company and its subsidiaries own, or have obtained valid and enforceable licenses for, the inventions, patent applications, patents, trademarks, trade names, service names, copyrights, trade secrets and other intellectual property described in the Registration Statement and the Prospectus as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as currently proposed to be conducted (collectively, "**Intellectual Property**"), and the conduct of their respective businesses does not and will not infringe, misappropriate or otherwise conflict with any such rights of others, in each case in any material respect. Except as otherwise disclosed in the Registration Statement

or the Prospectus, to the Company's knowledge, none of the Intellectual Property of the Company has been adjudged by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part. To the Company's knowledge: (i) there are no third parties who have rights to any Intellectual Property, except for customary reversionary rights of third-party licensors with respect to Intellectual Property that is disclosed in the Registration Statement and the Prospectus as licensed to the Company or one or more of its subsidiaries, and the Company has not granted any material liens, security interests, or encumbrances on or with respect to such Intellectual Property except as otherwise disclosed in the Registration Statement or the Prospectus; (ii) there is no infringement, misappropriation or dilution by third parties of any Intellectual Property; (iii) the Company is not infringing, misappropriating, diluting or otherwise violating the intellectual property rights of third parties, in any respect which would reasonably be expected to result in a Material Adverse Change; (iv) neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to result in a Material Adverse Change; (v) the Company is the owner or co-owner of the Intellectual Property owned by it and has the valid right to use the Intellectual Property; (vi) there are no material defects in any of the patents or patent applications included in the Intellectual Property; (vii) the duties of candor and good faith required by the U.S. Patent and Trademark Office ("**USPTO**") during the prosecution of the United States patents and patent applications included in the Intellectual Property have been complied with, and all such requirements in foreign offices having similar requirements applicable to the Company and its subsidiaries have been complied with; (viii) the Company and its subsidiaries have taken all reasonable steps to protect, maintain and safeguard their Intellectual Property, and (iv) no employee of the Company is in or has been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others: (A) challenging the Company's rights in or to any Intellectual Property; (B) challenging the validity, enforceability or scope of any Intellectual Property; or (C) asserting that the Company or any of its subsidiaries infringes or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement or the Prospectus as under development, infringe or violate, any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others. Other than as disclosed in the Registration Statement and the Prospectus, neither the Company nor its subsidiaries is obligated to pay a material royalty, grant a license or option, or provide other material consideration to any third party in connection with the Company's Intellectual Property. The Company and its subsidiaries have complied in all material respects with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any subsidiary, and all such agreements are in full force and effect. All patents and patent applications owned by or exclusively licensed to the Company or any of its affiliates or under which the Company or any of its affiliates has rights have, to the knowledge of the Company, been duly and properly filed and each issued patent is being diligently maintained; to the knowledge of

the Company, the parties prosecuting such applications have complied with their duty of disclosure to the USPTO. To the Company's knowledge, there are no material defects in any of the patents or patent applications owned by, or exclusively licensed to the Company or its subsidiaries and there are no facts required to be disclosed to the USPTO that were not disclosed to the USPTO and which would preclude the grant of a patent in connection with any such application. The products described in the Registration Statement and the Prospectus as under development by the Company or any subsidiary fall within the scope of the claims of one or more patents or patent applications owned by, or exclusively licensed to, the Company or any subsidiary.

(xxiii) *Regulatory Matters; Products and Product Candidates.* Except as described in the Registration Statement and the Prospectus, the Company: (i) has operated and currently operates its business in compliance with applicable provisions of the Health Care Laws (as defined below), except where failure to be so in compliance would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change; (ii) has not received any FDA Form 483, written notice of adverse finding, warning letter, untitled letter or other correspondence or written notice from any court or arbitrator or governmental or regulatory authority alleging or asserting non-compliance with (A) any Health Care Laws or (B) any Permits (as hereinafter defined) required by any such Health Care Laws ("**Regulatory Authorizations**"); (iii) possesses all Regulatory Authorizations required to conduct its business as currently conducted and such Regulatory Authorizations are valid and in full force and effect and the Company is not in violation, in any material respect, of any term of any such Regulatory Authorizations; (iv) has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from the Food and Drug Administration ("**FDA**"), the Department of Health and Human Services ("**HHS**") and any comparable foreign or other regulatory authority to which it is subject (collectively, the "**Applicable Regulatory Authorities**") or any other third party alleging that any product operation or activity is in material violation of any Health Care Laws or Regulatory Authorizations and has no knowledge that the Applicable Regulatory Authorities or any other third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (v) has not received notice that any of the Applicable Regulatory Authorities has taken, is taking or intends to take action to limit, suspend, modify or revoke any material Regulatory Authorizations and has no knowledge that any of the Applicable Regulatory Authorities is considering such action; (vi) except as would not reasonably be expected to result in a Material Adverse Change, has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Health Care Laws or Regulatory Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were materially corrected or supplemented by a subsequent submission); (vii) is not a party to or have any ongoing reporting obligations pursuant to any corporate integrity agreements, deferred prosecution agreements, monitoring agreements, consent decrees, settlement orders, plans of correction or similar agreements with or imposed by any Applicable Regulatory Authority; and (viii) has not been, and its employees, officers, directors, and, to the Company's knowledge, agents, have not been, excluded, suspended, debarred or is otherwise ineligible from participation in any government health care

program or human clinical research or, to the knowledge of the Company, is subject to a governmental inquiry, investigation, proceeding, or other similar action that would reasonably be expected to result in debarment, suspension, exclusion or other ineligibility.

(xxiv) The term “**Health Care Laws**” means Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh (the Medicare statute); Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the civil False Claims Act, 31 U.S.C. §§ 3729 et seq.; the criminal False Claims Act 42 U.S.C. 1320a-7b(a); any criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287 and the health care fraud criminal provisions under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d et seq., (“**HIPAA**”); the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Physician Payments Sunshine Act, 42 U.S.C. § 1320a-7h; the Exclusion Law, 42 U.S.C. § 1320a-7; HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, 42 U.S.C. §§ 17921 et seq.; the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq.; the Public Health Service Act, 42 U.S.C. §§ 201 et seq.; the regulations promulgated pursuant to such laws; and any similar federal, state and local laws and regulations.

(xxv) *Regulatory Matters: Manufacturing.* To the Company’s knowledge, after due inquiry, the manufacturing facilities and operations of the Company’s suppliers have (at all times that the Company has been doing business with them) been and are being operated in compliance in all material respects with all applicable statutes, rules, regulations and policies of the Applicable Regulatory Authorities.

(xxvi) *Regulatory Matters: Clinical Trials.* All clinical and pre-clinical studies and trials conducted by or on behalf of or sponsored by the Company, or in which the Company has participated, with respect to the Company’s products and product candidates, including any such studies and trials that are described in the Registration Statement and the Prospectus, or the results of which are referred to in the Registration Statement and the Prospectus, as applicable (collectively, “**Company Trials**”), were, and if still pending are, being conducted in all material respects in accordance with all applicable Health Care Laws, including, without limitation, Good Clinical Practices and Good Laboratory Practices, standard medical and scientific research procedures and any applicable rules, regulations and policies of the jurisdiction in which such trials and studies are being conducted; the descriptions in the Registration Statement and the Prospectus of the results of any Company Trials are accurate and complete descriptions in all material respects and fairly present the data derived therefrom; the Company has no knowledge of any other studies or trials not described in the Registration Statement and the Prospectus, the results of which are inconsistent with or call into question the results described or referred to in the Registration Statement and the Prospectus; the Company has not received, nor does the Company have knowledge after due inquiry that any of its collaboration partners have received any written notices, correspondence or other communications from the Applicable Regulatory Authorities or any other Governmental Entity requiring or threatening the termination, material modification or suspension of Company Trials, other than ordinary course communications with respect to modifications in connection with the design and implementation of such studies or trials. No investigational device exemption

or comparable submission filed by or on behalf of the Company with the FDA has been terminated or suspended by the FDA or any other Applicable Regulatory Authority. To the Company's knowledge, none of the Company Trials involved any investigator who has been disqualified as a clinical investigator or has been found by the FDA to have engaged in scientific misconduct.

(xxvii) *Safety Notices.* Except as described in the Registration Statement and the Prospectus, (i) there have been no recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear doctor" letters, investigator notices, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the Company's products ("Safety Notices"), and (ii) to the Company's knowledge, there are no facts that would be reasonably likely to result in (x) a Safety Notice with respect to the Company's products, (y) a material change in labeling of any of the Company's products, or (z) a termination or suspension of marketing or testing of any of the Company's products, except, in each of cases (x), (y) or (z) such as would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Change.

(xxviii) *All Necessary Permits, etc.* The Company and its subsidiaries possess such valid and current material certificates, authorizations, exemptions, registrations, listings, clearances, approvals, consents or permits required by state, federal or foreign regulatory agencies or bodies to conduct their respective businesses as currently conducted and as described in the Registration Statement or the Prospectus ("**Permits**"), except where the failure to so possess would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. Neither the Company nor any of its subsidiaries is in violation of, or in default under, any of the Permits or has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such Permit, except as would not reasonably be expected to result in a Material Adverse Change.

(xxix) *Title to Properties.* Neither the Company nor any of the subsidiaries owns any real property. The Company and its subsidiaries have good and marketable title to all of the personal property and other assets reflected as owned in the financial statements referred to in Section 1(vi) above (or elsewhere in the Registration Statement or the Prospectus), in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, adverse claims and other defects, except as disclosed in the Registration Statement and the Prospectus or as would not reasonably be expected, individually or in the aggregate, to materially affect the value of such property or materially interfere with the use thereof. The real property, improvements, equipment and personal property held under lease by the Company or any of its subsidiaries are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary.

(xxx) *Tax Law Compliance.* Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change, the Company and its subsidiaries have filed all federal, state, local and foreign tax returns

required to be filed through the date hereof or have properly requested extensions thereof, and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them, other than such taxes, assessments, fines or penalties being contested in good faith and by appropriate proceedings. The Company has made adequate charges, accruals and reserves (in conformity with GAAP) in the applicable financial statements referred to in Section 1(xi) above in respect of all federal, state, local and foreign taxes for all periods as to which the tax liability of the Company or any of its subsidiaries has not been finally determined, except to the extent of any inadequacy that would not reasonably be expected to result in a Material Adverse Change.

(xxxii) *Insurance.* Each of the Company and its subsidiaries are insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as the Company reasonably believes are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes and policies covering the Company and its subsidiaries for product liability claims and clinical trial liability claims. The Company has no reason to believe that it or any of its subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not be reasonably expected to result in a Material Adverse Change. Neither the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(xxxiii) *Compliance with Environmental Laws.* Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change: (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or, to the Company's knowledge, threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"); (ii) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements; and (iii) there are no pending or, to the Company's knowledge, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries.

(xxxiii) *ERISA Compliance.* The Company and its subsidiaries and any “employee benefit plan” (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, “**ERISA**”)) established or maintained by the Company, its subsidiaries or their “ERISA Affiliates” (as defined below) are in compliance in all material respects with ERISA. “**ERISA Affiliate**” means, with respect to the Company or any of its subsidiaries, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the “**Code**”) of which the Company or such subsidiary is a member. No “reportable event” (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates.

No “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such “employee benefit plan” were terminated, would have any “amount of unfunded benefit liabilities” (as defined under ERISA). Neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “employee benefit plan” or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each employee benefit plan established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and, to the Company’s knowledge, nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification.

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

(xxxv) *No Price Stabilization or Manipulation; Compliance with Regulation M.* Neither the Company nor any of its subsidiaries has taken, directly or indirectly, any action designed to or that would reasonably be expected to cause or result in stabilization or manipulation of the price of the Shares or of any “reference security” (as defined in Rule 100 of Regulation M under the Exchange Act (“**Regulation M**”)) with respect to the Shares, whether to facilitate the sale or resale of the Shares or otherwise, and has taken no action which will directly or indirectly violate Regulation M.

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

(xxxvii) *FINRA Matters.* All of the information provided to the Agent or to counsel for the Agent by the Company, its counsel, its officers and directors and, to the Company’s knowledge, the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Shares is true,



complete, correct and compliant in all material respects with FINRA's rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules is true, complete and correct.

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

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

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

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

arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xlii) *Sanctions.* Neither the Company nor any of its subsidiaries nor to the knowledge of the Company, after due inquiry, any directors, officers, or employees, nor, any agent, controlled affiliate or other person acting on behalf of the Company or any of its subsidiaries is currently the subject or, to the Company's knowledge, after due inquiry, the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("*OFAC*") or the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority (collectively, "*Sanctions*"); nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or, to the Company's knowledge, after due inquiry, the target of Sanctions, including, without limitation, Cuba, Iran, North Korea, Syria, the Crimea, Zaporizhzhia and Kherson, Regions of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk, People's Republic until such time such country or territory is no longer the subject or the target of Sanctions (each, a "*Sanctioned Country*"); and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that at the time of such financing, is the subject or the target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of applicable Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that, at the time of the dealing or transaction, is or was the subject or the target of Sanctions or with any Sanctioned Country.

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

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

(xlv) *No Outstanding Loans or Other Extensions of Credit.* The Company does not have any outstanding extension of credit, in the form of a personal loan, to or for any director or executive officer (or equivalent thereof) of the Company except

for such extensions of credit as are expressly permitted by Section 13(k) of the Exchange Act.

(xlvi) *Cybersecurity.* The Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, except as would not reasonably be expected to result in a Material Adverse Change. The Company and its subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses, except where the failure to so implement and maintain would not reasonably be expected to result in a Material Adverse Change. "**Personal Data**" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by the European Union General Data Protection Regulation (the "**GDPR**"); (iv) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA**"); and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. There have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification, except as would not reasonably be expected to result in a Material Adverse Change.

(xlvii) *Compliance with Data Privacy Laws.* The Company's and its subsidiaries' business practice have been structured in a manner reasonably designed to comply with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, and the Company and its subsidiaries have taken commercially reasonable actions to prepare to comply with, and since May 25, 2018, have been and currently are in compliance with, the GDPR (EU 2016/679) (collectively, the "**Privacy Laws**"), except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. To ensure compliance with

the Privacy Laws, the Company and its subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the “**Policies**”). The Company and its subsidiaries have at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. The Company further certifies that neither it nor any subsidiary: (i) has received notice asserting a violation by the Company or any of its subsidiaries of any of the Privacy Laws; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any material order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(xlvi) *Emerging Growth Company Status.* From the time of initial filing of the Registration Statement to the Commission through the date hereof, the Company has been and is an “**emerging growth company**,” as defined in Section 2(a) of the Securities Act.

(xlix) *Absence of Settlement Agreements or Undertakings.* Except as disclosed in the Registration Statement and the Prospectus, the Company is not a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any governmental authority.

(l) *No Integration.* The Company has not sold or issued any securities that would be integrated with the offering of the Shares contemplated by this Agreement pursuant to the Securities Act or the interpretations thereof by the Commission.

(li) *No Taxes or Fees Due Upon Issuance.* No stamp, issue, registration, documentary, transfer or other similar taxes and duties, including interest and penalties, are payable on or in connection with the issuance and sale of the Shares by the Company or the execution and delivery of this Agreement.

(lii) *No Legal, Accounting or Tax Advice.* The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Shares.

(liii) *Certificate as Representation and Warranty.* Any certificate signed by any officer of the Company and delivered to the Agent or the Agent’s counsel in connection with the offering of the Shares shall be deemed a representation and warranty by the Company to the Agent as to the matters covered thereby.

(liv) *No Contract Terminations.* Neither the Company nor any of its subsidiaries has sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in any preliminary

prospectus, the Prospectus or any free writing prospectus, or referred to or described in, or filed as an exhibit to, the Registration Statement, or any document incorporated by reference therein and no such termination or non-renewal has been threatened by the Company or any of its subsidiaries or, to the Company's knowledge, any other party to any such contract or agreement, which threat of termination or non-renewal has not been rescinded as of the date hereof.

(lv) *No Indebtedness.* Except as otherwise disclosed in the Registration Statement and the Prospectus, the Company has no outstanding indebtedness for borrowed money.

The Company has a reasonable basis for making each of the representations set forth in this Section 1. The Company acknowledges that the Agent and, for purposes of the opinions to be delivered pursuant to Sections 3 and 4 hereof, counsel to the Company and counsel to the Agent will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

## **2. Purchase, Sale and Delivery of Shares.**

(a) *At-the-Market Sales.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell through the Agent as sales agent, and the Agent agrees to use its commercially reasonable efforts to sell for and on behalf of the Company, the Shares on the following terms and conditions; *provided, however*, that any obligation of the Agent to use such commercially reasonable efforts shall be subject to the continuing accuracy of the representations and warranties of the Company herein, the performance by the Company of its covenants and obligations hereunder and the continuing satisfaction of the additional conditions specified in Section 4 of this Agreement. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Shares, and (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Shares as required under this Section 2.

(i) Each time that the Company wishes to issue and sell the Shares hereunder (each, a "**Placement**"), it will notify the Agent by email notice (or other method mutually agreed to in writing by the parties) (a "**Placement Notice**") containing the parameters in accordance with which it desires the Shares to be sold, which shall at a minimum include the number of shares of Shares to be issued, the time period during which sales are requested to be made, any limitation on the number of Shares that may be sold in any one Trading Day (as defined below) and any minimum price below which sales may not be made, a form of which containing such minimum sales parameters necessary is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 2 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Agent set forth on Schedule 2, as such Schedule 2 may be amended from time to time. The Placement Notice shall be effective upon receipt by the Agent unless and until (i) in accordance with the notice requirements set forth in Section 2(a)(iii)

of this Agreement, the Agent declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Shares subject to the Placement Notice or set forth in the Sales Prospectus have been sold, (iii) the Company suspends or terminates the Placement Notice in accordance with the notice requirements set forth in Section 2(a)(iii) below, (iv) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice, or (v) this Agreement has been terminated under the provisions of Section 7. The amount of any commission or other compensation to be paid by the Company to the Agent in connection with the sale of the Shares shall be calculated in accordance with the terms set forth in Section 2(a)(v) below. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of the Placement Notice, the terms of the Placement Notice will control. For the purposes hereof, “**Trading Day**” means any day on which the Company’s Common Stock is purchased and sold on the principal market on which the Common Stock is listed or quoted.

(ii) The Shares are to be sold by the Agent on a daily basis or otherwise as shall be agreed to by the Company and the Agent on any day that is a Trading Day for the Nasdaq (other than a day on which the Nasdaq is scheduled to close prior to its regular weekday closing time). The gross sales price of the Shares sold under this Section 2(a) shall be the market price for the Company’s Common Stock sold by the Agent under this Section 2(a) at the time of such sale.

(iii) Notwithstanding the foregoing, the Company may instruct the Agent by telephone (confirmed promptly by email) not to sell the Shares if such sales cannot be effected at or above the price designated by the Company in any such instruction. Furthermore, the Company shall not authorize the issuance and sale of, and the Agent shall not be obligated to use its commercially reasonable efforts to sell, any Share at a price lower than the minimum price therefor designated from time to time by the Company’s Board of Directors and notified to the Agent in writing. In addition, the Company or the Agent may, upon notice to the other party hereto by telephone (confirmed promptly by email), suspend the offering of the Shares, whereupon the Agent shall so suspend the offering of Shares until further notice is provided to the other party to the contrary; *provided, however*, that such suspension or termination shall not affect or impair the parties’ respective obligations with respect to the Shares sold hereunder prior to the giving of such notice. Notwithstanding any other provision of this Agreement, during any period in which the Company is in possession of material non-public information, the Company and the Agent agree that (i) no sale of Shares will take place, (ii) the Company shall not request the sale of any Shares, and (iii) the Agent shall not be obligated to sell or offer to sell any Shares.

(iv) Subject to the terms of the Placement Notice, the Agent may sell the Shares by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act, including sales made directly on or

through Nasdaq. Subject to the terms of any Placement Notice, the Agent may also sell Shares in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices and/or any other method permitted by law, subject to the prior written consent of the Company.

(v) The compensation to the Agent for sales of the Shares, as an agent of the Company, shall be up to 3.0% of the gross sales price of the Shares sold pursuant to this Section 2(a), payable in cash (the “**Sales Commission**”); *provided* that the combined Sales Commission and reimbursement of the Agent for its out-of-pocket expenses pursuant to Section 3(g), including the reasonable and documented fees and disbursements of the Agent’s counsel, shall not exceed 8.0% of the gross sales price of the Shares. The remaining proceeds, after further deduction for any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales, and reimbursement of expenses that the Agent may be entitled to pursuant to Section 3(g), shall constitute the net proceeds to the Company for such Shares (the “**Net Proceeds**”).

(vi) The Agent will provide written confirmation to the Company (including by email correspondence to each of the individuals of the Company set forth on Schedule 2), no later than the opening of the Trading Day immediately following the Trading Day on which it has made sales of Shares hereunder, setting forth the number of Shares sold on such day, the volume-weighted average price of the Shares sold, and the Net Proceeds payable to the Company.

(vii) All Shares sold pursuant to this Section 2(a) will be delivered by the Company to the Agent for the account of the Agent, against payment of the Net Proceeds therefor, by wire transfer of same-day funds payable to the order of the Company at the offices of Piper Sandler & Co., U.S. Bancorp Center, 800 Nicollet Mall, Minneapolis, Minnesota, or such other location as may be mutually acceptable, at 9:00 a.m. Central Time on the second full business day following the date on which such Shares are sold, or at such other time and date as the Agent and the Company determine pursuant to Rule 15c6-1(a) under the Exchange Act, each such time and date of delivery being herein referred to as a “**Settlement Date**.” If the Agent so elects, delivery of the Shares may be made by credit through full fast transfer to an account or accounts at The Depository Trust Company designated by the Agent. On each Settlement Date, the Agent will deliver the Net Proceeds in same day funds to an account designated by the Company on, or prior to, such Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to timely deliver duly authorized Shares on a Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 5 hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company, (ii) reimburse the Agent for any losses incurred by the Agent attributable, directly or indirectly, to such default and (iii) pay to the Agent any commission or other compensation to which the Agent would otherwise have been entitled absent such default.

(b) *Maximum Amount.* Under no circumstances shall the aggregate number or aggregate value of the Shares sold pursuant to this Agreement exceed: (i) the aggregate number

and aggregate dollar amount of shares of Common Stock available for issuance and sale under the currently effective Registration Statement (including any limit set forth in General Instruction I.B.6 thereof, if applicable), (ii) the aggregate number of authorized but unissued shares of Common Stock that are available for issuance under the Company's certificate of incorporation or certificate of designation or (iii) the aggregate number or aggregate dollar amount of shares of Common Stock for which the Company has filed any Prospectus in connection with the Shares (the lesser of (i), (ii) and (iii), the "**Maximum Amount**").

(c) *No Association or Partnership.* Nothing herein contained shall constitute the Agent as an unincorporated association or partner with the Company.

(d) [Reserved.]

(e) *Market Transactions by Agent.* The Company acknowledges and agrees that the Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act, the Exchange Act and this Agreement, purchase and sell shares of Common Stock for its own account while this Agreement is in effect, *provided*, that (i) no sale for its own account shall take place while a Placement Notice is in effect (except to the extent the Agent may engage in sales of Shares purchased or deemed purchased from the Company as a "riskless principal" or in a similar capacity) and (ii) the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent. The Company consents to the Agent trading in the Common Stock for the account of any of its clients at the same time as sales of the Shares occur pursuant to this Agreement.

**3. Covenants of the Company.** The Company covenants and agrees with the Agent as follows:

(a) *Amendments to Registration Statement and Prospectus.* After the date of this Agreement and during any period in which a Prospectus relating to any Shares is required to be delivered by the Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company agrees that it will: (i) notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference or amendments not related to the Shares, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus related to the Shares has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement (insofar as it relates to the transactions contemplated hereby) or Prospectus or for additional information; (ii) prepare and file with the Commission, promptly upon the Agent's request, any amendments or supplements to the Registration Statement or Prospectus that, in the Agent's reasonable opinion, may be necessary or advisable in connection with the sale of the Shares by the Agent (*provided, however*, that the failure of the Agent to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement); (iii) not file any amendment or supplement to the Registration Statement or Prospectus, other than documents incorporated by reference, relating to the Shares or a security convertible into the Shares unless a copy thereof has been submitted to the Agent within a reasonable period of time before the filing and the Agent has not reasonably objected thereto (*provided, however*, that (A) the failure of the Agent to make such



objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement), (B) the Company has no obligation to provide the Agent any advance copy of such filing or to provide the Agent an opportunity to object to such filing if the filing does not name the Agent or does not relate to a Placement or other transaction contemplated hereunder, and (C) the only remedy that the Agent shall have with respect to the failure by the Company to provide the Agent with such copy or the filing of such amendment or supplement despite the Agent's objection shall be to cease making sales under this Agreement); (iv) furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (v) cause each amendment or supplement to the Prospectus, other than documents incorporated by reference, to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act.

(b) *Stop Order.* The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose, and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(c) *Continuing Amendments.* During any period in which a Prospectus relating to the Shares is required to be delivered by the Agent under the Securities Act with respect to any Placement or pending sale of the Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will comply with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports (taking into account any extensions available under the Exchange Act) and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Agent to suspend the offering of Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(d) *Qualification of the Shares.* The Company shall take or cause to be taken all necessary action to qualify the Shares for sale under the securities laws of such jurisdictions as the Agent reasonably designates and to continue such qualifications in effect so long as required for the distribution of the Shares, except that the Company shall not be required in connection therewith to qualify as a foreign corporation or to execute a general consent to service of process in any state. The Company shall promptly advise the Agent of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for offer or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(e) *Copies of Registration Statement and Prospectus.* The Company will furnish to the Agent and counsel for the Agent copies of the Registration Statement (which will include three complete manually signed copies of the Registration Statement and all consents and exhibits filed therewith), the Prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Agent may from time to time reasonably request; provided, however, that the Company's obligations to provide such copies shall not apply to any filing available via EDGAR.

(f) *Section 11(a).* The Company will make generally available to its security holders as soon as practicable an earnings statement (which need not be audited) covering a 12-month period that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder.

(g) *Expenses.* The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid (i) all expenses (including stock or transfer taxes and stamp or similar duties allocated to the respective transferees) incurred in connection with the registration, issue, sale and delivery of the Shares, (ii) all expenses and fees (including, without limitation, fees and expenses of the Company's accountants and counsel) in connection with the preparation, printing, filing, delivery, and shipping of the Registration Statement (including the financial statements therein and all amendments, schedules, and exhibits thereto), the Shares, the Prospectus and any amendment thereof or supplement thereto, and the producing, word-processing, printing, delivery, and shipping of this Agreement and other underwriting documents or closing documents, including Blue Sky Memoranda (covering the states and other applicable jurisdictions) and including the cost to furnish copies of each thereof to the Agent, (iii) all filing fees, (iv) all fees and disbursements of the Agent's counsel incurred in connection with the qualification of the Shares for offering and sale by the Agent or by dealers under the securities or blue sky laws of the states and other jurisdictions which the Agent shall designate, (v) the fees and expenses of any transfer agent or registrar, (vi) the filing fees and the reasonable, actual and documented fees and disbursements of the Agent's counsel incident to any required review and approval by FINRA of the terms of the sale of the Shares, (vii) listing fees, if any, (viii) the cost and expenses of the Company relating to investor presentations or any "roadshow" undertaken in connection with marketing of the Shares, and (ix) all other costs and expenses incident to the performance of its obligations hereunder that are not otherwise specifically provided for herein. In addition to (iv) and (vi) above, the Company shall reimburse the Agent for its reasonable and documented out-of-pocket expenses, including reasonable fees and disbursements of the Agent's counsel actually incurred in an amount which, taken together with the fees and disbursements of Agent's counsel incurred pursuant to (iv) and (vi) above, do not exceed (A) \$75,000 in connection with the filing of the initial Registration Statement pursuant to this Agreement, and (B) \$15,000 in connection with each Representation Date, but only to the extent that the Company provides a Representation Certificate pursuant to Section 3(q) hereof in respect of such Representation Date.

(h) *Use of Proceeds.* The Company will apply the net proceeds from the sale of the Shares in the manner disclosed in the Prospectus.

(i) *Restrictions on Future Sales.* During the period beginning on the third Trading Day immediately prior to the date on which any Placement Notice is delivered to the

Agent hereunder and ending on the third Trading Day immediately following the earlier of (x) the Settlement Date with respect to the Shares sold pursuant to such Placement Notice and (y) the termination or suspension by the Company such Placement Notice, the Company will not, without the prior written consent of the Agent, offer for sale, sell, contract to sell, pledge, grant any option for the sale of, enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition of Common Stock (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate, or otherwise issue or dispose of, directly or indirectly (or publicly disclose the intention to make any such offer, sale, pledge, grant, issuance or other disposition), any Common Stock or any securities convertible into or exchangeable for, or any options or rights to purchase or acquire, Common Stock, or permit the registration under the Securities Act of any Common Stock, such securities, options or rights, except for: (i) the registration of the Shares and the sales through the Agent pursuant to this Agreement, (ii) sales of shares through any dividend reinvestment and stock purchase plan of the Company, (iii) sales of shares of restricted stock, restricted stock units and options granted pursuant to employee benefit plans described or incorporated by reference in the Registration Statement, and the Common Stock issuable upon the exercise of such outstanding options or vesting of such restricted stock units, (iv) grants made pursuant to Nasdaq Listing Rule 5635(c)(4), (v) the issuance of shares pursuant to the exercise of warrants, options or other derivative securities, (vi) the filing of registration statements on Form S-8, and (vii) the filing of a registration statement pursuant to any registration rights granted prior to the date hereof as disclosed in the Registration Statement.

(j) *No Stabilization or Manipulation; Compliance with Regulation M.* The Company has not taken and will not take, directly or indirectly, any action designed to, or which might reasonably be expected to cause or result in, or which constitutes: (i) the stabilization or manipulation of the price of the Common Stock or any other security of the Company to facilitate the sale or resale of the Shares, (ii) a violation of Regulation M. The Company shall notify the Agent of any violation of Regulation M by the Company or any of its subsidiaries or any of their respective officers or directors promptly after the Company has received notice or obtained knowledge of any such violation. The Company shall not invest in futures contracts, options on futures contracts or options on commodities, unless the Company is exempt from the registration requirements of the Commodity Exchange Act, as amended (the “**Commodity Act**”), or otherwise complies with the Commodity Act. The Company will not engage in any activities bearing on the Commodity Act, unless such activities are exempt from the Commodity Act or otherwise comply with the Commodity Act.

(k) *No Other Broker.* Except as contemplated by this Agreement, the Company will not incur any liability for any finder’s or broker’s fee or agent’s commission in connection with the execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby.

(l) *Timely Securities Act and Exchange Act Reports.* During any prospectus delivery period, the Company will use its commercially reasonable efforts to file on a timely basis with the Commission such periodic and special reports as required by the Securities Act and the Exchange Act.

(m) *Internal Controls.* The Company and its subsidiaries will maintain such controls and other procedures, including without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act and the applicable regulations thereunder, that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and its principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure, to ensure that material information relating to Company, including its subsidiaries, is made known to them by others within those entities.

(n) *Permitted Free Writing Prospectus.* The Company represents and agrees that, unless it obtains the prior written consent of the Agent, and the Agent severally represents and agrees that, unless it obtains the prior written consent of the Company, it has not made and will not make any offer relating to the Shares that would constitute an "issuer free writing prospectus," as defined in Rule 433 under the Securities Act, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405 under the Securities Act, required to be filed with the Commission. Any such free writing prospectus consented to by the Company and the Agent is hereinafter referred to as a "**Permitted Free Writing Prospectus.**" The Company represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus," as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

(o) *Representation Date and Opinions of Counsel.* On or prior to the date of the first Placement Notice, and thereafter during the term of this Agreement, each time the Company (A) files an amendment to the Registration Statement or Prospectus (other than relating solely to the offering of securities other than the Shares), (B) files an annual report on Form 10-K under the Exchange Act or files its quarterly reports on Form 10-Q under the Exchange Act; and (C) files a report on Form 8-K containing amended financial statements (other than an earnings release) under the Exchange Act, (each of the dates in (A), (B) and (C) are referred to herein as a "**Representation Date**"), the Company shall cause:

(i) Goodwin Procter LLP, counsel for the Company, to furnish to the Agent the opinion and negative assurance letter of such counsel, dated as of such date and addressed to the Agent, in form and substance reasonably satisfactory to the Agent; *provided however*, the opinion of such counsel shall be required only on or prior to the date of the first Placement Notice and only a negative assurance letter of such counsel shall be required for each subsequent Representation Date.

(ii) Shay Glenn LLP, intellectual property and patent counsel for the Company, or other intellectual property and patent counsel for the Company, to furnish to the Agent the opinion of such counsel, dated as of such date and addressed to the Agent, in form and substance reasonably satisfactory to the Agent; *provided however*, the opinion of counsel shall only be required for the first Settlement Date.

Notwithstanding the foregoing and Sections 3(p) and 3(q) hereof, the requirement to provide counsel opinions, a comfort letter, certificates and other documents shall be waived for any Representation Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the date the Company delivers a Placement Notice to the Agent. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Representation Date when the Company relied on such waiver and did not provide the Agent with the opinions, comfort letter, certificates and other documents, then before the Agent sells any Shares pursuant to Section 2(a), the Company shall cause the opinions (including the opinion pursuant to Section 3(o) if not delivered on the date of the prior Form 10-K), comfort letter, certificates and documents that would be delivered on a Representation Date to be delivered.

(p) *Representation Date and Comfort Letter.* On or prior to the date of the first Placement Notice and thereafter during the term of this Agreement, on each Representation Date to which a waiver does not apply, the Company shall cause KPMG LLP, or other independent accountants reasonably satisfactory to the Agent (the “**Accountants**”), to deliver to the Agent a letter, dated as of such date and addressed to the Agent, confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualifications of accountants under Rule 2-01 of Regulation S-X of the Commission, and stating the conclusions and findings of said firm with respect to the financial information and other matters covered by its letter in form and substance satisfactory to the Agent of the same tenor as the first such letter received hereunder.

(q) *Representation Date and Representation Certificate.* On or prior to the date of the first Placement Notice and thereafter during the term of this Agreement, on each Representation Date to which a waiver does not apply, the Company shall furnish to the Agent a certificate (the “**Representation Certificate**”), substantially in the form of Schedule 3 hereto and dated as of such date, addressed to the Agent and signed by the chief executive officer or by the chief operating officer and chief financial officer of the Company.

(r) *Disclosure of Shares Sold.* The Company shall disclose in its quarterly reports on Form 10-Q and in its annual report on Form 10-K the number of the Shares sold through the Agent under this Agreement, the net proceeds to the Company and the compensation paid by the Company with respect to sales of the Shares pursuant to this Agreement during the relevant quarter.

(s) *Continued Listing of Shares.* The Company shall use its commercially reasonable efforts to maintain the listing of the Common Stock on the Nasdaq.

(t) *Notice of Changes.* At any time during the term of this Agreement, as supplemented from time to time, the Company shall advise the Agent as soon as practicable after it shall have received notice or obtain knowledge thereof, of any information or fact that would alter or affect any opinion, certificate, letter and other document provided to the Agent pursuant to this Section 3.

(u) *Maximum Amount.* The Company will not instruct the Agent to sell or otherwise attempt to sell Shares pursuant to this Agreement in excess of the Maximum Amount.

**4. Conditions of Agent's Obligations.** The obligations of the Agent hereunder are subject to (i) the accuracy, as of the date of this Agreement, each Representation Date, each Notice Date, each Applicable Time, and each Settlement Date (in each case, as if made at such date) of and compliance with all representations, warranties and agreements of the Company contained herein, (ii) the performance by the Company of its obligations hereunder and (iii) the following additional conditions:

(a) *Continuing Amendments; No Stop Order.* If filing of the Prospectus, or any amendment or supplement thereto, or any Permitted Free Writing Prospectus, is required under the Securities Act, the Company shall have filed the Prospectus (or such amendment or supplement) or such Permitted Free Writing Prospectus with the Commission in the manner and within the time period so required (without reliance on Rule 424(b)(8) or Rule 164(b) under the Securities Act); the Registration Statement shall be effective; no stop order suspending the effectiveness of the Registration Statement or any part thereof, any registration statement filed pursuant to Rule 462(b) under the Securities Act, or any amendment thereof, nor suspending or preventing the use of the Prospectus shall have been issued; no proceedings for the issuance of such an order shall have been initiated or threatened; and any request of the Commission for additional information (to be included in the Registration Statement, the Prospectus or otherwise) shall have been complied with to the Agent's satisfaction.

(b) *Absence of Certain Events.* None of the following events shall have occurred and be continuing: (i) receipt by the Company or any of its subsidiaries of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related Prospectus or such documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) *No Material Misstatement or Omission.* The Agent shall not have advised the Company that the Registration Statement or the Prospectus contains an untrue statement of fact which, in the Agent's opinion, is material, or omits to state a fact which, in the Agent's opinion, is material and is required to be stated therein or necessary to make the statements therein not misleading.

(d) *No Adverse Changes.* Except as disclosed in the Prospectus, subsequent to the respective dates as of which information is given in the Prospectus, neither the Company nor any of its subsidiaries shall have incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there shall not have been any material change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the issuance of shares of Common Stock upon the exercise of outstanding options or warrants), or any material change in the short-term or long-term debt of the Company, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or any of its subsidiaries, or any development involving a prospective Material Adverse Change (whether or not arising in the ordinary course of business), or any loss by strike, fire, flood, earthquake, accident or other calamity, whether or not covered by insurance, incurred by the Company or any of its subsidiaries, the effect of which, in any such case described above, in the Agent's judgment, makes it impractical or inadvisable to offer or deliver the Shares on the terms and in the manner contemplated in the Prospectus.

(e) *No Rating Downgrade.* On or after each Applicable Time (i) no downgrading shall have occurred in the rating accorded any of the Company's securities by any "nationally recognized statistical organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's securities.

(f) *Compliance with Certain Obligations.* The Company shall have performed each of its obligations under Section 3(o) – 3(q).

(g) *Opinion of Agent Counsel.* On each Representation Date to which a waiver does not apply, there shall have been furnished to the Agent the opinion and negative assurance letter of Latham & Watkins LLP, counsel for the Agent, dated as of such Representation Date and addressed to the Agent, in a form reasonably satisfactory to the Agent, and such counsel shall have received such papers and information as they request to enable them to pass upon such matters; *provided however*, the opinion of Latham & Watkins LLP shall only be required prior to the first Placement Notice, and thereafter, only a negative assurance letter of such counsel shall be required for each subsequent Representation Date.

(h) *Representation Certificate.* On or prior to the first Placement Notice, the Agent shall have received the Representation Certificate substantially in the form of Schedule 3 hereto.

(i) *No Objection by FINRA.* FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements, or the offering shall be otherwise exempt from filing with FINRA under FINRA Rule 5110(h)(1).

(j) *Timely Filing of Prospectus .* All filings with the Commission required by Rule 424 under the Securities Act to have been filed by the Settlement Date, as the case may be, shall have been made within the applicable time period prescribed for such filing by Rule 424 under the Securities Act.

(k) *Additional Documents and Certificates.* The Company shall have furnished to the Agent and the Agent's counsel such additional documents, certificates and evidence as they may have reasonably requested.

All opinions, certificates, letters and other documents described in this Section 4 will be in compliance with the provisions hereof only if they are reasonably satisfactory in form and substance to the Agent and the Agent's counsel. The Company will furnish the Agent with such conformed copies of such opinions, certificates, letters and other documents as the Agent shall reasonably request.

**5. *Indemnification and Contribution.***

(a) *Company Indemnification of the Agent.* The Company agrees to indemnify and hold harmless the Agent, its affiliates, directors, officers and employees, and each person, if any, who controls the Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which the Agent may become subject, under the Securities Act or otherwise (including in settlement of any litigation), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon, in whole or in part:

(i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the Rule 430B Information (as defined below) and at any subsequent time pursuant to Rules 430A and 430B promulgated under the Securities Act, and any other information deemed to be part of the Registration Statement at the time of effectiveness, and at any subsequent time pursuant to the Securities Act or the Exchange Act, and the Prospectus, or any amendment or supplement thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus), any Permitted Free Writing Prospectus, or any roadshow as defined in Rule 433(h) under the Securities Act (a "**road show**"), or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading,

(ii) any inaccuracy in the representations and warranties of the Company contained herein;

(iii) any investigation or proceeding by any governmental authority, commenced or threatened (whether or not the Agent is a target of or party to such investigation or proceeding); or

(iv) any failure of the Company to perform its respective obligations hereunder or under law;

and will reimburse the Agent for any legal or other expenses reasonably incurred by it in connection with investigating or defending against such loss, claim, damage, liability or action; *provided, however,* that the Company shall not be liable in any such case of (i) through (iv) to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or



alleged omission made in the Registration Statement, the Prospectus, or any such amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by the Agent specifically for use in the preparation thereof. “**Rule 430B Information**,” as used herein, means information with respect to the Shares and the offering thereof permitted to be omitted from the Registration Statement when it becomes effective pursuant to Rule 430B.

In addition to its other obligations under this Section 5(a), the Company agrees that, as an interim measure during the pendency of any claim, action, investigation, inquiry or other proceeding arising out of or based upon any statement or omission, or any alleged statement or omission, described in this Section 5(a), it will reimburse the Agent on a monthly basis for all reasonable, actual and documented legal fees or other expenses incurred in connection with investigating or defending any such claim, action, investigation, inquiry or other proceeding, notwithstanding the absence of a judicial determination as to the propriety and enforceability of the Company’s obligation to reimburse the Agent for such expenses and the possibility that such payments might later be held to have been improper by a court of competent jurisdiction. Any such interim reimbursement payments which are not made to the Agent within 30 days of a request for reimbursement shall bear interest at the WSJ Prime Rate (as published from time to time by the Wall Street Journal).

(b) *Agent Indemnification of the Company.* The Agent will indemnify and hold harmless the Company against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Agent), but only insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Prospectus, any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in conformity with written information furnished to the Company by the Agent specifically for use in the preparation thereof, it being understood and agreed that the only information furnished by the Agent for use in the Registration Statement or the Prospectus consists of the statements set forth in the first sentence of the sixth paragraph under the caption “Plan of Distribution” in the Prospectus, and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending against any such loss, claim, damage, liability or action.

(c) *Notice and Procedures.* Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure. In case any such action shall be brought against any indemnified party, and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in, and, to the extent that it shall wish, jointly

with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that if, in the sole judgment of the Agent, it is advisable for the Agent to be represented by separate counsel, the Agent shall have the right to employ a single counsel to represent the Agent, in which event the reasonable fees and expenses of such separate counsel shall be borne by the indemnifying party or parties and reimbursed to the Agent as incurred (in accordance with the provisions of the second paragraph in subsection (a) above).

The indemnifying party under this Section 5 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 5, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into, and (iii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (a) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (b) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Contribution; Limitations on Liability; Non-Exclusive Remedy.* If the indemnification provided for in this Section 5 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the other from the offering of the Shares, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Agent on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total commissions received by the Agent (before deducting

expenses) from the sale of the Shares. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission.

The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities referred to in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

**6. Representations and Agreements to Survive Delivery.** All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto, including but not limited to the agreements of the Agent and the Company contained in Section 5 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Agent or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Shares to and by the Agent hereunder.

**7. Termination of this Agreement.**

(a) The Company shall have the right, by giving ten (10) days' written notice as hereinafter specified, to terminate the provisions of this Agreement relating to the solicitation of offers to purchase the Shares in its sole discretion at any time. Any such termination shall be without liability of any party to any other party except that (i) with respect to any pending sale, through the Agent for the Company, the obligations of the Company, including in respect of compensation of the Agent, shall remain in full force and effect notwithstanding the termination and (ii) the provisions of Section 3(g), Section 5 and Section 6 of this Agreement shall remain in full force and effect notwithstanding such termination.

(b) The Agent shall have the right, by giving written notice as hereinafter specified, to terminate the provisions of this Agreement relating to the solicitation of offers to purchase the Shares in its sole discretion at any time. Any such termination shall be without liability of any party to any other party except that the provisions of Section 3(g), Section 5 and Section 6 of this Agreement shall remain in full force and effect notwithstanding such termination.

(c) Unless earlier terminated pursuant to this Section 7, this Agreement shall automatically terminate upon the earlier to occur of the issuance and sale of all of the Shares through the Agent on the terms and subject to the conditions set forth herein, except that the provisions of Section 3(g), Section 5 and Section 6 of this Agreement shall remain in full force and effect notwithstanding such termination.

(d) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 7(a), (b) or (c) above or otherwise by mutual agreement of the parties; *provided* that any such termination by mutual agreement shall in all cases be deemed to provide that Section 3(g), Section 5 and Section 6 shall remain in full force and effect.

(e) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided* that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of the Shares, such sale shall settle in accordance with the provisions of Section 2(a) (vii) of this Agreement.

**8. Default by the Company.** If the Company shall fail at any Settlement Date to sell and deliver the number of Shares which it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of the Agent or, except as provided in Section 3(g) hereof, any non-defaulting party. No action taken pursuant to this Section shall relieve the Company from liability, if any, in respect of such default, and the Company shall (A) hold the Agent harmless against any loss, claim or damage arising from or as a result of such default by the Company and (B) pay the Agent any commission to which it would otherwise be entitled absent such default.

**9. Notices.** Except as otherwise provided herein, all communications under this Agreement shall be in writing and, if to the Agent, shall be delivered via overnight delivery services to (i) Piper Sandler & Co., U.S. Bancorp Center, 800 Nicollet Mall, Minneapolis, Minnesota 55402, Attention: Equity Capital Markets, with a copy to Piper Sandler General Counsel at 800 Nicollet Mall, Minneapolis, MN 55402 and LegalCapMarkets@psc.com; and (ii) the Company at TELA Bio, Inc., 1 Great Valley Parkway, Suite 24, Malvern, PA 19355, Attention: Roberto Cuca, Chief Operating Officer and Chief Financial Officer; or in each case to such other address as the person to be notified may have requested in writing. Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

**10. Persons Entitled to Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 5. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. The term “successors and assigns” as herein used shall not include any purchaser, as such purchaser, of any of the Shares from the Agent.

**11. Absence of Fiduciary Relationship.** The Company, having been advised by counsel, acknowledges and agrees that: (a) the Agent has been retained solely to act as a sales agent in connection with the sale of the Shares and that no fiduciary, advisory or agency relationship between the Company (including any of the Company’s affiliates (including directors), equity holders, creditors, employees or agents, hereafter, “*Company Representatives*”), on the one hand, and the Agent on the other, has been created or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Agent has advised or is advising the Company on other matters and irrespective of the use of the defined term “Agent;” (b) neither the Agent nor any of its affiliates (including directors), equity holders,

creditors, employees or agents, hereafter, “**Agent Representatives**”) shall have any duty or obligation to the Company or any Company Representative except as set forth in this Agreement; (c) the price and other terms of any Placement executed pursuant to this Agreement, as well as the terms of this Agreement, are deemed acceptable to the Company and its counsel, following discussions and arms-length negotiations with the Agent; (d) the Company is capable of evaluating and understanding, and in fact has evaluated, understands and accepts the terms, risks and conditions of any Placement Notice to be executed pursuant to this Agreement, and any other transactions contemplated by this Agreement; (e) the Company has been advised that the Agent and the Agent Representatives are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Agent and the Agent Representatives have no obligation to disclose any such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship, or otherwise; (f) the Company has been advised that the Agent is acting, in respect of any Placement and the transactions contemplated by this Agreement, solely for the benefit of the Agent, and not on behalf of the Company; and (g) the Company and the Company Representatives waive, to the fullest extent permitted by law, any claims that they may have against the Agent or any of the Agent Representatives for breach of fiduciary duty or alleged breach of fiduciary duty in respect of any Placement or any of the transactions contemplated by this Agreement and agree that the Agent and the Agent Representatives shall have no liability (whether direct or indirect, in contract, tort or otherwise) to the Company or any of the Company Representatives in respect of any person asserting any claim of breach of any fiduciary duty on behalf of or in right of the Company or any of the Company Representatives.

**12. Recognition of the U.S. Special Resolution Regimes.**

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

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

(c) As used in this section:

“**BHC Act Affiliate**” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k);

“**Covered Entity**” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that

term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b);

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and

“**U.S. Special Resolution Regime**” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

**13. Governing Law and Waiver of Jury Trial.** This Agreement and any transaction contemplated by this Agreement and any claim, controversy or dispute arising under or related thereto shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflict of laws that would result in the application of any other law than the laws of the State of New York. THE COMPANY (ON ITS OWN BEHALF AND ON BEHALF OF ITS STOCKHOLDERS AND AFFILIATES) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**14. Submission to Jurisdiction, Etc.** Each party hereby submits to the exclusive jurisdiction of the U.S. federal and New York state courts sitting in the Borough of Manhattan, City of New York, in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any lawsuit, action or other proceeding in such courts, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

**15. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile or electronic mail (including, without limitation, “pdf”, “tif” or “jpg”) and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**16. Construction.** The section and exhibit headings herein are for convenience only and shall not affect the construction hereof. References herein to any law, statute, ordinance, code, regulation, rule or other requirement of any governmental authority shall be deemed to refer to such law, statute, ordinance, code, regulation, rule or other requirement of any governmental authority as amended, reenacted, supplemented or superseded in whole or in part and in effect from time to time and also to all rules and regulations promulgated thereunder. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may not be amended or modified unless in writing by

all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit.

[Signature Pages Follow]

Please sign and return to the Company the enclosed duplicates of this letter whereupon this letter will become a binding agreement between the Company and the Agent in accordance with its terms.

Very truly yours,

**TELA BIO, INC.**

By: /s/ Roberto Cuca  
Name: Roberto Cuca  
Title: Chief Operating Officer and Chief Financial Officer

*[Signature Page to Equity Distribution Agreement]*

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Confirmed as of the date first  
above mentioned.

**PIPER SANDLER & CO.**

By: /s/ Connor Leahey  
Name: Connor Leahey  
Title: Director

*[Signature Page to Equity Distribution Agreement]*

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**SCHEDULE 1**

**FORM OF PLACEMENT NOTICE**

**No Facsimile and No Voicemail**

From: TELA Bio, Inc.

To: Piper Sandler & Co.

Attention:

Neil A. Riley  
Neil.Riley@psc.com

Connor N. Anderson  
Connor.Anderson@psc.com

Tom Wright  
Thomas.Wright@psc.com

Jay A. Hershey  
Jay.Hershey@psc.com

Chad Huber  
Chad.Huber@psc.com

Connor Leahey  
Connor.Leahey@psc.com

Date: [•], 20[•]

Subject: Equity Distribution Agreement – Placement Notice

Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Equity Distribution Agreement by and between TELA Bio, Inc. (“**Company**”) and Piper Sandler & Co. (“**Agent**”), dated November 13, 2023 (the “**Agreement**”), the Company hereby requests that Agent sell up to [•] shares of the Company’s common stock, par value \$0.001 per share, at a minimum market price of \$[•] per share. Sales should begin on the date of this Placement Notice and shall continue until [•] / [all shares are sold].

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**SCHEDULE 2**  
**NOTICE PARTIES**

**TELA Bio, Inc.**

Antony Koblish  
akoblish@telabio.com

Roberto Cuca  
rcuca@telabio.com

Megan Smeykal  
msmeykal@telabio.com

**Piper Sandler & Co.**

Neil A. Riley  
Neil.Riley@psc.com

Connor N. Anderson  
Connor.Anderson@psc.com

Tom Wright  
Thomas.Wright@psc.com

Jay A. Hershey  
Jay.Hershey@psc.com

Chad Huber  
Chad.Huber@psc.com

Connor Leahey  
Connor.Leahey@psc.com

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### SCHEDULE 3

#### FORM OF REPRESENTATION CERTIFICATE PURSUANT TO SECTION 3(q) OF THE AGREEMENT

[•]

Piper Sandler & Co.  
800 Nicollet Mall  
Minneapolis, MN 55402

Sir/Madam:

The undersigned, the duly qualified and elected Chief Operating Officer and Chief Financial Officer of TELA Bio, Inc., a Delaware corporation (the “**Company**”), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 3(q) of the Equity Distribution Agreement, dated November 13, 2023 (the “**Equity Distribution Agreement**”), between the Company and Piper Sandler & Co., that to the best of the knowledge of the undersigned:

(i) The representations and warranties of the Company in this Agreement are true and correct, in all material respects, as if made at and as of the date of the certificate, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the date of the certificate;

(ii) No stop order or other order suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof or the qualification of the Shares for Registration Statement, nor suspending or preventing the use of the base prospectus, the Prospectus or any Permitted Free Writing Prospectus, has been issued, and no proceeding for that purpose has been instituted or, to the best of the Company’s knowledge, is contemplated by the Commission or any state or regulatory body;

(iii) The Shares have been duly and validly authorized by the Company and that all corporate action required to be taken for the authorization, issuance and sale of the Shares has been validly and sufficiently taken;

(iv) The signer of this certificate has carefully examined the Registration Statement, the base prospectus, the Prospectus and any Permitted Free Writing Prospectus, and any amendments thereof or supplements thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the base prospectus, the Prospectus and any Permitted Free Writing Prospectus),

(A) each part of the Registration Statement and the Prospectus, and any amendments thereof or supplements thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus) contain, and contained when such part of the Registration Statement (or such amendment) became effective, all statements and information required to be included therein, each part of the Registration Statement, or any

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amendment thereof, does not contain, and did not contain, when such part of the Registration Statement (or such amendment) became effective, any untrue statement of a material fact or omit to state, and did not omit to state when such part of the Registration Statement (or such amendment) became effective, any material fact required to be stated therein or necessary to make the statements therein not misleading, and the Prospectus, as amended or supplemented, does not include and did not include as of its date, or the time of first use within the meaning of the Securities Act, any untrue statement of a material fact or omit to state and did not omit to state as of its date, or the time of first use within the meaning of the Securities Act, a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading,

(B) at no time during the period that begins on the earlier of the date of such base prospectus, Prospectus, or Permitted Free Writing Prospectus and the date such base prospectus, Prospectus, or Permitted Free Writing Prospectus was filed with the Commission and ends on the date of this certificate did such base prospectus, Prospectus, or Permitted Free Writing Prospectus, as then amended or supplemented, include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading,

(C) since the date of the Equity Distribution Agreement, there has occurred no event required to be set forth in an amended or supplemented prospectus which has not been so set forth, and there has been no document required to be filed under the Exchange Act that upon such filing would be deemed to be incorporated by reference into the base prospectus, the Prospectus or any Permitted Free Writing Prospectus that has not been so filed,

(D) except as stated in the Prospectus or any Permitted Free Writing Prospectus, the Company has not incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, not in the ordinary course of business, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock, and except as disclosed in the base prospectus, the Prospectus, and any Permitted Free Writing Prospectus, there has not been any material change in the capital stock (other than a change in the number of outstanding Common Stock due to sales of Shares pursuant to the Equity Distribution Agreement and the issuance of shares of Common Stock upon the exercise of equity awards or warrants), or any material change in the short term or long term debt, or any Material Adverse Change or any development involving a prospective Material Adverse Change (whether or not arising in the ordinary course of business), or any loss by strike, fire, flood, earthquake, accident or other calamity, whether or not covered by insurance, incurred by the Company, and

(E) except as stated in the base prospectus, the Prospectus, and any Permitted Free Writing Prospectus, there is not pending, or, to the knowledge of the Company, threatened or contemplated, any action, suit or proceeding to which the Company is a party before or by any court or governmental agency, authority or body, or any arbitrator, which might result in a Material Adverse Change.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Equity Distribution Agreement.

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TELA Bio, Inc.

By:

Name:

Title:

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**CERTIFICATION**

Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934,  
as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Antony Koblisch, certify that:

1. I have reviewed this Form 10-Q of TELA Bio, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2023

/s/ Antony Koblisch

Antony Koblisch

*President and Chief Executive Officer*

*(Principal Executive Officer)*

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**CERTIFICATION**

Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934,  
as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Roberto Cuca, certify that:

1. I have reviewed this Form 10-Q of TELA Bio, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2023

/s/ Roberto Cuca

Roberto Cuca

Chief Operating Officer and Chief Financial Officer

(Principal Financial Officer)

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**CERTIFICATION**

Pursuant to 18 U.S.C. Section 1350,  
as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), that: Antony Koblisch, Chief Executive Officer of TELA Bio, Inc. (the "Company"), hereby certifies that, to the best of his knowledge:

- (1) The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2023, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
- (2) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2023

/s/ Antony Koblisch

Antony Koblisch  
*President and Chief Executive Officer*  
*(Principal Executive Officer)*

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**CERTIFICATION**

Pursuant to 18 U.S.C. Section 1350,  
as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), that: Roberto Cuca, Chief Operating Officer and Chief Financial Officer of TELA Bio, Inc. (the "Company"), hereby certifies that, to the best of his knowledge:

- (1) The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2023, to which this Certification is attached as Exhibit 32.2 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
- (2) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 13, 2023

/s/ Roberto Cuca

Roberto Cuca

*Chief Operating Officer and Chief Financial Officer  
(Principal Financial Officer)*

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