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

FORM 8-K

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

Date of Report (Date of earliest event reported): August 5, 2024

Seres Therapeutics, Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware	**001-37465**	**27-4326290**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

101 Cambridgepark Drive **Cambridge, MA**	**02140**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (617) 945-9626

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

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

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

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

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

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

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

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

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

Emerging growth company ☐

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

Item 1.01. Entry into Material Definitive Agreement

Asset Purchase Agreement

On August 5, 2024, Seres Therapeutics, Inc., a Delaware corporation ("Seres" or the "Company"), entered into an Asset Purchase Agreement (the "Purchase Agreement") with Société des Produits Nestlé S.A., a *société anonyme* organized under the laws of Switzerland ("SPN"), and a wholly-owned subsidiary of Nestlé S.A., pursuant to which Seres agreed, subject to the satisfaction or waiver of the conditions set forth therein, to sell Seres' VOWST microbiome therapeutic business (the "VOWST Business"), including inventory and equipment, certain patents and patent applications, know-how, trade secrets, trademarks, domain names, marketing authorizations and related rights, documents, materials, business records and data and contracts that are used or held for use primarily in the development, commercialization and manufacturing of the microbiome product sold under the brand name VOWST as provided for in accordance with the terms of the Purchase Agreement (the "Product") to SPN and its designated affiliates, and SPN and its designated affiliates will assume certain liabilities from Seres, for the following consideration (the "Transaction Consideration"):

(i) a cash payment, payable upon completion of the transaction ("Closing"), of $100 million, less approximately $17.9 million owed by Seres to an affiliate of SPN as of March 31, 2024 under the existing license agreement between Seres and the SPN affiliate, less approximately CHF2.0 million in satisfaction of fees due under an existing manufacturing agreement between Seres and Bacthera AG;

(ii) cash installment payments of $50 million on January 15, 2025 and $25 million on July 1, 2025 (the "Installment Payments"), conditioned on Seres' material compliance with obligations under the Transition Services Agreement (as described below) to be entered into at Closing between Seres and SPN;

(iii) prepayment of the $60 million milestone payment tied to the achievement of worldwide annual net sales of the Product of $150 million (the "First Sales Milestone"), payable in cash at Closing (the "Prepaid Milestone"), which Prepaid Milestone will accrue interest at a fixed rate of 10% per annum until the First Sales Milestone is achieved and 5% per annum thereafter until the earlier of (x) the date on which the Prepaid Milestone, plus accrued interest thereon, has been repaid in full by set-off and (y) the last day of the Milestone Period (as defined below); and

(iv) future milestone payments of (x) $125 million tied to the achievement of worldwide annual net sales of the Product of $400 million and (y) $150 million tied to the achievement of worldwide annual net sales of the Product of $750 million, during the period from Closing until December 31 of the calendar year in which the tenth anniversary of Closing occurs (the "Milestone Period") (together, the "Future Milestone Payments" and, together with the Prepaid Milestone, the "Milestone Payments").

As they are earned, the Milestone Payments will be satisfied as follows: (1) *first*, by set-off against all accrued interest on the Prepaid Milestone until the amount of such accrued interest has been paid in full, (2) *second*, by set-off against the outstanding balance of the Prepaid Milestone until the Prepaid Milestone has been repaid in full and (3) *thereafter*, in cash. The Installment Payment due on July 1, 2025 will be reduced by an amount related to certain employment obligations assumed by SPN through the period prior to the Closing Date.

Seres and SPN will share 50/50 in the net profit or net loss achieved during the period from the date of Closing until December 31, 2025 (the "Profit Sharing Period"), with the net profit or net loss calculated as (i) the net sales of VOWST in the United States and Canada, plus (ii) other income received in connection with the grant of a license or sublicense with respect to VOWST in the United States and Canada as described in the Purchase Agreement, minus (iii) allowable expenses directly attributable or reasonably allocable to certain development activities, commercialization activities, medical affairs activities, manufacturing activities or other relevant activities, as described in the Purchase Agreement. During the Profit Sharing Period, Seres will reimburse SPN for (i) certain payments under the exclusive license agreement between Seres and Memorial Sloan Kettering Cancer Center, (ii) certain costs incurred in connection with an ongoing post-marketing safety study of VOWST™ and (iii) 80.1% of all rent and other costs due to the landlord under the lease for Seres' Waltham facility.

Following Closing, Seres expects to focus on advancing SER-155 and Seres' other wholly-owned cultivated live biotherapeutic candidates to improve patient outcomes for medically vulnerable patient populations with potential to address large commercial opportunities. Following Closing, Seres' common stock, par value $0.001 per share ("Common Stock"), will continue to be listed on Nasdaq Global Select Market under the ticker symbol "MCRB."

The Closing is subject to the approval of the transaction by Seres' stockholders and other customary conditions.

Seres has agreed, subject to certain exceptions with respect to unsolicited bids and the exercise of fiduciary duties by Seres' board of directors (the "Board"), not to directly or indirectly solicit an Acquisition Proposal (as defined in the Purchase Agreement) or to engage in any discussions concerning, or provide confidential information in connection with any submission, announcement, proposal or offer that would reasonably be expected to lead to an Acquisition Proposal.

Either party may terminate the Purchase Agreement if Closing has not occurred by February 6, 2025. Seres has the right to terminate the Agreement to enter into a Superior Proposal (as defined in the Purchase Agreement) on the terms and subject to the conditions set forth in the Purchase Agreement, which, among other things, would require Seres to reimburse SPN's expenses in the amount of $4.7 million to SPN in such circumstances. The Purchase Agreement has been unanimously approved by the Board.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Purchase Agreement, a copy of which is attached as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Transition Services Agreement

As a condition to Closing, the parties will enter into a transition services agreement in substantially the form set forth as Exhibit H to the Purchase Agreement (the "Transition Services Agreement"). The Transition Services Agreement will provide for services to be performed by Seres in order to facilitate a transition of the business associated with the VOWST Business to SPN and its affiliates. The scope of the transition services is expected to include the provision of certain manufacturing services and certain administrative functions related to the VOWST Business and operations, including the maintenance of certain manufacturing services and the related facility in which such services are currently conducted. Seres will provide the manufacturing services until December 31, 2025 and other services, for a certain period specified in the schedule to the Transition Services Agreement. SPN will agree to pay Seres for certain fixed costs, including a monthly fixed fee for preserved raw material suspension manufacturing, and will reimburse Seres for the costs of any transition services performed by Seres under the Transition Services Agreement. The know-how and other intellectual property generated in connection with the performance of the Transition Services Agreement will be owned by SPN with Seres having a non-exclusive license to such know-how and other intellectual property. During the term of the Transition Services Agreement, upon SPN request, Seres will transfer the manufacturing services to a third party service provider designated by SPN. In the event of a material failure by Seres to maintain the manufacturing facility under the Transition Services Agreement, SPN will have step-in rights to negotiate to enter into a direct lease with the landlord of the manufacturing facility with respect to the portion of such facility used in connection with the VOWST Business or to cause such services to be performed, with any reasonable out-of-pocket costs and expenses incurred in connection therewith reimbursed by Seres.

The foregoing description of the Transition Services Agreement does not purport to be complete and is qualified in its entirety by reference to the Transition Services Agreement, the form of which is attached as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Cross-License Agreement

As a condition to Closing, the parties will also enter into a cross-license agreement in substantially the form set forth as Exhibit D to the Purchase Agreement (the "Cross-License Agreement"). Under the Cross-License Agreement, Seres will grant to SPN a perpetual, worldwide, non-exclusive, fully paid-up license under certain issued patents and know-how controlled by Seres that is not transferred to SPN pursuant to the Purchase Agreement and that is used or reasonably useful in connection with the exploitation of the VOWST Business. In the field of the treatment of clostridium difficile infection and recurrent clostridium difficile infection (collectively, the "CDI Field"), the license to SPN would be exclusive to SPN for five years after Closing (the "Exclusivity Period") and co-exclusive between SPN and Seres following that five year period. Similarly, SPN will grant to Seres a perpetual, worldwide, non-exclusive (except in the CDI Field for five years after Closing, during which time Seres would not have a license), fully paid-up license under all intellectual property that is transferred to SPN pursuant to the Purchase Agreement that is currently used in connection with Seres' operation of its retained business and any intellectual property developed under the Transition Services Agreement to exploit products containing designed, cultivated, bacterial consortia not manufactured using human stool in the CDI and CDI Field and all products in any other fields. From and after Closing, certain license agreements between Seres, SPN, and/or their respective affiliates will terminate and be of no further force or effect, except as contemplated by the Purchase Agreement.

The foregoing description of the Cross-License Agreement does not purport to be complete and is qualified in its entirety by reference to the Cross-License Agreement, the form of which is attached as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

Support Agreements

Concurrently with the execution of the Purchase Agreement, Seres' directors and executive officers and certain stockholders affiliated with Flagship Pioneering, Inc. entered into support agreements with Seres and SPN (the "Support Agreements"), pursuant to which, among other things and subject to the terms and conditions therein, such parties agreed, solely in their capacities as holders of shares of Common Stock (collectively, the "Subject Shares"), to vote all Subject Shares beneficially owned by such parties at every meeting of the stockholders of Seres (including the special meeting to consider the transactions contemplated by the Purchase Agreement) (i) in favor of adopting and approving the Purchase Agreement and the transactions contemplated by the Purchase Agreement, (ii) against any proposal that would otherwise be reasonably be expected to adversely affect the transactions contemplated by the Purchase Agreement, (iii) against any Acquisition Proposal, and (iv) in favor of approving any proposal to adjourn or postpone the special meeting of stockholders to a later date, if there are not sufficient votes for the adoption of the Purchase Agreement on the date on which such meeting is held. In addition, each stockholder party to a Support Agreement provided an irrevocable proxy to SPN to vote such party's Subject Shares in favor of adopting and approving the Purchase Agreement and the transactions contemplated by the Purchase Agreement.

The foregoing description of the Support Agreements does not purport to be complete and is qualified in its entirety by reference to the Support Agreements, the forms of which are attached as Exhibit 99.1 and Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Securities Purchase Agreement

As a condition to Closing, Seres and SPN will enter into a securities purchase agreement (the "Securities Purchase Agreement") pursuant to which SPN will agree to purchase 14,285,715 shares (the "Shares") of Common Stock at Closing, at a purchase price per share of $1.05, for an aggregate purchase price of $15 million. Under the terms of the Securities Purchase Agreement, SPN will agree not to sell or transfer the Shares for a period of six months after Closing, subject to certain customary exceptions. Seres will agree to register the resale of the Shares by SPN within 90 days of Closing. In addition, under the terms of the Securities Purchase Agreement, for as long as SPN, together with its affiliates, beneficially owns at least 10% of Seres' outstanding shares of Common Stock, Seres will agree to take such action within its control to include one individual designated by SPN in the slate of nominees recommended by the Board (or the applicable committee of the Board) to Seres' stockholders for election to the Board at the applicable stockholder meeting. The Securities Purchase Agreement will contain customary representations and warranties and closing conditions.

The foregoing description of the Securities Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Securities Purchase Agreement, the form of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Lease-Related Agreements

As a condition to Closing, the parties will also enter into assignment and assumption of lease agreements, in substantially the form set forth as Exhibit C to the Purchase Agreement (the "Assignment and Assumption Agreements"). Under the Assignment and Assumption Agreements, Seres will assign to SPN or its designated affiliates the Company's rights in, to and under certain real property leases, and SPN or its designated affiliates will assume the liabilities related thereto.

Employee Support Agreement

As a condition to Closing, the parties will also enter into an employee support agreement, in substantially the form set forth as Exhibit K to the Purchase Agreement (the "Employee Support Agreement"). Under the Employee Support Agreement, among other things and subject to the terms and conditions therein, certain Seres employees related to the VOWST Business who accept employment with SPN or one of its designated affiliates will provide the services they provided to Seres prior to the Transaction to SPN, as well as other services as SPN may reasonably request, from Closing until the day prior to the beginning of SPN's or its designated affiliate's next pay period following the Closing. SPN will reimburse Seres' out of pocket costs in connection with such employees' services, including certain compensation and benefits paid or provided to such employees pursuant to the terms of the Employee Support Agreement.

The foregoing description of the Employee Support Agreement does not purport to be complete and is qualified in its entirety by reference to the Employee Support Agreement, the form of which is attached as Exhibit 10.4 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement

Concurrently with the execution of the Purchase Agreement, Seres, SPN and Bacthera AG entered into an Assignment and Termination of Manufacturing Agreement (the "Termination of Bacthera Manufacturing Agreement"), pursuant to which the parties agreed that concurrently with the Closing, Seres will assign to SPN that certain Long Term Manufacturing Agreement, dated November 8, 2021, as amended by that certain Amendment to the Long Term Manufacturing Agreement, dated December 14, 2022 (the "Manufacturing Agreement") between Seres and Bacthera AG, and, immediately thereafter, the Manufacturing Agreement will be terminated by mutual agreement, upon the terms and subject to the conditions set forth therein. Pursuant to the Termination of Bacthera Manufacturing Agreement, concurrently with the Closing, SPN will pay a specified amount to Bacthera AG in full and final settlement of all outstanding liabilities owed to Bacthera AG pursuant to the Manufacturing Agreement. The Manufacturing Agreement governed the general terms under which Bacthera AG agreed to (i) construct a dedicated full-scale production suite for Seres at Bacthera AG's Microbiome Center of Excellence in Visp, Switzerland; and (ii) provide manufacturing services to Seres for SER-109.

Item 3.02 Unregistered Sales of Equity Securities

The disclosures in Item 1.01 of this Form 8-K regarding the Securities Purchase Agreement and the proposed issuance and sale of the Shares are incorporated by reference into this Item 3.02. The Shares will be issued in a private placement pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), available under Section 4(a)(2) promulgated pursuant to the Securities Act. SPN will represent that it is an accredited investor, and that it is acquiring the securities for its own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act.

Item 9.01. Financial Statements and Exhibits

Exhibits

Exhibit No.	Description
2.1	Asset Purchase Agreement, dated August 5, 2024, by and between Seres Therapeutics, Inc. and Société des Produits Nestlé S.A.*
10.1	Form of Securities Purchase Agreement, by and between Seres Therapeutics, Inc. and Société des Produits Nestlé S.A.
10.2	Form of Transition Services Agreement, by and between Seres Therapeutics, Inc. and Société des Produits Nestlé S.A. +
10.3	Form of Cross-License Agreement, by and between Seres Therapeutics, Inc. and Société des Produits Nestlé S.A.
10.4	Form of Employee Support Agreement, by and between Seres Therapeutics, Inc. and Société des Produits Nestlé S.A.
99.1	Form of Support Agreement, dated August 5, 2024, by and between Seres Therapeutics, Inc., Société des Produits Nestlé S.A. and certain directors and executive officers of Seres Therapeutics, Inc.
99.2	Form of Support Agreement, dated August 5, 2024, by and between Seres Therapeutics, Inc., Société des Produits Nestlé S.A. and certain stockholders affiliated with Flagship Pioneering.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the SEC.

\+ Exhibits marked with a (+) exclude certain portions of the exhibit pursuant to Item 601(b)(10)(iv) of Regulation S-K. A copy of the omitted portions will be furnished to the SEC upon request.

Important Additional Information About the Transaction and Where to Find It

This communication is being made in respect of the proposed transaction involving Seres and SPN. Seres intends to file a proxy statement and other relevant documents with the Securities and Exchange Commission (the "SEC") in connection with a special meeting of Seres' stockholders for purposes of obtaining, stockholder approval of the proposed transaction. The definitive proxy statement will be sent or given to the stockholders of Seres and will contain important information about the proposed transaction and related matters. INVESTORS AND STOCKHOLDERS OF SERES ARE URGED TO READ THE DEFINITIVE PROXY STATEMENT AND OTHER RELEVANT MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT SERES AND THE PROPOSED TRANSACTION. Investors may obtain a free copy of these materials (when they are available) and other documents filed by Seres with the SEC at the SEC's website at www.sec.gov or from Seres at its website at ir.seresherapeutics.com.

Participants in the Solicitation

Seres and certain of its directors, executive officers and other members of management and employees may be deemed to be participants in soliciting proxies from its stockholders in connection with the proposed transaction. Information regarding the persons who may, under the rules of the SEC, be considered to be participants in the solicitation of Seres' stockholders in connection with the proposed transaction will be set forth in Seres' definitive proxy statement for its stockholder meeting at which the proposed transaction will be submitted for approval by Seres' stockholders. You may also find additional information about Seres' directors and executive officers in Seres' Annual Report on Form 10-K for the fiscal year ended December 31, 2023, which was filed with the SEC on March 5, 2024, Seres' Definitive Proxy Statement for its 2024 annual meeting of stockholders, which was filed with the SEC on March 5, 2024, and in subsequently filed Current Reports on Form 8-K and Quarterly Reports on Form 10-Q.

Forward-Looking Statements

This communication contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act, and Section 21E of the Exchange Act that do not directly or exclusively relate to historical facts, including, without limitation, statements relating to the completion of the proposed transaction. Forward-looking statements may be identified by the context of the statement and generally arise when Seres or its management is discussing its beliefs, estimates or expectations. Such statements generally include words such as "believes," "plans," "intends," "targets," "aims," "will," "expects," "estimates," "suggests," "anticipates," "outlook," "continues," "could," "should," "would," "may," "seeks," "might," "predicts," "projects," or other similar expressions, or the negative of these terms or comparable terminology. Forward-looking statements are prospective in nature and are not based on historical facts, but rather on our current plans and expectations and projections of our management about future events and are therefore subject to risks and uncertainties, many of which are outside Seres' control, and which could cause actual results to differ materially from those included in or contemplated or implied by the forward-looking statements. Such risks and uncertainties include, without limitation: (1) the occurrence of any event, change or other circumstance that could give rise to the termination of the Purchase Agreement, including in circumstances requiring Seres to reimburse certain SPN expenses; (2) the failure of Seres to obtain stockholder approval for the proposed transaction or the failure to satisfy any of the other conditions to the completion of the proposed transaction; (3) the effect of the announcement of the proposed transaction on Seres' ability to retain and hire key personnel and maintain relationships with its customers, suppliers, advertisers, partners and others with whom it does business, or on Seres' operating results and businesses generally; (4) the risks associated with the disruption of management's attention from ongoing business operations due to the proposed transaction; (5) the ability to meet expectations regarding the timing and completion of the proposed transaction, including with respect to receipt of required regulatory approvals; (6) the failure of Seres to receive conditional portions of the Transaction Consideration, including the Installment Payments and the Milestone Payments, as contemplated by the Purchase Agreement and the uncertainty of the timing of any receipt of any such payments; (7) the significant costs, fees and expenses related to the proposed transaction; (8) the disruption of management's attention in delivering services under the Transaction Services Agreement; (9) the uncertainty of the quantum of Seres' 50% share of the net profit/net loss during the profit sharing period of the Closing date until December 31, 2025 and the impact on Seres' reported results and liquidity; (10) the uncertainty of the results and effectiveness of the use of proceeds from the proposed transaction; (11) the nature, cost and outcome of any litigation and other legal proceedings, including any such proceedings related to the proposed transaction and instituted against Seres and/or its directors, executive officers or other related persons; and (12) other risks to consummation of the proposed transaction, including the risk that the proposed transaction will not be completed within the expected time period or at all.

These and other risks and uncertainties are identified in more detail in Seres reports and filings with the SEC, including the risks and uncertainties set forth in Item 1A under the heading Risk Factors in Seres' Annual Report on Form 10-K for the year ended December 31, 2023, Seres' Quarterly Report on Form 10 Q for the fiscal quarter ended on March 31, 2024, filed with the SEC on May 8, 2024, and other subsequent periodic reports that Seres files with the SEC. Seres undertakes no obligation to update any forward-looking statements to reflect subsequent events or circumstances, except as required by law.

SIGNATURE

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

SERES THERAPEUTICS, INC.

Date: August 6, 2024

By: /s/ Eric D. Shaff
Name: Eric D. Shaff
Title: President and Chief Executive Officer

Exhibit 2.1

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and between

SERES THERAPEUTICS, INC.,

as Seller,

and

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.,

as Purchaser

Dated as of August 5, 2024

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), is made as of August 5, 2024, by and between Seres Therapeutics, Inc., a corporation organized and existing under the laws of Delaware, having an office located at 101 Cambridge Park Drive, Cambridge, MA 02140, USA ("Seller") and Société des Produits Nestlé S.A., a *société anonyme* organized under the laws of Switzerland, having an office located at Avenue Nestlé 55, 1800 Vevey, Switzerland ("Purchaser"). Each of Seller and Purchaser may be referred to, individually, as a "Party" or, collectively, as the "Parties."

WHEREAS, Seller owns or controls certain patents, know-how and other intellectual property relating to the Product;

WHEREAS, Seller and Purchaser (as successor to Nestec Ltd.) are parties to that certain Collaboration and License Agreement, dated January 9, 2016 (the "ROW License Agreement"), pursuant to which Seller has granted to Purchaser certain exclusive rights and licenses for the exploitation of the Product outside of the United States and Canada;

WHEREAS, Seller and NHSc Rx License GmbH (as successor to NHSc Pharma Partners), an Affiliate of Purchaser, are parties to that certain License Agreement, dated July 1, 2021 (the "US License Agreement" and, together with the ROW License Agreement, the "Existing Agreements"), pursuant to which Seller, among other things, has granted to NHSc Rx License GmbH certain co-exclusive rights and licenses with respect to the Commercialization of the Product in the United States and Canada;

WHEREAS, Purchaser desires to purchase and acquire from Seller and certain of its Affiliates assets related to the Exploitation of the Product worldwide, which may under the DGCL (defined below), constitute substantially all of the assets of Seller (the "Asset Sale") and assume certain corresponding liabilities from Seller and its Affiliates upon the terms and subject to the conditions set forth herein;

WHEREAS, the Board of Directors of Seller (the "Board") has unanimously (a) determined that this Agreement, the Ancillary Agreements, the Asset Sale and the transactions contemplated hereby and thereby (collectively, the "Transactions") are fair and in the best interest of Seller and its stockholders and declared it advisable to enter into this Agreement with Purchaser, and (b) adopted resolutions approving this Agreement, the Ancillary Agreements, the Asset Sale and the Transactions and recommending to the stockholders of Seller to vote in favor of the adoption of a resolution approving the Asset Sale pursuant to, and on the terms and conditions set forth in this Agreement at a meeting duly called and held pursuant to the DGCL (such recommendation by the Board, the "Board Recommendation"); and

WHEREAS, concurrently with the execution of this Agreement and as a condition and inducement to Purchaser's willingness to enter into this Agreement, the officers and directors and stockholders of Seller listed on Schedule 1.1(a) of the Seller Disclosure Letter (defined below) have entered into Support Agreements, dated and effective as of the date hereof, in substantially the form set out in Exhibit A-1 and Exhibit A-2, respectively (the "Support Agreement"), pursuant to which such officers, directors and stockholders, subject to the terms and conditions thereof, have agreed to vote all of their shares of Seller's capital stock held by them in favor the Transactions, including the Asset Sale.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the Parties, intending to be legally bound hereby, do agree as follows:

ARTICLE 1
DEFINITIONS AND CONSTRUCTION

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings designated to them under this Article 1, unless otherwise specifically indicated:

"Acceptable Confidentiality Agreement" has the meaning set forth in Section 6.17(b).

"Accounts Payable" means all accounts payable, notes payable and other indebtedness due and owed by any of Seller or its Affiliates to any Third Party arising from, or owed in connection with, the Exploitation of the Product by or on behalf of Seller or its Affiliates, determined as of 11:59 P.M. on the day preceding the Closing Date; provided that, for the avoidance of doubt, "Accounts Payable" shall not include any Tax payables.

"Accounts Receivable" means all accounts receivable, notes receivable and other indebtedness due and owed by any Third Party to Seller or its Affiliates arising from, or held in connection with, the Exploitation of the Product by or on behalf of Seller or any of its Affiliates, determined as of 11:59 P.M. on the day preceding the Closing Date; provided that, for the avoidance of doubt, "Accounts Receivable" shall not include any Tax receivables.

"Accounting Expert" has the meaning set forth in Section 3.8(d).

"Acquired Assets" has the meaning set forth in Section 2.1.

"Acquired Books and Records" means files (including all electronic data files and hard copies), documents, correspondence, lists, drawings and specifications, creative materials, marketing plans, studies (including market research and market data), clinical data (including all data and results obtained from the conduct the Ongoing Safety Study prior to and after the Closing Date), reports, and other printed or written materials (in whatever form or medium) primarily related to the Exploitation of the Product, the Acquired Assets or the Assumed Liabilities, including (a) financial books, records, statements or reports of Seller or its Affiliates, (b) legal analyses and assessments, legal opinions and other records relating to the prosecution of the Acquired IP, and (c) all books and records relating to reimbursement, contracting, managed market activities and pricing, except, in each case, to the extent included in the Acquired Marketing Records or the Acquired Regulatory Documentation, but excluding the Excluded Assets.

"Acquired Contracts" means the Contracts to which Seller or any of its Affiliates is bound that are primarily related to the Exploitation of the Product, including those listed on Schedule 1.1(b)-2 (Delayed Assignment Contracts) and Schedule 4.7(a)-1 (Acquired Contracts) of the Seller Disclosure Letter, but excluding the Excluded Contracts.

"Acquired Equipment" means all machinery, equipment, vehicles, and other items of tangible personal property and assets that are owned by Seller or its Affiliates, wherever located, in each case to the extent used primarily in the Exploitation of the Product, including the items identified on Schedule 1.1(b)-1 (Acquired Equipment) and Schedule 1.1(b)-3 (Delayed Transferring Assets) of the Seller Disclosure Letter, but excluding the Excluded Assets.

"Acquired Inventory" means all finished goods inventory of Product, together with any other inventory (including work-in-process, raw materials, active pharmaceutical ingredients and packaging supplies inventory), primarily related to the Product that is owned by Seller or its Affiliates as of the Closing, whether or not in the possession or control of Seller.

"Acquired IP" means the Intellectual Property set forth on Annex A and related Know-How and Trade Secrets primarily related to the Product. For the avoidance of doubt, the term "Acquired IP" includes only Intellectual Property listed on Annex A and related Know-How and Trade Secrets primarily related to the Product that in all cases are owned by Seller or its Affiliates, and does not include third-party Intellectual Property used by Seller or its Affiliates under license.

"Acquired Marketing Records" means all Marketing Records primarily related to the Exploitation of the Product that are owned by Seller or its Affiliates and in the possession or control of Seller or its Affiliates, to the extent transferable in compliance with applicable Laws or privacy policies; provided that, to the extent any Marketing Records contain information related to the Exploitation of products other than the Product, Seller may redact such information to the extent not related to the Exploitation of the Product.

"Acquired Regulatory Approvals" means the Regulatory Approvals held by Seller or any of its Affiliates primarily with respect to the Exploitation of the Product, including the Regulatory Approvals listed on Schedule 1.1(c) of the Seller Disclosure Letter, but excluding the Excluded Assets.

"Acquired Regulatory Documentation" means original documents or, to the extent original documents are not reasonably available, copies thereof, in any format in the possession or control of any of Seller or its Affiliates as of the Closing, of all Regulatory Documentation, including documentation evidencing all Acquired Regulatory Approvals.

"Acquisition Proposal" has the meaning set forth in Section 6.17(a).

"Action" means any action, claim, suit, litigation, proceeding, arbitration, mediation, audit, hearing, investigation or dispute.

"Adverse Event" means, with respect to the Product, any undesirable, untoward or noxious event or experience associated with the use, or occurring during or following the administration, of such Product in humans, occurring at any dose, related to or caused by such Product, including such an event or experience as occurs in the course of the use of such Product in professional practice, in a clinical trial, from overdose, whether accidental or intentional, from abuse, from withdrawal or from a failure of expected pharmacological or biological therapeutic action of such Product, and in each case, where such events or experiences would be required to be reported to the FDA pursuant to the pharmacovigilance plan submitted by Seller and accepted by the FDA in connection with the issuance of the Vowst BLA or under 21 C.F.R. sections 312.32, 314.80 or 600.80, as applicable, or to other Governmental Entities under corresponding applicable Law.

"Affiliate" means, as to any specified Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, "control," "controls," "controlled by" or "under common control with" means the possession of the power to direct or cause the direction of management and policies of such Person, whether through direct or indirect ownership of voting securities or otherwise.

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

"Allocation" has the meaning set forth in Section 3.13.

"Allowable Expenses" means, with respect to the Product for any period, and without duplication, the following expenses that are incurred by Purchaser or any of its Affiliates and are directly attributable or reasonably allocable to certain Development activities, Commercialization activities, Medical Affairs Activities, Manufacturing activities or other relevant activities indicated below, for the Product in the Territory during such period:

(a) Manufacturing Costs for the Product sold during such period;

(b) Commercialization Costs;

(c) Medical Affairs Activities Costs;

(d) costs associated with recalls, corrective actions, market withdrawals, or similar actions, except to the extent such costs constitute Liabilities for which a Party or its Affiliate is required to indemnify the other Party or its Affiliate pursuant to Sections 9.2(a), 9.2(b)(i) or 9.2(b)(ii);

(e) costs associated with pharmacovigilance activities (including maintaining the global safety database in respect of the Product);

(f) REMS Costs;

(g) Product Liability Losses arising out of Commercialization, Manufacturing or Medical Affairs Activities, except to the extent such Product Liability Losses constitute Liabilities for which a Party or its Affiliate is required to indemnify the other Party or its Affiliate pursuant to Sections 9.2(a), 9.2(b)(i) or 9.2(b)(ii);

(h) Trademark Costs;

(i) Regulatory Expenses (including the PDUFA Fee);

(j) costs of insurance in respect of Commercialization activities or Medical Affairs Activities for the Product in the Territory, in each case, to the extent such costs are not taken into account in the calculation of Net Sales;

(k) all (i) costs for Services (as defined in the Transition Services Agreement) denoted with "Yes" under the column titled "Allowable Expenses" in Schedule 1 of the Transition Services Agreement paid by Purchaser or its Affiliates under the Transition Services Agreement; provided, that, for the avoidance of doubt, (A) any costs for Services denoted with "No" under such column in Schedule 1 of the Transition Services Agreement shall not constitute an Allowable Expense and (B) any costs for Services denoted with "Item is capitalizable in inventory and will run through the P&L as COGS when the finished unit is shipped/sold" under such column in Schedule 1 of the Transition Services Agreement shall constitute Allowable Expenses to the extent such costs are reflected in Costs of Goods Sold and (ii) the costs and expenses incurred to obtain any Required Consent (as defined in the Transition Services Agreement) required by Seller in connection with its performance of the Services under the Transition Services Agreement;

(l) the costs of conducting a technology transfer with respect to PRMS (as defined in the Transition Services Agreement) pursuant to Section 1.09 (*Technology Transfer*) of the Transition Services Agreement, whether related to Product sold during or after such period, which costs will be deemed to be period expenses (in the period when incurred during the Profit Sharing Period) and, accordingly, not costs which are capitalized as part of a Product cost; and

(m) the Liabilities due and payable or arising under the Waltham Lease with respect to the Profit Sharing Period (other than the Retained Waltham Rent), including costs and expenses associated with payments to third parties or otherwise incurred in connection with the Waltham Lease that are related to the Exploitation of the Product and are consistent with the types of costs and expenses incurred in connection with the Waltham Lease prior to the date hereof, in each case, whether related to Product sold during or after such period (the "Waltham Allowable Costs"), which Liabilities will be deemed to be period expenses (in the period when incurred during the Profit Sharing Period) and, accordingly, not Liabilities which are capitalized as part of a Product cost.

If any cost or expense is directly attributable or reasonably allocable to more than one activity, such cost or expense shall only be counted as an Allowable Expense with respect to one of such activities. For the avoidance of doubt, the MSK Costs, the Ongoing Safety Study Expenses and the Retained Waltham Rent shall be excluded from Allowable Expenses and, during the Profit Sharing Period, Seller will reimburse Purchaser for the MSK Costs, the Ongoing Safety Study Expenses and the Retained Waltham Rent within thirty (30) days following Purchaser's delivery of an invoice therefor which provides in reasonable detail demonstrating such costs paid for by Purchaser. For the avoidance of doubt, Allowable Expenses shall not include any costs and expenses incurred (including, without limitation, fees of attorneys, accountants and other third party advisors) by the Parties in connection with the negotiation, preparation, execution and delivery of this Agreement or the Ancillary Agreements or the Bacthera Milestone Payment or any payments made under the Bacthera Termination Agreement. For the avoidance of doubt, any amortization or step up in basis of the Acquired Assets recorded by Purchaser related to purchase price accounting for the Transactions shall be excluded from Allowable Expenses.

"Alternative Acquisition Agreement" has the meaning set forth in Section 6.17(d).

"Ancillary Agreements" means, collectively, the Bill of Sale, Assignment and Assumption Agreements, the Assignment and Assumption of Lease, the Cross-License Agreement, the Purchaser FDA Letters, the Seller FDA Letters, the Seller Disclosure Letter, the Transition Services Agreement, the Employee Support Agreement, the Patent Assignment Agreement, the Trademark Assignment Agreement, the ROW License Termination Agreement, the US License Termination Agreement and the Quality Agreement (as defined in the Transition Services Agreement).

"API" means active pharmaceutical ingredient.

"Asset Sale" has the meaning set forth in the Recitals.

"Assignment and Assumption of Lease" means one or more assignment and assumption agreements, to be dated and effective as of the Closing Date, between Seller and/or its Affiliates, on one hand, and Purchaser and/or its designated Affiliates, on the other hand, for the assignment to Purchaser or its designated Affiliates of Seller's or any of its Affiliates' rights in, to and under any Real Property Lease, and the assumption by Purchaser or its designated Affiliates of the Assumed Liabilities related thereto, each substantially in the form of Exhibit C.

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Bacthera" means BacThera AG.

"Bacthera Agreement" means the Long Term Manufacturing Agreement, effective as of November 8, 2021, by and between Seller and Bacthera, as amended on December 14, 2022 and from time to time.

"Bacthera Milestone Payment" has the meaning set forth in Section 2.3(c).

"Bacthera Termination Agreement" means the Termination of Manufacturing Agreement, entered into on or about the date hereof, by and among Seller, Purchaser and Bacthera, pursuant to which the parties thereto agreed to terminate the Bacthera Agreement subject to the terms and conditions thereof.

"Basket" has the meaning set forth in Section 9.3(a).

"Bill of Sale, Assignment and Assumption Agreement" means one or more bill of sale, assignment and assumption agreements, to be dated and effective as of the Closing Date, between Seller and/or its Affiliates, on one hand, and Purchaser and/or its designated Affiliates, on the other hand, (a) for the assignment to Purchaser or its designated Affiliates of Seller's or any of its Affiliates' rights in, to and under the Acquired Contracts and the other intangible Acquired Assets, and the assumption by Purchaser or its designated Affiliates of the Assumed Liabilities, and/or (b) for the conveyance of the tangible Acquired Assets, each substantially in the form of Exhibit B.

"BLA" means in the United States, a Biologics License Application, as defined in the United States Public Health Service Act (42 U.S.C. § 262), and applicable regulations promulgated thereunder by the FDA, or any equivalent application that replaces such application, or any corresponding foreign application in the Territory.

"BLA Transfer Date" has the meaning set forth in Section 6.7(b).

"Board" has the meaning set forth in the Recitals.

"Board Recommendation" has the meaning set forth in the Recitals.

"Budget" means a non-binding estimated forecast of the projected Net Sales, costs and expenses proposed to be included as Allowable Expenses, Ongoing Safety Study Expenses and MSK Costs, if any, to be provided pursuant to Section 3.5(c) for the periods contemplated by Section 3.5(c), in each case, in substantially the form attached hereto as Annex D; provided that Subsequent Quarter Budgets shall only set out the level of details indicated as being provided for "quarterly budget refreshes" in Annex D.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in New York, New York.

"Business Information" has the meaning set forth in Section 6.7(d).

"Calendar Quarter" means each successive period of three (3) calendar months commencing on January 1, April 1, July 1 and October 1, except that the first Calendar Quarter under this Agreement shall commence on the Closing Date and end on the day immediately prior to the first to occur of January 1, April 1, July 1 or October 1 after the date hereof.

"Calendar Year" means each successive period of twelve (12) calendar months commencing on January 1 and ending on December 31, except that the first Calendar Year under this Agreement shall commence on the Closing Date and end on December 31 of the year in which the Closing Date occurs.

"CDI" has meaning as set forth in the definition of rCDI set forth in this Section 1.1.

"Change" means a material event, occurrence or fact first occurring or arising after the date hereof.

"Change in Recommendation" has the meaning set forth in Section 6.17(d).

"Claim" has the meaning set forth in Section 9.5.

"Closing" means the meaning set forth in Section 3.2.

"Closing Date" has the meaning set forth in Section 3.2.

"Closing Date Payment" has the meaning set forth in Section 3.1(a).

"CMC" means chemistry, manufacturing and controls.

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

"Commercialization" means any and all activities directed to the preparation for sale of, offering for sale of, or sale of the Product, including activities related to registering, launching, marketing, promoting, distributing, detailing, booking of sales, importing, pricing, reimbursement, Market Access, HEOR Activities, and advertising the Product, and interacting with Regulatory Authorities regarding any of the foregoing, but excluding any activities relating to Development, Manufacturing or Medical Affairs Activities. When used as a verb, "to Commercialize" and "Commercializing" means to engage in Commercialization, and "Commercialized" has a corresponding meaning.

"Commercialization Costs" means, with respect to the Product, the FTE Costs and Out-of-Pocket Costs that are incurred by Purchaser or any of its Affiliates that are directly attributable or reasonably allocable to the Commercialization of the Product in the Territory, including detailing costs, sales and marketing costs, distribution costs and other costs incurred by Purchaser and/or its Affiliates, patient assistance program costs, health and economic outcomes research costs, Market Access and market research costs (including costs for data purchases from Third Parties and for data analytics), and sales force training and operational expenses (except for general sales representative training expenses not specific to the Product). For the avoidance of doubt, Commercialization Costs shall exclude (a) Manufacturing Costs, (b) Medical Affairs Activities and (c) Regulatory Expenses incurred with respect to the Product.

"Competition Laws" means the HSR Act, the Sherman Antitrust Act of 1890, as amended, the Federal Trade Commission Act, as amended, and the Clayton Act of 1914, as amended, and other similar Laws of any jurisdiction.

"Consent" means any and all notices to, consents, approvals, clearances, ratifications, permissions, authorizations or waivers from Third Parties, including from any Governmental Entity.

"Contract" means any agreement, contract, subcontract, settlement, lease (whether for real or personal property), confidentiality agreement or license, whether written or oral, to which Seller or its Affiliate is a party or by which any of the Acquired Assets are bound.

"Control" (including any variations such as "Controlled" and "Controlling") means, with respect to any Intellectual Property Rights, material or document, the legal authority or right (whether by ownership, license or otherwise) of a Party to transfer such Intellectual Property Rights, or grant a license or a sublicense of or under such Intellectual Property Rights, or to provide or provide access to such material or document, to the other Party without breaching the terms of any agreement with a Third Party existing at the time such Party would be required hereunder to grant the other Party such license, sublicense, or access.

"Copyrights" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Cost of Goods Sold" means, with respect to the Product, the consolidated cost incurred by Purchaser or any of its Affiliates in Manufacturing the Product (including activities related to quality control, packaging and labeling, failed batches and expired materials, and including activities related to the supply of raw materials or intermediates) and calculated in accordance with GAAP, in bulk, vialed or finished product form as the case may be, including: (a) to the extent that the Product is Manufactured by one or more Third Party contractors, (i) the actual Out-of-Pocket Costs actually accrued or incurred by Purchaser or its Affiliate to pay such Third Party contractors for the Manufacture thereof *plus* (ii) to the extent directly attributable or reasonably allocable to the Product, the FTE Costs incurred to engage with and oversee such Third Party contractor (excluding, for purposes of this subclause (a) actual costs associated with the technology transfer to such Third Party contractor to enable Manufacturing (which shall be an Allowable Expense pursuant to subclause (l) of such definition) and any upfront and milestone based payments and startup costs associated therewith); and (b) to the extent that the Product is Manufactured by Purchaser or its Affiliate, material costs, including items such as yield, waste levels and failed lot charges, FTE Costs of direct labor, and any applicable overhead (e.g. depreciation, supervisory, occupancy, facility and equipment), and such other costs allocable to the Product, including inventory write-offs, incurred by Purchaser or its applicable Affiliate.

"Court Order" means any judgment, decision, decree, consent decree, writ, injunction, ruling or order of any Governmental Entity that is binding on any Person or its property under applicable Laws.

"Cross-License Agreement" means the License Agreement, to be dated and effective on the Closing Date by and between Purchaser and Seller, substantially in the form of Exhibit D.

"Damages" means any and all damages, judgments, awards, Liabilities, losses, obligations, deficiencies, assessments, payments (including those arising out of any settlement or Court Order relating to any Claim), penalties, claims of any kind or nature, fines and costs and expenses, including costs of mitigation and reasonable attorneys' and accountants' fees and disbursements, in each case, whether or not arising out of a Third Party Claim; provided, that, "Damages" shall exclude any punitive, special, incidental, indirect or similar damages (including damages for lost profits, damages based on a multiple of earnings, diminution in value or other metrics) or other damages that are not a reasonably foreseeable consequence of the applicable breach, except to the extent such damages are awarded by a Court Order and payable to a third party in connection with a Third Party Claim.

"Data" means any and all research data, pharmacology data, preclinical data, clinical data, including in each case raw data, as well as marketing, Market Access, pharmacovigilance, and other data directly related to the Product, in each case to the extent that such data are Controlled by a Party or its Affiliates.

"Data Processing Contract" means any applicable contractual obligation with respect to the Product or the Acquired Assets concerning data privacy and security relating to Personal Information in the possession or control of Seller or maintained by Third Parties having access to such information under Contracts to which Seller is a party.

"Data Protection Law" means any Law applicable to the collection or other or Processing of Data, data privacy, data security, data protection, data transfer or cross-border data flow of Personal Information.

"Data Room" means the electronic data room, as constituted as of the Closing Date, containing documents and materials relating to the Acquired Assets.

"Delayed Assignment Contracts" means such Contracts set forth on Schedule 1.1(b)-2 (Delayed Assignment Contracts) of the Seller Disclosure Letter.

"Delayed Assignment Contracts Transfer Date" has the meaning set forth on Section 6.24(a).

"Delayed Transferring Assets" means such equipment and assets set forth on Schedule 1.1(b)-3 (Delayed Transferring Assets) of the Seller Disclosure Letter.

"Determination Notice" has the meaning set forth in Section 6.17(e)(i).

"Development" or "Develop" means non-clinical and clinical drug development activities reasonably related to the development and submission of information to a Regulatory Authority or otherwise related to the research, identification, testing and validation of a therapeutic agent, including, without limitation, toxicology, pharmacology and other discovery and pre-clinical efforts, test method development and stability testing, manufacturing process and CMC development and scale-up, life cycle management, formulation development, delivery system development, quality assurance and quality control development, statistical analysis, clinical trials (including, without limitation, pre- and post-approval studies), and all other activities necessary or reasonably useful for or otherwise requested or required by a Regulatory Authority as a condition to or in support of obtaining or maintaining a Regulatory Approval.

"DGCL" means the Delaware General Corporation Law, as amended.

"Dispute Notice" has the meaning set forth in Section 3.8(d).

"Disputed Item" has the meaning set forth in Section 3.8(d).

"Eligible Insurance Proceeds" has the meaning set forth in Section 9.3(b).

"Employee on Disability Leave" has the meaning set forth in Section 6.12(a).

"Employee Support Agreement" means that certain Employee Support Agreement to be entered into by and between Seller or its Affiliate and Purchaser or its designated Affiliates, substantially in the form set forth on Exhibit K attached hereto.

"Employee Transfer Date" means the last day of the "Employee TSA Period" as such term is defined in the Employee Support Agreement.

"Employees" has the meaning set forth in Section 4.11(a).

"Encumbrance" means any lien, mortgage, security interest, pledge, easement or similar encumbrance.

"Equity Financing Documents" means that certain Securities Purchase Agreement to be entered into by and between Seller and Purchaser, substantially in the form set forth on Exhibit L attached hereto.

"Equity Financing Transaction" means such transaction(s) as contemplated by the Equity Financing Documents.

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

"ERISA Affiliate" means, with respect to any Person, any corporation, trade or business which, together with such Person, is a member of a controlled group of corporations or a group of trades or businesses under common control within the meaning of section 414 of the Code.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Contracts" has the meaning set forth in Section 2.2(f).

"Excluded Employee Liabilities" has the meaning set forth in Section 2.4(j).

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Existing Agreements" has the meaning set forth in the Recitals.

"Exploit," and related terms such as "Exploitation", means to make, have made, import, export, use, sell or offer for sale, including to Develop, Commercialize, Manufacture and have Manufactured.

"FD&C Act" means the United States Food, Drug and Cosmetic Act (21 U.S.C. § 301 *et seq*.), as amended, together with any rules and regulations promulgated thereunder.

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

"Field" means the treatment of CDI and rCDI and associated complications.

"Final Allocation" has the meaning set forth in Section 3.13.

"Financial Information" has the meaning set forth in Section 4.4(a).

"First Sales Milestone" has the meaning set forth in Section 3.4(a).

"Flagship" means Flagship Pioneering Inc. and/or its affiliates, as stockholders of Seller.

"Former Employee" means any employee of Seller or any of its Affiliates whose employment therewith terminated prior to the Closing Date.

"Forward-Looking Statements" has the meaning set forth in Section 5.6(c).

"Fraud" means actual fraud that is committed by making an intentionally or willfully deceptive misrepresentation of a fact in respect of the representations and warranties set forth in this Agreement or any certificate delivered in connection herewith, as applicable, and upon which the Party claiming fraud has reasonably relied.

"FTE" means a commitment of time and effort to constitute a full-time equivalent person, consisting of 1880 hours per year (i.e., one fully committed person or multiple partially committed persons aggregating to one (1) full time person) with appropriate capabilities and seniority employed by Purchaser or its Affiliates assigned to directly perform specified activities with respect to the Ongoing Safety Study, the Manufacture of the Product, regulatory activities, implementing risk evaluation and mitigation strategies, Commercialization or Medical Affairs Activities of the Product, or any other activities specified under this Agreement, as applicable, pursuant to this Agreement.

"FTE Costs" means the product of: (a) that number of FTEs (proportionately, on a per-FTE basis) used by Purchaser or its Affiliates in directly performing activities with respect to the Ongoing Safety Study, the Manufacture of the Product, regulatory activities, implementing risk evaluation and mitigation strategies, Commercialization or Medical Affairs Activities of the Product, or any other activities specified under this Agreement (without duplication), as applicable, *multiplied* by (b) the applicable FTE Rate. For clarity, FTE Costs do not include items included in the determination of the Out-of-Pocket Costs.

"FTE Rate" means an annual rate per FTE as set forth on Annex B, which may be prorated on a daily or hourly basis as necessary and as may be adjusted from time to time by mutual agreement of the Parties.

"Fundamental Representations" means, with respect to Seller, the representations in Sections 4.1, 4.2(a), 4.2(b), 4.2(c)(i), 4.3 and 4.18, and, with respect to Purchaser, the representations in Sections 5.1, 5.2(a), 5.2(b) and 5.5.

"Funds Flow Memorandum" has the meaning set forth in Section 3.1(a).

"GAAP" means the generally accepted accounting principles in the United States.

"Good Clinical Practices" or "GCP" means the requirements for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials, protection of human subjects, financial disclosure by clinical investigators, and institutional review boards, including as promulgated by the FDA at 21 C.F.R. Parts 50, 54, 56 and 312, or any other equivalent Laws in the Territory.

"Good Laboratory Practices" or "GLP" means the then-current good laboratory practice standards promulgated by the FDA and codified at 21 C.F.R. Part 58, or any other equivalent Laws in the Territory.

"Good Manufacturing Practices" or "GMP" means the regulations governing the manufacturing of fine chemicals, API, intermediates, bulk products or finished pharmaceutical products set forth in 21 U.S.C. 351(a)(2)(B) and in FDA regulations at 21 C.F.R. Parts 210, 211 and 600, or any other equivalent Laws in the Territory.

"Governmental Entity" means any national, supranational, international, federal, state, local, provincial or other governmental, regulatory or administrative authority, agency or commission or any court, tribunal, commission, board or judicial or arbitral body of competent jurisdiction.

"Health Care Laws" means, GMP, GLP, GCP, and further includes: (a) the FD&C Act; (b) 21 C.F.R. Parts 11, 50, 54, 56, 58, 312, and 812; (c) Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act); (d) the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)); (e) the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)); (f) the civil False Claims Act (31 U.S.C. §§ 3729 et seq.); (g) the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)); (h) the exclusion Laws (42 U.S.C. § 1320a-7); and (i) any other Laws governing the design, development, testing, processing, handling, storing or licensing of the Acquired Assets, as applicable, or that is related to remuneration (including ownership) to or by physicians or other health care providers (including kickbacks) or the disclosure or reporting of the same, record-keeping, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government health care programs, quality, safety, licensure, accreditation or any other material aspect of providing health care products or services.

"Healthcare Reform Laws" means the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and the regulations issued thereunder.

"HEOR" has the meaning as set forth in the definition of HEOR Activities set forth in this Section 1.1.

"HEOR Activities" means evidence generation and dissemination in support of pricing and reimbursement or establishment of the value proposition of the Product or other activities applying the results of health economics and outcomes research ("HEOR") (e.g., clinical outcome assessment development and validation or use of HEOR-related endpoints in clinical studies or real world evidence generation); provided, that for the avoidance of doubt, no costs related to any clinical studies shall be borne by Seller, during the Profit Sharing Period or otherwise under this Agreement, other than the Ongoing Safety Study Expenses.

"HSR Act" means U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Identified Employees" has the meaning set forth in Section 4.11(a).

"IFRS" means International Financial Reporting Standards as in effect from time to time.

"Improvements" has the meaning set forth in Section 4.14(c).

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money, loans, or advances, (b) all indebtedness for the deferred purchase price of properties, assets, or services (including all earn-out obligations), (c) all obligations evidenced by notes, bonds, debentures, or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement, (e) all reimbursement, payment, or similar obligations, contingent or otherwise, under any banker's acceptance, letter of credit, or similar facility, (f) all obligations under surety bonds and performance bonds, (g) all obligations under any interest rate, currency, or other derivative, hedging, swap, or similar instrument, and (h) all Liabilities of any other Person described in clauses (a) through (g) above that such Person has, directly or indirectly, guaranteed or assumed, or that is otherwise its legal obligation.

"Indemnified Parties" has the meaning set forth in Section 9.2(b).

"Indemnifying Party" has the meaning set forth in Section 9.5.

"Initial Budget" has the meaning set forth in Section 3.5(c).

"Installment Payments" has the meaning set forth in Section 3.1(b).

"Intellectual Property" means all U.S. and foreign (a) Patents, (b) trademarks, service marks, trade dress, trade names, logo, insignia, symbol, design, or combinations thereof, whether registered or unregistered, together with any registrations and applications for registration thereof and goodwill associated therewith, (c) domain name registrations (clauses (b) and (c), collectively, "Trademarks"), (d) copyrights and database rights, whether registered or unregistered ("Copyrights"), (e) confidential information meeting the definition of a trade secret under the Uniform Trade Secrets Act (collectively, "Trade Secrets"), and (f) inventions, discoveries, data, information, processes, methods, techniques, materials (including any chemical or biological materials), technologies, results, cell lines, compounds, probes, sequences or other know-how or other confidential information, whether or not patentable (collectively, "Know-How").

"Intellectual Property Rights" means all Patents, Trade Secrets, Copyrights, Trademarks, moral rights, Know-How and any and all other intellectual property or proprietary rights now known or hereafter recognized in any jurisdiction.

"Intervening Event" means a Change that is material to Seller and the Exploitation of the Product, taken as a whole, which was not known by, or if known, the effect of which was not reasonably foreseeable by, the Board as of or prior to the date hereof (which Change does not relate to and does not include an Acquisition Proposal or a Superior Proposal), and which becomes known to the Board prior to the Stockholder Approval; provided, however, that none of the following shall constitute, be deemed to contribute to or otherwise be taken into account in determining whether there has been a Intervening Event: (a) any Change in GAAP, IFRS or in any applicable Law; (b) any Change that is the result of factors generally affecting the industries in which Seller operates, in the geographic markets in which it operates or where its products (including the Product) or services are sold or sourced (as applicable); (c) any changes in the market price or trading volume of Seller's common stock, in and of itself; (d) the fact that, in and of itself, Seller or any of its subsidiaries exceeds any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period ending after the date of this Agreement (it being understood that the underlying facts giving rise or contributing to events described in clauses (c) and (d) may be taken into account in determining whether there has been an Intervening Event if such facts are not otherwise excluded under this definition); (e) any regulatory or clinical Changes relating to any product(s) of Seller other than the Product (including (i) any regulatory actions, requests, recommendations or decisions of any Governmental Entity relating to such product or any other regulatory or clinical development relating to such product, and (ii) any clinical trials, studies, tests or results or announcements thereof with respect to such product); and (f) any refinancing of Seller's Liabilities under the Oaktree Credit Agreement, or any inquiry, proposal or offer from, or negotiations or discussions with, any Person with respect thereto.

"Key Personnel" has the meaning set forth in Section 6.7(d).

"Key Personnel Agreements" has the meaning set forth in Section 6.7(d).

"Know-How" has the meaning as set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Law" means any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, Court Order, regulation, ruling, notice, treaty or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

"Leased Real Property" has the meaning set forth in Section 4.14(b).

"Liability" means any liability, indebtedness, obligation (including obligations relating to research, clinical studies, clinical trials and post-marketing commitment studies), commitment, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, consequential, contingent, matured, unmatured, liquidated, unliquidated, known or unknown.

"Licensee" means a Third Party that has been granted a right to sell, market, distribute and/or promote the Product in the Field and in the Territory by Purchaser or its Affiliates. As used in this Agreement, "Licensee" shall not include a wholesaler, distributor or reseller of the Product, to the extent that Purchaser or its Affiliate sells to such Person the Product and receives only supply price payments.

"Manufacture" and "Manufacturing" means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, and shipping of a product or any intermediate thereof, including process qualification and validation, pre-clinical, clinical and commercial manufacture, product characterization, stability testing, and quality assurance and quality control.

"Manufacturing Costs" means, with respect to the Product, the Cost of Goods Sold therefor incurred by Purchaser and/or its Affiliates, and that are reasonably allocable to, the Manufacture of the Product used in connection with Purchaser's or its Affiliates' Development activities, for Commercialization in the Territory or that is provided as a sample free of charge in the Territory.

"Market Access" means any and all processes and activities conducted to establish, seek and maintain pricing and reimbursement for the Product, as well as country level, state, regional and local payor processes and activities to obtain and maintain local and regional patient access for the Product, including price setting, national mandatory rebate negotiations with applicable Governmental Entities, preparing reimbursement and economic dossiers, and policy-related activities associated with any of the foregoing.

"Marketing Records," with respect to the Product, means all advertising, marketing, market research, market data, sales and promotional materials, pricing lists, consulting deliverables and other related literature, catalogs and materials (including customer lists), in each case with respect to the Product.

"Material Adverse Effect" means any event, occurrence, effect, matter, change, development or state of facts that is materially adverse to (a) the Product, the Acquired Assets and the Assumed Liabilities, taken as a whole, or (b) Seller's or its Affiliate's ability to consummate the Transactions; provided, however, that, in determining whether a Material Adverse Effect has occurred, there shall be excluded from this definition any event, occurrence, effect, matter, change, development or state of facts that results from (i) changes or conditions affecting the industries in which the Product is Exploited or the economy, in each case, in any territory in which the Product is Exploited, (ii) any change in Law or in GAAP or IFRS (in any territory in which the Product is Exploited), or in the interpretation of any of the foregoing, (iii) conditions arising out of acts of terrorism, war conditions, natural disasters or other force majeure events, (iv) declining sales of the Product (including due to competition) or the failure to meet projections, forecasts, estimates or budgets with respect to the Product (for the avoidance of doubt, any underlying cause for any such failure shall not be excluded by this clause (iv)), (v) the announcement or pendency of the transactions contemplated by this Agreement or any action required to be taken by Seller or any of its Affiliates pursuant to the terms of this Agreement or any action taken by Seller or any of its Affiliates with Purchaser's written consent, (vi) the failure to take any action that Seller or any of its Affiliates have requested the consent of Purchaser to take and which Purchaser did not grant its consent with respect thereto, (vii) any action by Seller or its Affiliates which Purchaser has expressly requested be taken or (viii) any acts or omissions of Purchaser or any of its Affiliates; except, in the cases of clauses (i), (ii), (iii) and (iv) only, to the extent Seller, the Product, the Acquired Assets or the Assumed Liabilities is disproportionately affected by such effect as compared to other similarly situated Persons as Seller operating in the industries in which the Product is Exploited.

"Medical Affairs Activities" means design, strategies, oversight and implementation of activities designed to ensure or improve appropriate medical use of, conduct medical education in respect of the Product, including activities of medical liaisons, grants to support continuing independent medical education (including independent symposia, and congresses), and development, publication and dissemination of scientific and clinical information in support of an approved indication for the Product, as well as medical information services (and the content thereof) provided in response to inquiries communicated via sales representatives or other external-facing representatives or received by letter, phone call or email or other means of communication, but excluding any activities relating to Development or Commercialization.

"Medical Affairs Activities Costs" means, with respect to the Product, the FTE Costs and Out-of-Pocket Costs incurred by Purchaser or any of its Affiliates that are directly attributable or reasonably allocable to Medical Affairs Activities for the Product in the Territory.

"Milestone" has the meaning set forth in Section 3.4(a).

"Milestone Notice" has the meaning set forth in Section 3.4(b).

"Milestone Payment" has the meaning set forth in Section 3.4(a).

"Milestone Period" has the meaning set forth in Section 3.4(a).

"Milestone Report" has the meaning set forth in Section 3.4(e).

"MSK" means Memorial Sloan Kettering Cancer Center.

"MSK Agreement" means the exclusive license agreement between Seller and MSK, dated October 16, 2019, as may be amended from time to time.

"MSK Costs" means any milestone payments pursuant to Section 5.1(e) of the MSK Agreement, minimum royalty payments pursuant to Section 5.1(d) of the MSK Agreement, and running royalty payments pursuant to Section 5.1(b) of the MSK Agreement, in each case becoming payable to MSK during the Profit Sharing Period as a result of Development or Commercialization of the Product.

"MSK Patents" means the Patents licensed to Seller under the MSK Agreement.

"Net Profit/Net Loss" means, with respect to the Product in the Territory during any period, Net Sales of the Product in the Territory during such period, adding any Other Income and subtracting the sum of Allowable Expenses attributable to the Product in the Territory during such period. For the avoidance of doubt, (a) income and withholding Taxes imposed on Purchaser or its Affiliates, (b) any Milestone Payments made by Purchaser to Seller pursuant to this Agreement and (c) indemnification payments by an Indemnifying Party to an Indemnified Party, in each case, will not be included in the calculation of Net Profit/Net Loss, and if such terms are used individually, "Net Profit" means a positive Net Profit/Net Loss, and "Net Loss" means a negative Net Profit/Net Loss.

"Net Sales" means the gross amount invoiced by or on behalf of Purchaser, its Affiliates and their respective Licensees for sales of the Product in the Territory (or, in the case of Section 3.4, the entire world) (other than sales among Purchaser, its Affiliates or Licensees for subsequent resale in which case the first sale to a Third Party that is not a Licensee shall be used for calculation of Net Sales), *less* the following deductions if and to the extent they are (a) included in the gross invoiced sales price of the Product or otherwise directly incurred by Purchaser, its Affiliates and their respective Licensees with respect to the sale of the Product, (b) normal and customary for Purchaser, its Affiliates or their respective Licensees, as applicable, or (c) not otherwise deducted in computing other amounts hereunder:

(i) trade discounts, including trade, cash and quantity discounts or rebates, credits or refunds (including inventory management fees, discounts or credits),

(ii) allowances or credits for claims, returns or rejections of the Product, including recalls,

(iii) actual freight and insurance costs, including without limitation the costs of export licenses, shipping, postage and handling charges, incurred in transporting the Product to customers,

(iv) rebates and chargebacks or retroactive price reductions made to federal, state or local governments (or their agencies), or any Third Party payor, administrator or contractor, including managed health organizations,

(v) customs duties, sales, excise and use Taxes and any other governmental charges (including value added Tax) actually paid in connection with the transportation, distribution, use or sale of the Product (but excluding what are commonly known as income taxes), and

(vi) bad debts (not to exceed one percent (1%) of gross sales of the Product in the Territory (or, in the case of Section 3.4, the entire world)) in connection with the Product, provided that any recovered bad debts will be included in Net Sales in the Calendar Quarter in which they are recovered.

In the case of sale or other disposal of the Product for non-cash consideration, the gross revenue attributable to the Product for purposes of calculating Net Sales in respect thereof shall include the fair market price of such non-cash consideration. Notwithstanding the foregoing, provision of the Product for the purpose of conducting pre-clinical or clinical research shall not be deemed to be a sale. For clarity, any consideration received for the Product provided as samples, as charitable donations, or for compassionate use in each case free of charge shall not be included in the calculation of Net Sales.

Net Sales shall be determined in accordance with IFRS for purposes of determining the achievement of Milestones pursuant to Section 3.4 but shall be determined in accordance with GAAP for purposes of Net Profit/Loss calculation.

"Non-Assignable Asset" has the meaning set forth in Section 6.4(b).

"Non-Transferring Employee" has the meaning set forth in Section 6.16(c).

"Notice of Dispute" has the meaning set forth in Section 3.13.

"Oaktree Credit Agreement" means the Credit Agreement and Guaranty, dated April 27, 2023, by and among Seller, the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto and Oaktree Fund Administration, LLC.

"Ongoing Safety Study" means the post-marketing safety study conducted by or on behalf of Seller as of the date hereof entitled "A Post-Marketing Safety Study of VOWST™ in Patients with rCDI using administrative claims data in the United States."

"Ongoing Safety Study Expenses" means the costs and expenses, including the FTE Costs (but only up to one-half (0.5) of an FTE) and Out-of-Pocket Costs, incurred in connection with the conduct of the Ongoing Safety Study, which during the Profit Sharing Period, shall be set forth in the Budget.

"Ordinary Course of Business" means the ordinary course of business, including with regard to nature, frequency and magnitude, and otherwise consistent with past practice.

"Organizational Documents" means, as to any Person, its certificate of incorporation and by-laws, its certificate of formation and limited liability company agreement, or any equivalent documents under the Law of such Person's jurisdiction of organization.

"Other Income" means any payment or income (other than Net Sales) received by Purchaser or its Affiliate from a Third Party that is attributable to the Product or is received in connection with the grant of a license or sublicense or other right or activity with respect to the Product, in each case, in the Territory; provided, that recoveries in connection with any Third Party Infringement or Third Party Challenge shall only be included in Other Income after Purchaser has recovered the internal and out-of-pocket costs and expenses incurred by Purchaser or any of its Affiliates in connection with such Third Party Infringement or Third Party Challenge.

"Out-of-Pocket Costs" means reasonable amounts actually paid to Third Party vendors, consultants, suppliers or contractors, for services or materials, as applicable, provided by each such Third Party and other reasonable amounts actually paid to Third Parties (including travel and entertainment expenses) that are, in each case, directly related to the Ongoing Safety Study, the Manufacture of the Product, performing the activities contemplated by the booking of sales of the Product, warehousing, distributing, maintaining (and if applicable, creating or obtaining the infrastructure necessary therefor) of the Product, handling returns, recalls, order processing, invoicing and collection, and receivables, with respect to the Product in the Territory, regulatory activities, implementing risk evaluation and mitigation strategies, defense of Third Party Challenges, clearance of Product Trademarks, establishment and maintenance of rights of Product Trademarks, Commercialization or Medical Affairs Activities of or in respect to the Product, or any other activities specified under this Agreement, as applicable, to the extent such services or materials apply to the activities in or in respect of the Territory. For clarity, Out-of-Pocket Costs do not include (a) payments for Purchaser's internal salaries or benefits for its employees, general office or facility supplies, insurance, general information technology, utilities, or capital expenditures, or (b) items included in the determination of the FTE Rate.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Patent Assignment Agreement" means the Patent Assignment Agreement assigning to Purchaser or its designated Affiliate the Patents included in the Acquired IP, to be entered into by and among Seller or one or more of its Affiliates and Purchaser or its designated Affiliate, substantially in the form included as Exhibit E.

"Patents" means any and all national, regional and international (a) issued patents and pending patent applications (including provisional patent applications), (b) patent applications claiming priority to the foregoing, including all converted provisionals, substitutions, continuations, continuations-in-part, divisions, renewals and continued prosecution applications, and all patents granted thereon, (c) patents-of-addition, revalidations, reissues, reexaminations and extensions or restorations by existing or future extension or restoration mechanisms, including patent term adjustments, pediatric exclusivity, patent term extensions, supplementary protection certificates or the equivalent thereof, (d) inventor's certificates, utility models, petty patents, innovation patents and design patents, (e) other forms of government-issued rights substantially similar to any of the foregoing, including so-called pipeline protection or any importation, revalidation, confirmation or introduction patent or registration patent or patent of additions to any of such foregoing and (f) United States and foreign counterparts of any of the foregoing.

"Permits" means all certifications (including those of standards-setting organizations), licenses, permits, franchises, approvals, authorizations, exemptions, notices to, consents or orders of, or filings with, any trade association, any standards-setting organization or any Governmental Entity, necessary for the ownership of the Acquired Assets.

"Permitted Encumbrance" means (a) any Encumbrance that arises out of Taxes not yet due and delinquent or the validity of which is being contested in good faith by appropriate proceedings, (b) any Encumbrance representing the rights of customers, suppliers and subcontractors in the Ordinary Course of Business under the terms of any Contracts to which the relevant party is a party or under general principles of commercial or government contract Law (including mechanics', materialmen's, carriers', workmen's, warehouseman's, repairmen's, landlords' and similar liens granted or which arise in the Ordinary Course of Business), (c) in the case of real property, Encumbrances that are easements, rights-of-way, encroachments, restrictions, conditions and other similar Encumbrances incurred or suffered in the Ordinary Course of Business and which, individually or in the aggregate, do not and would not materially impair the use (or contemplated use), utility or value of the applicable real property or otherwise materially impair the present or contemplated business operations at such location, and (d) prior to the Closing, Encumbrances under the Oaktree Credit Facility.

"Person" means any person or entity, whether an individual, trustee, corporation, limited liability company, general partnership, limited partnership, trust, unincorporated organization, business association, firm, joint venture or Governmental Entity.

"Personal Information" means information that identifies, is associated with, or could reasonably be linked, directly or indirectly, with a particular individual, and any other information defined under applicable Data Protection Laws as "personal information," "personally identifiable information," "protected health information," and "personal data."

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"Pre-Closing Period" has the meaning set forth in Section 6.1.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"Prepaid Milestone" has the meaning set forth in Section 3.1(a).

"Prepaid Milestone Calculations" has the meaning set forth in Section 3.4(b).

"Privacy Policy" means any external or internal privacy policy of Seller used in connection with the Product and the Acquired Assets.

"Pro Rata Bonus Amount" means the product of (a) the sum of (i) one hundred percent (100%) of the target amount of bonuses payable to the Transferring Employees who actually receive bonuses, subject to and in accordance with Section 6.12(g), from the Purchaser for the Calendar Year in which the Closing occurs, *plus* (ii) all employer Taxes on such bonuses, *multiplied by* (b) quotient of (i) the number of days prior to the Closing in the Calendar Year in which the Closing occurs, *divided by* (ii) 366.

"Processed" has the meaning set forth in Section 4.6(a).

"Product" means, collectively, Vowst and any improvements and modifications thereto Developed after the Closing Date (or, in the case of Article 4, prior to the Closing Date).

"Product Liability Losses" means any and all Damages that relate to Third Party Claims in respect of personal injury or death (or risk of personal injury or death) arising from, relating to or otherwise in respect of, the use or ingestion of, or exposure to, the Product, whether based on negligence, strict product liability or any other product liability theory, including any such liability predicated on any alleged or actual Manufacturing, design or formulation defect or failure to warn or any breach of any express or implied warranties, in each case relating to the Product sold or alleged to have been sold, or Commercialization or Medical Affairs Activities conducted or alleged to have been conducted, in the Territory.

"Product Trademarks" means any and all of the Trademarks used or to be used on or in connection with the Product in the Territory as determined by Purchaser or its Affiliates.

"Profit Sharing Period" has the meaning set forth in Section 3.5(a).

"Proxy Statement" has the meaning set forth in Section 4.19.

"Purchase Price" means the sum of, without duplication, (a) the Closing Date Payment, *plus* (b) the Prepaid Milestone, *plus* (c) the Installment Payments, *plus* (d) the amount of all accrued interest on the Prepaid Milestone, *plus* (e) the amount of the Milestone Payments, if and when earned, and after deducting therefrom the amount of any such Milestone Payments satisfied by set-off against the Prepaid Milestone pursuant to Section 3.3.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser FDA Letters" means the letters from Purchaser or its designated Affiliate to the FDA or such other instrument as may be necessary to effectuate the transfer of Acquired Regulatory Approvals from Seller or its Affiliates, as applicable, to Purchaser in accordance with this Agreement, in a form reasonably satisfactory to Seller, duly executed by Purchaser or its designated Affiliate.

"Purchaser Indemnified Parties" has the meaning set forth in Section 9.2(a).

"Qualifying Offer" has the meaning set forth in Section 6.12(a).

"Quarterly Report" has the meaning set forth in Section 3.5(b).

"Quarterly Report Meeting" has the meaning set forth in Section 3.8(c).

"Real Property Lease" has the meaning set forth in Section 4.14(b).

"Recurrent *C. difficile* Infection" or "rCDI" means an episode of a *C. difficile* infection ("CDI") in a patient who has had one or more episodes of CDI within the immediately preceding twelve (12) month period.

"Regulatory Approval" means, with respect to the Product in any country or regulatory jurisdiction, any and all approvals, licensures and Permits from the applicable Regulatory Authority sufficient for the import, distribution, marketing, use, offering for sale, and sale of the Product for use in the Field in such country or jurisdiction in accordance with applicable Laws, including orphan drug designation and exclusivity, but excluding any applicable pricing and reimbursement approvals.

"Regulatory Authority" means any national or supranational Governmental Entity (including, without limitation, the FDA) which has regulatory responsibility and authority in one or more countries for review and approval of Development, Manufacturing and Commercialization of a Product.

"Regulatory Documentation" means all (a) Regulatory Filings and other registrations, licenses, authorizations, and approvals of or with Regulatory Authorities (including Regulatory Approvals); (b) correspondence and reports submitted to or received from Regulatory Authorities (including minutes and official contact reports relating to any communications with any Regulatory Authority) and all supporting documents with respect thereto, including all regulatory drug lists, advertising and promotion documents, adverse event files, and complaint files; (c) correspondence and documentation with any Regulatory Authority related to orphan drug designation and exclusivity or a foreign equivalent thereof; and (d) Data contained or relied upon in any of the foregoing, in each case ((a), (b), (c) and (d)) relating to the Development, Manufacture, or Commercialization of the Product in a particular country or jurisdiction.

"Regulatory Expenses" means, with respect to the Product, the FTE Costs (but only up to two and one-quarter (2.25) FTEs) and Out-of-Pocket Costs incurred by Purchaser or any of its Affiliates that are directly attributable or reasonably allocable to obtaining and maintaining existing Regulatory Approvals for the Product, including the preparation and filing of Regulatory Filings and maintenance of Regulatory Approvals in the Field in the Territory and the payment of fees payable to Regulatory Authorities, provided that Regulatory Expenses shall not include such FTE Costs or Out-of-Pocket Costs that are directly attributable or reasonably allocable to obtaining Regulatory Approvals for new or expanded indications for the Product; provided, that for the avoidance of doubt, no costs related to any clinical studies shall be borne by Seller, during the Profit Sharing Period or otherwise under this Agreement, other than the Ongoing Safety Study Expenses.

"Regulatory Filings" means any and all regulatory applications and/or related documentation submitted on or before the date hereof, to a Regulatory Authority with respect to the Product in connection with the initiation or conduct of clinical studies, and/or to seek Regulatory Approval for the Product in the Field, including, without limitation, any INDs, drug master files, manufacturing master files, BLAs, or any supplements thereto.

"Reimbursement Expense Amount" has the meaning set forth in Section 8.3(a).

"REMS Costs" means the FTE Costs and Out-of-Pocket Costs directly related or reasonably allocable to any risk evaluation and mitigation strategy that is implemented as a commitment to a Regulatory Authority as a condition of, or in connection with obtaining or maintaining, a Regulatory Approval.

"Representatives" means, with respect to a Person, such Person's Affiliates, officers, directors, employees, attorneys, investment bankers, financial advisers, accountants and agents.

"Restricted Business" has the meaning set forth in Section 6.16(a)(i).

"Retained Bacthera Amount" has the meaning set forth in Section 3.1(a).

"Retained Waltham Rent" has the meaning set forth in Section 2.4(f)(ii).

"ROW License Agreement" has the meaning set forth in the Recitals.

"ROW License Termination Agreement" means that certain Termination Agreement to be entered into by and between Seller and Purchaser, substantially in the form set forth on Exhibit G attached hereto.

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

"Second Payment" has the meaning set forth in Section 3.1(b)(i).

"Security Incident" means any compromise or unauthorized access, destruction, loss, acquisition or disclosure of any Personal Information or confidential information processed by Seller in connection with the Product and the Acquired Assets.

"Seller" has the meaning set forth in the Preamble.

"Seller Benefit Plan" means (a) any "employee welfare benefit plan" or "employee pension benefit plan" (as those terms are defined in sections 3(1) and 3(2), respectively, of ERISA), other than a "multiemployer plan" (as defined in section 3(37) of ERISA), (b) any employment or consulting agreement, and (c) any severance pay, salary continuation, bonus, incentive, stock option, retirement, pension, profit sharing, change in control, retention or deferred compensation plans, flex benefit, fringe benefit, or other plans, contracts, programs, funds, or arrangements of any kind, in each case, that are sponsored or maintained by Seller or any of its Affiliates or with respect to which Seller or its Affiliates has any Liability; provided, however, that Seller Benefit Plan shall not include a plan, program or arrangement unless (i) the plan, arrangement or agreement has been extended to persons because such persons have performed or will perform services for Seller or its Affiliates in connection with the Exploitation of the Product, or (ii) Purchaser will have any liability or contingent liability with respect to such plan, arrangement or contract on account of the execution of this Agreement or any transactions contemplated by this Agreement.

"Seller Disclosure Letter" means the disclosure schedules of Seller referred to throughout this Agreement and attached hereto.

"Seller FDA Letters" means the letters from Seller or any of its Affiliates, as applicable, to the FDA or such other instrument as may be necessary to effectuate the transfer of Acquired Regulatory Approvals to Purchaser or its designated Affiliate in accordance with this Agreement, each in a form reasonably satisfactory to Purchaser, duly executed by Seller or its Affiliate, as applicable.

"Seller Indebtedness" means any Indebtedness of Seller or its Affiliates.

"Seller Indemnified Party" has the meaning set forth in Section 9.2(b).

"Seller Names" means any Trademarks that Seller or any of its Affiliates own or have the right to use and license, other than any Trademarks that are specifically included in the Acquired IP.

"Seller Retained IP" means all Intellectual Property owned by Seller or any of its Affiliates that is not Acquired IP.

"Seller SEC Documents" means all forms, reports, statements, schedules, certifications and other documents (including all exhibits, amendments and supplements thereto) filed or furnished by Seller with the SEC since January 1, 2024.

"SER-262" means the consortium of cultivated bacterial species not isolated from human donors as described in IND# 016975 containing the following bacterial species: (1) *Clostridium innocuum*, (2) *Clostridium glycolicum*, (3) *Clostridium hylemonae*, (4) *Clostridium bolteae*, (5) *Clostridium disporicum*, (6) *Flavonifractor plautii*, (7) *Blautia producta*, (8) *Murimonas intestine*, (9) *Turicibacter sanguinis*, (10) *Eubacterium contortum*, (11) *Niameybacter massiliensis*, and (12) *Clostridium oroticum*. For the avoidance of doubt, SER-262 does not include the Product.

"Severance Plan" has the meaning set forth in Section 6.12(b).

"Shared Contract" means any Contract (a) under which a Third Party provides to, or receives from, Seller or its Affiliates, rights, assets or services, or (b) that confers liabilities, which, in each case of clauses (a) and (b), are related to the Exploitation of the Product as Exploited by Seller and its Affiliates as of the date hereof and that are also related to the Exploitation by Seller and its Affiliates of products other than the Product.

"Specified Court" has the meaning set forth in Section 10.7.

"Stockholder Approval" means the approval of the Asset Sale in accordance with the terms of this Agreement, by a majority of the outstanding shares of common stock of Seller entitled to vote thereon at the Stockholders Meeting.

"Stockholders Meeting" has the meaning set forth in Section 6.19.

"Straddle Period" means a taxable period that includes but does not end on the Closing Date.

"Subsequent Quarter Budget" has the meaning set forth in Section 3.5(c).

"Superior Proposal" means any unsolicited bona fide, written Acquisition Proposal (with percentages in the definition of Acquisition Proposal increased to fifty percent (50%)), which Acquisition Proposal was made or renewed on or after the date of this Agreement and did not arise out of a breach of Section 6.17 on terms which the Board determines in its good faith judgment, after consultation with Seller's financial advisors and outside legal counsel, is reasonably expected to be consummated in accordance with its terms, taking into account all legal, financial, timing and regulatory aspects (including certainty of closing) of the proposal and the Person or group of Persons making the proposal, and, if consummated, would result in a transaction more favorable to Seller's stockholders (solely in their capacity as such), from a financial point of view, than the transactions contemplated by this Agreement (including after taking into account any revisions to the terms of the transactions contemplated by this Agreement pursuant to Section 6.17 of this Agreement and the time likely to be required to consummate such Acquisition Proposal).

"Supply Chain Employees" has the meaning set forth in Section 4.11(a).

"Support Agreement" has the meaning set forth in the Recitals.

"Tax" or "Taxes" means all taxes and similar charges, fees, duties, levies, or other assessments (including income, gross receipts, net proceeds, ad valorem, withholding, turnover, real or personal property (tangible and intangible), occupation, customs, import and export, sales, use, franchise, excise, goods and services, value added, stamp, user, transfer, registration, recording, fuel, profit, excess profits, occupational, interest equalization, windfall profits, severance, payroll, workers' compensation, employment insurance premiums, employer health, unemployment, and social security taxes and fees) that are imposed by any Governmental Entity, in each case, including any interest, penalties, or additions to tax attributable thereto (or attributable to the nonpayment thereof), whether disputed or not.

"Tax Return" means any report, declaration, return, information return, claim for refund, information return, voucher or electronic equivalent, estimated tax declaration, document or statement relating to Taxes, including any schedule or attachment thereto, and including any amendments thereof, filed or required to be filed with any Governmental Entity.

"Termination Date" has the meaning set forth in Section 8.1(a)(ii).

"Territory" means the United States and Canada.

"Third Party" means any Person other than the Parties or their respective Affiliates.

"Third Party Challenge" means any allegation by a Third Party that any Intellectual Property Right owned by it is infringed, misappropriated, or otherwise violated by the Development, Manufacturing or Commercialization of the Product in the Territory.

"Third Party Claim" has the meaning set forth in Section 9.5.

"Third Party Infringement" means (a) any actual or threatened infringement, misappropriation, or other violation by a Third Party of any (i) Acquired IP, (ii) Intellectual Property Rights licensed to Purchaser pursuant to the Cross-License Agreement or (b) any other Intellectual Property Rights owned by or licensed to Purchaser or its Affiliates that is used in connection with the Exploitation of the Product, in each case in the Territory.

"Third Payment" has the meaning set forth in Section 3.1(b)(ii).

"Trade Secrets" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Trademark Assignment Agreement" means the Trademark Assignment Agreement assigning to Purchaser or its designated Affiliate the Trademarks included in the Acquired IP, to be entered into by and among Seller or its Affiliate and Purchaser or its designated Affiliate, substantially in the form included as Exhibit F.

"Trademark Costs" means the direct Out-of-Pocket Costs, including the reasonable fees and expenses incurred to outside counsel and other Third Parties, including Trademark searching, filing, prosecution and maintenance fees recorded as an expense by Purchaser or any of its Affiliates in accordance with its customary accounting practices, in connection with the clearance of Product Trademarks and the establishment and maintenance of rights of Product Trademarks in the Territory.

"Trademarks" has the meaning set forth in the definition of Intellectual Property set forth in this Section 1.1.

"Transactions" has the meaning set forth in the Recitals.

"Transfer Taxes" means all transfer, documentary, stamp duty, sales, use, value added, registration, filing, conveyance, and any similar Taxes incurred in connection with the transactions contemplated under this Agreement, including any interest, penalty or addition thereto (not including Taxes on net income or gain).

"Transferring Employee" has the meaning set forth in Section 6.12(a).

"Transition Services Agreement" means that certain Transition Services Agreement to be entered into by and between Seller or its Affiliate and Purchaser or its designated Affiliates, substantially in the form set forth on Exhibit H attached hereto.

"Upfront Payment" has the meaning set forth in Section 3.1(a).

"US License Agreement" has the meaning set forth in the Recitals.

"US License Termination Agreement" means that certain Termination Agreement to be entered into by and between Seller and NHSc Rx License GmbH, substantially in the form set forth on Exhibit I attached hereto.

"Vowst" means Vowst, as marketed pursuant to the Vowst BLA.

"Vowst BLA" means BLA 125757.

"Waltham Allowable Costs" has meaning as set forth in the definition of Allowable Expenses set forth in this Section 1.1.

"Waltham Lease" means that certain Lease Agreement, dated as of August 13, 2021, by and between Seller, as tenant, and Nine Fourth Avenue LLC, as landlord.

"WARN Act" has the meaning set forth in Section 6.12(f).

1.2 Interpretation Provisions.

(a) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement and Article, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(b) The terms "include" and "including," and variations thereof, are not limiting but rather shall be deemed to be followed by the words "without limitation."

(c) References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statutes or regulations.

(d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(e) Whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include all other genders.

(f) The Parties participated jointly in the negotiation and drafting of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. If an ambiguity or question of intent or interpretation arises, then this Agreement will accordingly be construed as drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party to this Agreement by virtue of the authorship of any of the provisions of this Agreement.

(g) The Schedules and Exhibits to this Agreement are a material part hereof and shall be treated as if fully incorporated into the body of this Agreement.

(h) References to "written" or "in writing" include in electronic form.

(i) The phrase "knowledge of Seller" (or similar phrases) means the actual knowledge of the individuals listed on Schedule 1.2(i) of the Seller Disclosure Letter, in each case after reasonable inquiry.

(j) The phrase "knowledge of Purchaser" (or similar phrases) means the actual knowledge of the following individuals: Martin Hendrix and David Berman, in each case after reasonable inquiry.

(k) References to "or" shall be deemed to be "and/or."

(l) Any matter, fact or circumstance disclosed by the information set out in the Schedules to this Agreement or the Seller Disclosure Letter shall be deemed to be a disclosure for the purposes of the Section or subsection of this Agreement to which it corresponds in number (and each other Section and subsection of this Agreement, to the extent it is reasonably apparent that such disclosure applies or would apply to such other Section(s) and subsection(s)). The disclosure of any matter in any Schedule to this Agreement or the Seller Disclosure Letter shall expressly not be deemed to constitute an admission by either Party, or to otherwise imply, that any such matter is material for the purposes of this Agreement, could or would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or is required to be disclosed under this Agreement. Except as set forth in this Agreement, the Ancillary Agreements and the certificate delivered by Seller pursuant to Section 3.9(d), no warranty, representation or other assurance is given by Seller or any of their Affiliates with respect to the accuracy of, or the absence of any omission from, the information set out in any of the documents or information included in the Data Room; provided, however, that the foregoing shall not be deemed to restrict, limit or otherwise adversely impact any rights or remedies with respect to Fraud. Any document, list, or other item shall be deemed to have been "provided" or "made available" to Purchaser for all purposes of this Agreement solely if such document, list, or other item was posted in the Data Room at least two (2) Business Days prior to the execution of this Agreement or has been publicly filed by Seller with the SEC since January 1, 2024 and at least two (2) Business Days prior to the date of this Agreement (excluding, in any event, any disclosures contained in the "*Risk Factors*" section thereof, any disclosure contained in any "forward-looking statements" disclaimer or any other disclosure of risks or any other statements that are predictive or forward-looking in nature, but including statements of fact and other statements that are not forward-looking and cautionary in nature). Seller shall deliver to Purchaser two (2) or more portable "thumb drives," in PC-readable format, that contain readable, working Adobe or other (e.g., Microsoft Office) portable document format files that set forth all of the documents, lists and other items posted and made available to Purchaser in the Data Room one (1) Business Day prior to the execution and delivery of this Agreement.

1.3 Performance of Obligations by Affiliates. Any obligation of Seller under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, either by Seller directly, or by any Affiliate of Seller that Seller causes to satisfy, meet or fulfill such obligation, in whole or in part. Notwithstanding the foregoing, this Section 1.3 shall not be construed to relieve Seller from any of its obligations under this Agreement.

ARTICLE 2
PURCHASE AND SALE

2.1 Purchase and Sale of Acquired Assets. Subject to the terms and conditions set forth in this Agreement, at and effective as of the Closing, Seller shall, or shall cause its Affiliates to, sell, convey, assign, transfer and deliver to Purchaser or its Affiliates, and Purchaser shall, or shall cause its Affiliates to, purchase and accept, all of Seller's or its Affiliate's rights, title and interest in and to the Acquired Assets, free and clear of all Encumbrances, other than Permitted Encumbrances. Accordingly, Seller will, or will cause its Affiliates to, execute and deliver at Closing, the Bill of Sale, Assignment and Assumption Agreements, the Assignment and Assumption of Lease, the Patent Assignment Agreement and the Trademark Assignment Agreement. As used in this Agreement, "Acquired Assets" means the following assets and rights:

(a) the Acquired Regulatory Approvals;

(b) the Acquired Contracts;

(c) the Acquired IP;

(d) the Acquired Inventory;

(e) the Acquired Marketing Records, Acquired Regulatory Documentation and Acquired Books and Records;

(f) the Acquired Equipment;

(g) all guaranties, warranties, indemnities and similar rights that have been made by any predecessors in title, manufacturers or suppliers and other Third Parties, to the extent relating to any Assumed Liabilities or the Acquired Assets;

(h) all claims, counterclaims, defenses, causes of action, demands, judgments, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind against any Third Party, to the extent relating to any Assumed Liabilities or the Acquired Assets;

(i) all goodwill associated with the Acquired Assets;

(j) all prepaid expenses, deferred charges, advance payments, prepaid rent, rent or security deposits (whether deposited with or paid by Seller or its Affiliate) and similar items, to the extent relating to any Assumed Liabilities or the Acquired Assets; and

(k) all other assets, properties and rights that are owned or held by Seller or any of its Affiliates as of the Closing (wherever located) that are used or held for use primarily in the Exploitation of the Product, other than the Excluded Assets.

2.2 Excluded Assets. The following assets, properties, rights and interests of Seller and its Affiliates shall be retained by Seller and its Affiliates and shall be excluded from the Acquired Assets (collectively, the "Excluded Assets"):

(a) the Accounts Receivable;

(b) any losses, loss carryforwards, attributes and rights to receive refunds, credits, rebates and loss carryforwards with respect to any and all Taxes of Seller or its Affiliates or relating to the Acquired Assets or the Exploitation of the Product for the Pre-Closing Tax Period;

(c) any current and prior insurance policies and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(d) the corporate books and records of Seller or its Affiliates, including all Tax Returns and workpapers, other than the Acquired Marketing Records, Acquired Regulatory Documentation and Acquired Books and Records transferred pursuant to Section 2.1(d);

(e) the Seller Names and Seller Retained IP;

(f) other than the Acquired Contracts, all Contracts to which Seller or any of its Affiliates are a party, including those set forth on Schedule 2.2(f) to the Seller Disclosure Letter (the "Excluded Contracts");

(g) all tangible personal property of Seller and its Affiliates other than the Acquired Inventory and the Acquired Equipment;

(h) all communications involving attorney-client confidences between Seller or its Affiliates, on the one hand, and their respective legal counsel (including, for the avoidance of doubt, all of the client files, records and attorney work product in the possession of any such legal counsel), on the other hand, in the course of the negotiation, documentation and consummation of the transactions contemplated hereby or relating to the Excluded Liabilities;

(i) all guaranties, warranties, indemnities and similar rights that have been made by any predecessors in title, manufacturers or suppliers and other Third Parties, to the extent relating to any Excluded Liabilities or the Excluded Assets;

(j) all assets under or relating to any Seller Benefit Plan;

(k) all claims, counterclaims, defenses, causes of action, demands, judgments, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind against any Third Party, to the extent relating to any Excluded Liabilities or the Excluded Assets;

(l) all rights of Seller or any of its Affiliates under this Agreement, the Ancillary Agreements and the other agreements and instruments executed and delivered in connection with this Agreement;

(m) any other assets or rights owned or held by Seller or any of its Affiliates that are not primarily related to the Product; and

(n) the assets, properties, rights and interests of Seller and its Affiliates listed on Schedule 2.2(n) of the Seller Disclosure Letter.

2.3 Assumed Liabilities. Subject to the terms and conditions set forth in this Agreement, including Sections 3.5 and 3.11, at the Closing, Purchaser shall, or shall cause its Affiliates to, expressly assume, and agree to pay or otherwise perform or discharge when due, the Assumed Liabilities. As used in this Agreement, the term "Assumed Liabilities" means the following Liabilities (which, for the avoidance of doubt, in each case shall exclude the Excluded Liabilities):

(a) all Liabilities arising out of, in respect of or relating to (i) the Acquired Assets, including the use, ownership, possession, operation, sale or lease thereof, on or after the Closing Date, or (ii) the Exploitation of the Product, by or on behalf of Purchaser or its Affiliates or their respective agents or assignees on or after the Closing Date, including the conduct and completion of the Ongoing Safety Study (but excluding the Ongoing Safety Study Expenses during the Profit Sharing Period and including the Ongoing Safety Study Expenses following the expiration of the Profit Sharing Period);

(b) all Liabilities with respect to the Acquired Regulatory Approvals or obtaining additional Permits or Regulatory Approvals for the Exploitation of the Product in any country or territory, in each case, arising or to be paid or performed on or after the Closing Date, other than any such Liabilities relating to a violation of Law, breach of any Permit or Regulatory Approval or misconduct prior to the Closing Date;

(c) (i) all Liabilities due and payable or arising under, or to be performed under, the Acquired Contracts (other than the MSK Agreement which assumption is described in subclause (iii) hereof and the Retained Waltham Rent as set forth in Section 2.4(f)(iii)) on or after the Closing Date which do not constitute a Liability relating to a breach of an Acquired Contract prior to the Closing Date; (ii) solely with respect to the Bacthera Agreement, the Liabilities constituting the "Substantial Completion" milestone payment payable pursuant to Section 11.1(a) of Exhibit 1 thereto, in an amount equal to Twenty Five Million Two Hundred Eighty Six Thousand Seven Hundred Sixty Six Swiss Francs (CHF25,286,766) as of the date hereof (the "Bacthera Milestone Payment"), but excluding the Retained Bacthera Amount (which shall be discharged by Seller by a reduction of the Closing Date Payment pursuant to Section 3.1(a)(iv)); and (iii) solely with respect to the MSK Agreement, all Liabilities due and payable or arising under, or to be performed thereunder on or after the Closing Date, but excluding (A) any Liability that constitutes part of the MSK Costs during the Profit Sharing Period or (B) any Liability related to a breach of the MSK Agreement occurring or in existence prior to the Closing Date;

(d) all Liabilities arising out of or relating to any Action (including warranty claims and manufacturing or product liability or similar claims) by a Third Party to the extent such Liabilities relate to a Product sold on or after the Closing Date;

(e) all Liabilities for (i) Taxes in respect of or relating to any Acquired Asset for any Post-Closing Tax Period, and (ii) Purchaser's share of any Transfer Taxes pursuant to Section 6.11(a); and

(f) (i) all employment and employee Liabilities with respect to the Transferring Employees and their dependents and beneficiaries arising on or following or relating to the period on or after the Closing Date, other than the Excluded Employee Liabilities, and (ii) all employment and employee Liabilities expressly required to be assumed by Purchaser or its Affiliates under Section 6.12.

2.4 Excluded Liabilities. Except for the Assumed Liabilities, and except as contemplated by Sections 3.5 and 3.11, neither Purchaser nor any of its Affiliates shall assume, and none of them shall become responsible for, and Seller or its Affiliates shall retain and be responsible for and shall pay, perform and discharge when due, any Liability of any of Seller or its Affiliates (collectively, the "Excluded Liabilities"). For the avoidance of doubt, Excluded Liabilities shall include:

(a) the Accounts Payable;

(b) all Liabilities in respect of any Seller Indebtedness, including any Liabilities of Seller or its Affiliates under or in connection with the Oaktree Credit Agreement;

(c) all Liabilities comprising the MSK Costs or the Ongoing Safety Study Expenses, in each case during the Profit Sharing Period;

(d) all Liabilities to the extent related to the Excluded Assets or any products of Seller or its Affiliates, other than the Product;

(e) all Liabilities arising out of, in respect of or relating to (i) the Acquired Assets, including the use, ownership, possession, operation, sale or lease thereof, prior to the Closing Date, or (ii) the Exploitation of the Product, by or on behalf of Seller or its Affiliates or their respective agents or assignees prior to the Closing Date, in each case of clauses (i) and (ii), other than any Liability that is or was a Liability of Purchaser or any of its Affiliates pursuant to an Existing Agreement;

(f) (i) all Liabilities due and payable or arising under, or to be performed under, the Acquired Contracts prior to the Closing Date other than Liabilities described in Section 2.3(c)(ii), (ii) all Liabilities relating to a breach of an Acquired Contract prior to the Closing Date, including any accumulated interest or late payment fees accrued under the Bacthera Agreement prior to the Closing Date and (iii) eighty and one-tenth percent (80.1%) of all Liabilities due and payable to the Landlord (as defined in the Waltham Lease) under the Waltham Lease with respect to the Profit Sharing Period (the "Retained Waltham Rent"); provided that, for the avoidance of doubt, Excluded Liabilities shall exclude one hundred percent (100%) of the Liabilities arising under the Waltham Lease with respect to the period after the Profit Sharing Period and the Waltham Allowable Costs;

(g) all Liabilities arising out of or relating to any Action (including warranty claims and manufacturing or product liability or similar claims) by a Third Party to the extent such Liabilities relate to a Product sold by or on behalf of Seller or any of its Affiliates prior to the Closing Date, other than the Liabilities that is or was a Liability of Purchaser or any of its Affiliates pursuant to an Existing Agreement;

(h) all Liabilities arising out of or relating to any violation, misappropriation or violation of the Intellectual Property Rights of a Third Party relating to the Exploitation of the Product by or on behalf of Seller or any of its Affiliates prior to the Closing Date;

(i) all Liabilities for (i) Taxes of Seller, (ii) Taxes imposed on any Acquired Asset for any Pre-Closing Tax Period, (iii) Seller's share of any Transfer Taxes pursuant to Section 6.11(a), and (iv) any Liability of Seller for the Taxes of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by contract (other than contracts entered into in the Ordinary Course of Business not primarily related to Taxes) or otherwise; but excluding, in each case, Purchaser's share of any Transfer Taxes pursuant to Section 6.11(a);

(j) (i) all Liabilities incurred under or with respect to any Seller Benefit Plan, (ii) all Liabilities arising out of, relating to or with respect to the employment or performance of services, or termination of employment or services by Seller or any of its Affiliates of any individual (collectively, the "Excluded Employee Liabilities"), provided, that any Liability described in clauses (i) or (ii) which is expressly required to be assumed by Purchaser under Section 6.12 shall not be treated as an Excluded Employee Liability; and

(k) all Liabilities for which Seller or any of its Affiliates are responsible under this Agreement, the Ancillary Agreements or the other agreements and instruments executed and delivered in connection with this Agreement.

ARTICLE 3
PURCHASE PRICE; CLOSING

3.1 Purchase Price. As consideration for the Acquired Assets, in addition to the assumption of the Assumed Liabilities:

(a) At the Closing, Purchaser shall pay Seller an amount in cash (the "Closing Date Payment"), in immediately available U.S. funds, equal to the sum of: (i) One Hundred Million US Dollars ($100,000,000) (the "Upfront Payment"); *minus* (ii) Seventeen Million Nine Hundred Thousand US Dollars ($17,900,000), such amount representing the net balance payable by Seller in connection with the settlement of intercompany accounts pursuant to Section 3.11; *plus* (iii) Sixty Million US Dollars ($60,000,000) (the "Prepaid Milestone"), which shall accrue interest and be subject to set-off in accordance with Section 3.3; *minus* (iv) Two Million Two Thousand Six Hundred Fifty Seven and Forty-One Hundredths Swiss Francs (CHF2,002,657.41) (as converted to US Dollars based on the conversion rate as of the Closing Date) (the "Retained Bacthera Amount"). The Closing Date Payment shall be paid by wire transfer to such account or accounts specified by Seller in a flow of funds memorandum delivered by Seller to Purchaser no later than five (5) Business Days prior to the Closing Date (the "Funds Flow Memorandum"). Purchaser will be entitled to promptly review, comment on, and propose changes to the Funds Flow Memorandum, and in connection therewith, Seller shall provide Purchaser and its Representatives such information as may be requested by Purchaser relating to the preparation of the Funds Flow Memorandum. Seller shall promptly consider in good faith the changes Purchaser proposes (if any) to the Funds Flow Memorandum and revise the Funds Flow Memorandum. The Parties agree that Purchaser shall be entitled to rely on the Funds Flow Memorandum in making payments under this Article 3 and Purchaser shall not be responsible for the calculations or the determinations regarding such calculations in the Funds Flow Memorandum.

(b) Following Closing, Purchaser shall pay to Seller the amounts specified below (the "Installment Payments") in cash on the dates specified below to the account specified by Seller to Purchaser in writing no later than five (5) Business Days prior to the date of payment, provided that, as of the applicable payment date, Seller is in compliance with its obligations under the Transition Services Agreement in all material respects (such material compliance to be determined in accordance with the terms and conditions of the Transition Services Agreement, including Section 1.06(b) (*Cooperation*) thereof); provided, further, that if any material non-compliance with Seller's obligations under the Transition Services Agreement exists as of the applicable payment date (notice of which shall be provided by Purchaser promptly upon becoming aware thereof) and Seller is able to cure such non-compliance within thirty (30) days of receipt of notice thereof, Purchaser shall pay Seller the applicable Installment Payment within five (5) Business Days of the date on which such non-compliance is cured; provided, further, that such thirty (30)-day cure period shall be extended if, within the initial thirty (30)-day cure period, (x) Seller communicates to Purchaser a written remediation plan reasonably designed to cure such non-compliance within a reasonable additional time period, not to exceed an additional thirty (30) days following expiration of the foregoing thirty (30)-day period and, (y) commences to diligently pursue such remediation plan with reasonable diligence:

(i) On January 15, 2025, Purchaser shall pay Seller Fifty Million US Dollars ($50,000,000) (the "Second Payment"); and

(ii) On July 1, 2025, Purchaser shall pay Seller an amount equal to Twenty Five Million US Dollars ($25,000,000) *minus* the Pro Rata Bonus Amount (the "Third Payment").

The Installment Payments shall be paid by wire transfer to Seller to the account(s) specified by Seller to Purchaser in writing no later than five (5) Business Days prior applicable payment date.

(c) Following Closing, in addition to the Installment Payments, Purchaser shall pay Seller the Milestone Payments, if any, subject to and in accordance with Section 3.3 and Section 3.4.

3.2 Closing. On the terms and subject to the conditions set forth in this Agreement, the sale, conveyance, assignment, transfer and delivery of the Acquired Assets and the assumption of the Assumed Liabilities contemplated by this Agreement (collectively, the "Closing") shall take place at the offices of Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY 10020 at 10:00 A.M., New York City time, on the second (2nd) Business Day following such date that the last of the conditions to Closing specified in Article 7 have been satisfied or waived (other than those conditions that by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other time and place as Purchaser and Seller mutually agree in writing; provided, that in the event that the conditions to the Closing are satisfied or waived (other than those conditions that by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or waiver of such conditions) on or after the date that is three (3) Business Days prior to the end of the month in which the last of such conditions has been satisfied, unless Seller and Purchaser mutually agree otherwise, the Closing shall take place on the last Business Day of such month. The date on which the Closing occurs is referred to as the "Closing Date."

3.3 Prepaid Milestone. The Prepaid Milestone shall accrue interest at a fixed rate of (a) 10.0% per annum (compounding annually) from, and including, the Closing Date through, but excluding, the date of achievement of the First Sales Milestone and (b) 5.0% per annum (compounding annually) from, and including, the date of achievement of the First Sales Milestone through, but excluding, the earlier of (i) the date on which the Prepaid Milestone, together with accrued interest thereon, has been repaid in full by set-off under Section 3.4 and (ii) the last day of the Milestone Period. The Prepaid Milestone, together with accrued interest thereon, shall be settled only through a reduction of any Milestone Payments that become payable under Section 3.4. If any amount of the Prepaid Milestone (and any accrued interest thereon) remains outstanding as of following the last day of the Milestone Period, the balance thereof (together with any interest accrued thereon) shall be forgiven and the right of set-off of Purchaser with respect thereto shall be deemed forfeited.

3.4 Milestone Payments.

(a) During the period from the Closing Date until December 31 of the Calendar Year in which the tenth (10^{th}) anniversary of the Closing Date occurs (the "Milestone Period"), Purchaser shall pay to Seller each of the following one-time contingent milestone payments (each, a "Milestone Payment" and each corresponding milestone event, a "Milestone") set out below following the first time that the Net Sales of Product in the entire world reach the following thresholds, in accordance with this Section 3.4 and Section 3.7 and Section 3.8:

Milestone Events	**Milestone Payment**
First Calendar Year in which annual Net Sales of Product in the entire world equal or exceed $150,000,000 (the "First Sales Milestone")	$60,000,000
First Calendar Year in which annual Net Sales of Product in the entire world equal or exceed $400,000,000	$125,000,000
First Calendar Year in which annual Net Sales of Product in the entire world equal or exceed $750,000,000	$150,000,000

The Milestone Payments shall not exceed, in the aggregate, Three Hundred Thirty Five Million US Dollars ($335,000,000).

(b) With respect to the achievement of any Milestone, within forty-five (45) days of the end of the Calendar Quarter in which such Milestone is achieved, Purchaser shall notify Seller in writing thereof (the "Milestone Notice"), which Milestone Notice shall include (i) to the extent then-applicable, a reasonably detailed calculation of the accrued and unpaid interest on the Prepaid Milestone accrued in accordance with Section 3.3 and the then-outstanding balance of the Prepaid Milestone (collectively, the "Prepaid Milestone Calculations") and (ii) the amount of such Milestone Payment that is subject to set-off pursuant to Section 3.4(c)(i) or Section 3.4(c)(ii) or is payable in cash to Seller in accordance with Section 3.4(c)(iii). Seller shall issue an invoice to Purchaser for the corresponding Milestone Payment or portion thereof payable in cash pursuant to Section 3.4(c)(iii), as applicable.

(c) The Milestone Payments shall be satisfied in the following manner: (i) *first*, by set-off against all interest on the Prepaid Milestone accrued in accordance with Section 3.3 until the amount of such accrued interest has been repaid in full, (ii) *second*, by set-off against the outstanding balance of the Prepaid Milestone until the amount of the Prepaid Milestone has been repaid in full, and (iii) thereafter, any amount due in respect of the Milestone Payments shall be paid in cash within thirty (30) days following Seller's delivery of an invoice therefor. For the avoidance of doubt, if more than one of the Milestones should occur in one and the same Calendar Year, each of the respective Milestone Payments shall become due with respect to such Calendar Year.

(d) For the avoidance of doubt, if more than one of the Milestones should occur in one and the same Calendar Year, each of the respective Milestone Payments shall become due with respect to such Calendar Year.

(e) Following the Profit Sharing Period and until the conclusion of the Milestone Period, Purchaser shall report to Seller, within ten (10) Business Days after the end of each Calendar Quarter, Net Sales of Product during such Calendar Quarter which shall be determined in accordance with IFRS (each, a "Milestone Report"). Each Milestone Report shall specify in reasonable detail a breakdown of the amount and type of all deductions allowed in the calculation of such Net Sales, but in any event shall be in the form attached hereto as Annex C. For the avoidance of doubt, notwithstanding anything to the contrary stated in this Agreement, the Milestone Reports are provided for informational purposes only, and shall be subject to normal year-end adjustments thereto. Seller acknowledges and agrees that Purchaser and its Affiliates make no representation (implied or express) with respect to the information and materials contained in any Milestone Report, and Seller and its Affiliates shall have no claim (whether in warranty, contract or tort (including negligence or strict liability)) against Purchaser or its Affiliates with respect thereto.

(f) Notwithstanding anything to the contrary in this Agreement, the dispute resolution procedures set forth in Section 3.8(d) shall be the sole and exclusive remedy of Purchaser and Seller with respect to the determination of the Milestone Payment (if any) and the Prepaid Milestone Calculations, if applicable, with respect to each Milestone Period; provided, that this provision shall not prohibit Purchaser or Seller from instituting litigation to enforce the determination of the Accounting Expert.

3.5 Net Profit/Net Loss.

(a) During the period from the Closing Date until December 31, 2025 (the "Profit Sharing Period"), Seller shall be entitled to receive fifty percent (50%) of all Net Profit and shall bear fifty percent (50%) of all Net Loss, as applicable, and Purchaser shall be entitled to receive fifty percent (50%) of all Net Profit and shall bear fifty percent (50%) of all Net Loss, as applicable.

(b) The payments contemplated by Section 3.5(a) shall be determined and effected as follows:

(i) Following the Closing Date, and only with respect to Net Sales, Other Income and Allowable Expenses incurred during the Profit Sharing Period, Purchaser shall report to Seller, within ten (10) Business Days after the end of each Calendar Quarter, Net Sales, Other Income and Allowable Expenses actually received or incurred by Purchaser during such Calendar Quarter in the Territory and, as applicable, in a format consistent with the form attached hereto as Annex D (except that the first such report shall report with respect to Allowable Expenses incurred from the Closing Date through the end of such Calendar Quarter), including a reasonably detailed comparison of the Allowable Expenses incurred in such Calendar Quarter against the Budget for such Calendar Quarter (each, a "Quarterly Report"). Each Quarterly Report shall specify in reasonable detail a breakdown of the amount and type of all deductions allowed in the calculation of such Net Sales and all expenses included in Allowable Expenses for such period. If requested by Seller, any invoices or other supporting documentation for any payments to a Third Party in respect of Allowable Expenses that individually exceed One Million US Dollars ($1,000,000) shall be promptly provided not more than thirty (30) days after receipt of a request therefor. For clarity, Purchaser shall not be required to provide the level of detail required for the "Day 1" and "Day 3" files provided by NHSc Rx License GmbH prior to the Closing pursuant to the US License Agreement. Purchaser shall calculate, and maintain records of, Net Sales, Other Income and Allowable Expenses incurred by it in accordance with GAAP and using its standard accounting procedures, consistently applied.

(ii) Within forty five (45) days after the end of each Calendar Quarter during the Profit Sharing Period, the Parties shall cooperate in good faith to reconcile all Net Sales, Other Income and Allowable Expenses to ascertain whether there is a Net Profit/Net Loss with respect to the applicable period, and not later than thirty (30) days following such reconciliation, the Parties shall make such payments to one another as may be necessary to achieve the sharing of Net Profit/Net Loss with respect to the Product provided for in Section 3.5(a). Notwithstanding anything to the contrary in this Agreement, the dispute resolution procedures set forth in Section 3.8(d) shall be the sole and exclusive remedy of Purchaser and Seller with respect to the calculation of Net Profit/Net Loss with respect to the applicable period if the Parties are unable to reconcile the Net Sales, Other Income and Allowable Expenses to ascertain whether there is a Net Profit/Net Loss in such period; provided, that this provision shall not prohibit Purchaser or Seller from instituting litigation to enforce the determination of the Accounting Expert. Any payments made pursuant to this Section 3.5 shall be treated as adjustments to the Purchase Price for income Tax purposes (unless otherwise required by a final determination, within the meaning of section 1313 of the Code (or similar provision of state, local or non-U.S. Tax Law)).

(iii) Notwithstanding the foregoing, the Parties agree and acknowledge that certain elements of Net Profits/Net Losses may be based on estimates during a Calendar Year (and as such, the foregoing amounts calculated on a quarterly basis are estimated amounts), and, as soon as reasonably practicable following the end of such Calendar Year, the Parties shall recalculate the Net Profits/Net Losses as set forth in the foregoing provisions of this Section 3.5(b) in order to take into account any changes to the estimates used to calculate the quarterly amounts. Thereafter, either Seller will make a payment to Purchaser, or Purchaser will make a payment to Seller, if and as necessary to ensure that each Party receives its share of Net Profit and bears its share of Net Loss in accordance with Section 3.5(a), as applicable, for such Calendar Year.

(c) Purchaser shall provide Seller with a Budget (i) as promptly as practicable following the date hereof and in no event later than the Closing, for the period from the Closing Date through December 31, 2024 (the "Initial Budget") and (ii) prior to October 31, 2024, for the Calendar Year ending December 31, 2025 (which for purposes of each of subclauses (i) through (ii), shall be a non-binding estimated forecast for such period), setting forth Purchaser's good faith estimates of (w) the projected Net Profit/Net Loss with supporting details, including Net Sales, Other Income and Cost of Goods Sold, (x) the Allowable Expenses, (y) the Ongoing Safety Study Expenses and (z) the MSK Costs. No later than forty-five (45) days prior to the beginning of each succeeding Calendar Quarter during the Profit Sharing Period, Purchaser will provide Seller a Budget for such succeeding Calendar Quarter ("Subsequent Quarter Budget") on a similar form with the level of details indicated as being provided for "quarterly budget refreshes" as set forth in Annex D. For the avoidance of doubt, notwithstanding anything to the contrary stated in this Agreement, the Budgets (including the Initial Budget and all Subsequent Quarter Budgets) are provided for informational purposes only and shall be subject in all respects to the Quarterly Report provided for the applicable Calendar Quarter and any recalculations thereof or adjustments thereto pursuant to Section 3.5(b)(iii), as applicable. Seller acknowledges and agrees that (A) the Budgets, and the information, materials, estimates, projections or forecasts contained therein, provided pursuant to this Section 3.5(c) will be provided solely for planning purposes and shall be non-binding, (B) there are uncertainties in attempting to make estimates, projections, forecasts and other forward-looking statements regarding Net Profit/Net Loss, Net Sales, Other Income and Cost of Goods Sold, (C) Seller and its Affiliates are familiar with such uncertainties and take full responsibility for making their own evaluation of the adequacy and accuracy of all such estimates, projections, forecasts and other forward-looking statements and (D) Purchaser and its Affiliates make no representation (implied or express) with respect to the information, materials, estimates, projections or forecasts contained in any Budget, and Seller and its Affiliates shall have no claim (whether in warranty, contract or tort (including negligence or strict liability)) against Purchaser or its Affiliates with respect thereto. In respect of any Calendar Quarter, to the extent Purchaser reasonably expects that the aggregate Net Loss (if applicable) or the Ongoing Safety Study Expenses for such Calendar Quarter will exceed one hundred fifteen percent (115%) of the estimated aggregate Net Loss (if applicable) or the Ongoing Safety Study Expenses, as applicable, as set forth in the Budget for such Calendar Quarter, then Purchaser shall provide prompt notice thereof to Seller; provided, that the failure of Purchaser to provide such notice shall not relieve Seller of its obligations under this Agreement.

(d) Purchaser shall have the right to offset any Net Loss amounts owed to it by Seller pursuant to this Section 3.5 against the Installment Payments or Milestone Payments in the event that Seller fails to timely make any payment of its share of a Net Loss that becomes due and payable under this Section 3.5; provided, that, Seller may elect to have any Net Loss amounts owed to Purchaser by Seller pursuant to this Section 3.5 offset against amounts due and payable to Seller by Purchaser under the Transition Services Agreement.

(e) Notwithstanding any other provision to the contrary, during the Profit Sharing Period, Seller will reimburse Purchaser for the MSK Costs and the Ongoing Safety Study Expenses within thirty (30) days following Purchaser's delivery of an invoice therefor. For the avoidance of doubt, following the Profit Sharing Period, the Ongoing Safety Study Expenses shall be borne exclusively by Purchaser.

3.6 Exploitation of Product.

(a) Notwithstanding any other provision to contrary but subject to Section 3.6(b), Seller agrees and acknowledges that any Exploitation of the Acquired Assets and the Product will be in Purchaser's sole and absolute discretion and Purchaser shall be under no obligation, express or implied, to Exploit the Acquired Assets or the Product in relation to the achievement of the Milestones, the realization of specific targets of Net Sales or Net Profit/Net Loss or otherwise. Seller acknowledges and agrees that (a) the Milestone Payments and the realization of Net Profit/Net Losses are speculative and subject to numerous factors outside the control of Purchaser, (b) there is no assurance that any Milestone Payment will become payable and Purchaser has not made any representation to the contrary, (c) there is no assurance that any specified level of Net Profit/Net Loss will be realized, (d) Purchaser does not owe a fiduciary duty or any other express or implied duty to Seller, and (e) the Parties solely intend the express provisions of this Agreement (and, for the avoidance of doubt, not the Existing Agreements) to govern their contractual relationship with respect to the Acquired Assets and the Product.

(b) Purchaser shall not take any action or omit to take any action with the primary purpose or intent of avoiding the payment of any Milestone Payment.

3.7 Payment Terms. For clarity, any and all dollar amounts referred to in this Agreement means US Dollars. Except as otherwise specifically provided in this Agreement, any and all payments due from one Party to the other pursuant to this Agreement shall be made in US Dollars by wire transfer of immediately available funds to such account or accounts and in accordance with such instructions as are provided by the payee Party from time to time no later than five (5) Business Days prior to the date of payment. Conversion of Net Sales or reimbursable costs incurred hereunder that are recorded in local currencies to US Dollars by a Party, its Affiliates or its or their licensees shall be at the rate of exchange as used by such Party for its internal and external financial reporting.

3.8 Records; Audits; Quarterly Report Meetings; Disputes.

(a) Purchaser shall keep, and shall require its Affiliates to keep, complete, true and accurate books of accounts and records for the purpose of determining the amounts payable by Purchaser pursuant to Sections 3.4 and 3.5. Such records shall be kept for the longer of (i) the period of time required by applicable Law in the Territory and (ii) five (5) years following the expiration (or termination, if applicable) of, in the case of Section 3.4, the Milestone Period, in the case of Section 3.5, the Profit Sharing Period.

(b) During the Milestone Period or Profit Sharing Period, Seller shall have the right to examine and audit Purchaser's and its Affiliates' relevant books and records to verify the accuracy of any reports and payments prepared or delivered by Purchaser pursuant to this Article 3. Any such audit shall be on at least thirty (30) days' prior written notice and shall be limited to not more than one (1) such audit in any Calendar Year (and no Calendar Year that was previously the subject of an audit shall be subject to re-audit), and shall be limited to the pertinent books and records for any Calendar Year ending not more than thirty-six (36) months before the date of the request. The audit shall be performed at Seller's sole expense by an independent certified public accounting firm of internationally recognized standing that is selected by Seller and reasonably acceptable to Purchaser. The accounting firm shall be required to enter into a reasonable and customary confidentiality agreement with Purchaser to protect the confidentiality of its books and records. Purchaser and its Affiliates shall make the relevant books and records reasonably available during normal business hours for examination by the accounting firm. Except as may otherwise be agreed, the accounting firm shall be provided access to such books and records at Purchaser's and/or its Affiliates' facilities where such books and records are normally kept. Upon completion of the audit, the accounting firm shall provide both Parties a written report disclosing whether or not the relevant reports or payments are correct, and the specific details concerning any discrepancies. The decision of the accounting firm shall be final and binding on the Parties absent manifest error. The accounting firm shall not provide to Seller any additional information or access to Purchaser's or its Affiliates' books and records. If the accounting firm conducting an audit pursuant to this Section 3.8(b) concludes as a result of such audit that any additional amounts were due and payable to Seller, such additional amounts shall be paid to Seller within thirty (30) Business Days of the date that the Parties receive such accountant's written report. In the event that the total amount of any underpayments by Purchaser to Seller for the audited period exceeds five percent (5%) of the aggregate total amount that was properly due and payable to Seller for the audited period, then Purchaser shall also reimburse Seller for the documented, reasonable out of pocket Third Party expenses incurred in conducting the audit, except to the extent that such underpayment was due to any inaccurate or incomplete information provided to Purchaser by Seller.

(c) During the Profit Sharing Period, once per fiscal quarter in a regularly scheduled meeting, which meeting shall not take place until at least ten (10) Business Days after the date Purchaser delivers to Seller a Quarterly Report, one or more Representatives of Purchaser shall meet with Seller and designees of Seller to discuss the Quarterly Reports for the prior fiscal quarter and the then-applicable Subsequent Quarter Budget (each such meeting, a "Quarterly Report Meeting"). Purchaser shall make available for each such Quarterly Report Meeting one or more Representatives of Purchaser with direct, overall managerial responsibility for the Product as well as Representatives with direct responsibility for the calculation of Net Sales, Other Income and Cost of Goods Sold, who shall respond to reasonable written inquiries of Seller and/or such designee regarding the applicable Quarterly Report and Subsequent Quarter Budget.

(d) If the Seller believes that (each of the following, a "Disputed Item") (i) any Milestone has occurred and a related Milestone Notice is not timely delivered by Purchaser, (ii) any Milestone Notice is inaccurate in whole or in part (including in respect of the Prepaid Milestone Calculations), or (iii) following such forty-five (45)-day period described in Section 3.5(b)(ii) (or such other period as mutually agreed to by the Parties), any Net Profit/Net Loss calculation is inaccurate in whole or in part (including the calculation of Net Sales, Other Income or Allowable Expenses), then the Seller shall promptly deliver written notice (a "Dispute Notice") of such Disputed Item, in reasonable detail, to Purchaser; provided, however, that any Milestone Notice shall become final and binding upon the Parties forty-five (45) days following delivery thereof, unless prior to such date the Seller delivers a Dispute Notice in good faith in respect of such Milestone Notice to Purchaser. The Dispute Notice shall only include disagreements based on mathematical errors or based on Net Sales, the Prepaid Milestone Calculations or Net Profit/Net Loss not being calculated in accordance with this Agreement. During the thirty (30) days following the delivery of a Dispute Notice, Purchaser and Seller shall attempt in good faith to resolve any Disputed Item. If the Parties do not reach agreement with respect to any Disputed Item relating to any such matter within thirty (30) days after a Dispute Notice is delivered to Purchaser by the Seller, the Parties shall submit for arbitration all matters that remain in dispute and that were properly included in the Dispute Notice to an internationally recognized independent accounting firm (the "Accounting Expert"). The Accounting Expert shall be agreed upon by the Parties in writing or, if the Parties are unable to so agree in writing within thirty (30) days, then Purchaser and Seller shall each select such a firm and such firms shall jointly select a third internationally recognized independent public accounting firm to serve as the Accounting Expert. The Parties shall jointly instruct the Accounting Expert that it shall (A) review only the matters that were properly included in the Dispute Notice and which remain in dispute, (B) make its determination in accordance with the requirements of this Section 3.8(d), (C) not engage in any ex parte communication with Purchaser or Seller (or any of their respective Affiliates or Representatives) without the consent of both Purchaser and Seller, and (D) render its written decision as promptly as practicable but in no event later than thirty (30) days after submission to the Accounting Expert of all matters in dispute, provided that any determination made by the Accounting Expert shall not be outside the range established by the amounts, or the relative positions taken, by Purchaser, on the one hand, as set forth in the applicable Milestone Notice or its calculation of the applicable Net Profit/Net Loss, and by Seller, on the other hand, as set forth in the Dispute Notice. No Party will disclose to the Accounting Expert, and the Accounting Expert will not consider for any purpose, any settlement discussions or settlement offer made by any Party during their attempt to resolve the Disputed Items. The Accounting Expert's determination shall be accompanied by a certificate of the Accounting Expert that it reached its decision in accordance with the provisions of this Section 3.8(d), including a worksheet setting forth the material calculations used in arriving at such determination and a calculation of the apportionment of fees, costs and expenses of the Accounting Expert in accordance with this Section 3.8(d). Each of Purchaser and Seller shall pay its own expenses of arbitration. The fees, costs and expenses of the Accounting Expert shall be allocated to and borne by Purchaser and Seller based on the inverse of the percentage that the Accounting Expert's determination (before such allocation) bears to the total amount of the total items in dispute as originally submitted to the Accounting Expert. For example, should the items in dispute total in amount to one thousand dollars ($1,000) and the Accounting Expert awards six hundred dollars ($600) in favor of the Seller's position, sixty percent (60%) of the costs of its review would be borne by Purchaser and forty percent (40%) of the costs would be borne by the Seller. Any decision rendered by the Accounting Expert shall be final and binding upon the Parties. All proceedings conducted by the Accounting Expert shall take place in New York, New York. Any underpayments in respect of Milestone Payments or Net Profits/Net Sales shall be paid by Purchaser within thirty (30) days of notification of the results of such decision and receipt of an invoice therefor from Seller. Any overpayments in respect of Milestone Payments or Net Profits/Net Sales shall be refunded by Seller to Purchaser or its designee within thirty (30) days of notification of the results of such decision and receipt of an invoice therefor from Purchaser.

3.9 Seller Closing Deliveries. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

(a) each of the Ancillary Agreements to which Seller or any of its Affiliates is a party, duly executed by Seller or such Affiliate(s), as applicable (which in the case of the Bill of Sale, Assignment and Assumption Agreement(s) shall exclude the Delayed Assignment Contracts);

(b) each of the Equity Financing Documents duly executed by Seller;

(c) (i) pay-off letters, duly executed by each lender in respect of any Indebtedness secured by any Acquired Assets, as of the Closing Date, including the Lenders (as defined in the Oaktree Credit Agreement) and (ii) UCC-3 termination statements and other Encumbrance terminations or releases with respect to Seller's Liabilities under the Oaktree Credit Agreement and any other credit or other agreement giving rise to an Encumbrance over any Acquired Assets, in each case, in form and substance reasonably satisfactory to Purchaser, evidencing the satisfaction in full of all Liabilities of Seller and its Affiliates thereunder and the release, discharge, removal and termination of all Encumbrances relating to such Liabilities;

(d) a certificate, dated the Closing Date, signed by a duly authorized officer of Seller, certifying the fulfillment of the conditions set forth in Sections 7.2(a) and 7.2(b);

(e) a properly completed and duly executed IRS Form W-9; and

(f) subject to Sections 6.3 and 6.4, the Acquired Assets.

3.10 Purchaser Closing Deliveries. At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller the following:

(a) an amount equal to the Closing Date Payment, by wire transfer of immediately available funds in accordance with the Funds Flow Memorandum;

(b) each of the Ancillary Agreements to which Purchaser or any of its Affiliates is a party, duly executed by Purchaser or such Affiliate(s), as applicable (which in the case of the Bill of Sale, Assignment and Assumption Agreement(s) shall exclude the Delayed Assignment Contracts);

(c) each of the Equity Financing Documents to which Purchaser or any of its Affiliates is a party, duly executed by Purchaser or such Affiliate(s), as applicable;

(d) a properly completed and duly executed IRS Form W-9; and

(e) a certificate, dated the Closing Date, signed by a duly authorized officer of Purchaser, certifying the fulfillment of the conditions set forth in Sections 7.3(a) and 7.3(b).

3.11 Accounts Settlement.

(a) Seller and Purchaser shall reconcile and settle all intercompany accounts between Seller, on the one hand, and Purchaser or NHSc Rx License GmbH, on the other hand, including payments for inventory shipments by Seller to Purchaser or its Affiliate and amounts payable to NHSc Rx License GmbH pursuant to Section 7.4 of the US License Agreement, through the Closing Date. A statement of such intercompany accounts as of March 31, 2024 is set forth on Exhibit J attached hereto. Such intercompany accounts as of March 31, 2024 shall be settled through a reduction of the Closing Date Payment by an amount equal to Seventeen Million Nine Hundred Thousand US Dollars ($17,900,000), such amount representing the net balance payable by Seller as of March 31, 2024 pursuant to such settlement. Seller shall, and Purchaser shall cause NHSc Rx License GmbH to, reconcile and settle all intercompany accounts arising under the US License Agreement with respect to the period from April 1, 2024 until the Closing Date in accordance with the terms of the US License Agreement; provided, that, for purposes of the period from April 1, 2024 through June 30, 2024, Seller and Purchaser, on behalf of itself and its Affiliates, acknowledge and agree that the intercompany accounts for such quarter represent only a True-Up Amount (as defined in the US License Agreement) of the amount set forth in Schedule 3.11(a) of the Seller Disclosure Letter due from Seller to NHSc Rx License GmbH.

(b) At or prior to the Closing, Seller shall settle and discharge all Liabilities due and payable under the Acquired Contracts in the Ordinary Course of Business as of the Closing Date, other than the Assumed Liabilities. For the avoidance of doubt, Seller shall not be obligated to accelerate the settlement and discharge of any Liabilities that are due and payable under the Acquired Contracts after the Closing Date.

3.12 Fixed Asset and Inventory Statements.

(a) As soon as practicable after the date hereof, and in any event prior to the Closing Date, Seller shall prepare and deliver to Purchaser a statement setting forth, to the extent practicable based on Seller's accounting policies and procedures as of the date hereof (it being understood that Seller will not be required to generate any statement on fixed assets that it has not classified as of the date hereof), the following information with respect to each of the fixed assets included in the Acquired Assets (which, for the avoidance of doubt, shall include the Delayed Transferring Assets) as of 11:59 P.M. on the day preceding the Closing Date: (i) asset classification; (ii) location; (iii) asset number / unique identifier; (iv) detailed asset description (brand, make, model if purchased); (v) date placed into service; (vi) historical cost; (vii) depreciation method; (viii) useful life; and (ix) accumulated depreciation as of the Closing Date.

(b) As soon as practicable after Closing, and in any event within ten (10) Business Days after the Closing Date, Seller shall undertake an evaluation of the Acquired Inventory in accordance with GAAP and on a basis which is consistent with the basis upon which the audited financial statements of Seller were prepared during the fiscal year immediately preceding the Closing Date, and prepare and deliver to Purchaser a statement of the Acquired Inventory as of 11:59 P.M. on the day preceding the Closing Date in the format attached hereto as Annex E, setting forth the asset type, location, Manufacturing process unit of measure, quantity and finished goods equivalent patient units.

3.13 Tax Allocation. The Purchase Price, the amount of the Assumed Liabilities (to the extent relevant in determining the purchase price for Tax purposes) and other relevant items shall be allocated among the Acquired Assets and the license granted to Purchaser pursuant to Section 6.9(a) in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (and any similar provision of state, local or non-U.S. Tax Law, as appropriate) (the "Allocation"). The Allocation shall be delivered by Purchaser to Seller within seventy five (75) days after the Closing Date. Seller shall have sixty (60) days to review the Allocation and provide Purchaser with a notice of dispute ("Notice of Dispute"). If Seller does not timely provide a Notice of Dispute to Purchaser, the Allocation shall become final. If Seller timely provides Purchaser a Notice of Dispute, the Parties shall work in good faith for thirty (30) days to resolve such dispute relating to the Allocation. If the Parties are unable to resolve any such dispute, Seller and Purchaser (and their respective Affiliates) shall have no further obligation under this Section 3.13, and each Party (and its respective Affiliates) is free to make its own determination of the allocation for Tax reporting purposes. Any Allocation which is agreed upon by the Parties shall be final (the "Final Allocation"). The Parties agree that the transfer of the Acquired Assets constitutes a sale of the Acquired Assets for income Tax purposes and that the Purchase Price and Assumed Liabilities allocable to the Acquired Assets are paid (and assumed, respectively) in exchange for such sale. Except as required by applicable Law, Seller and Purchaser shall report the Tax consequences of the transactions contemplated by this Agreement in a manner consistent with the Final Allocation and shall not take any position inconsistent therewith in preparing any Tax Returns, IRS Form 8594 or any other Tax forms or filings or in connection with any Tax audit, controversy or litigation (unless otherwise required by a final determination, within the meaning of section 1313 of the Code (or similar provision of state, local or non-U.S. Tax Law)). The Parties shall promptly advise one another of the existence of any Tax audit, controversy or litigation related to any allocation hereunder.

3.14 Withholding Tax. Each Party (and each other applicable withholding agent) shall be entitled to deduct and withhold from any payments made pursuant to this Agreement any withholding Taxes or other amounts required to be deducted or withheld under any applicable federal, state, local or foreign Tax law. To the extent that any such amounts are so deducted or withheld and paid over to the applicable Governmental Entity, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made. As soon as practicable after any deduction or withholding is made, the Party making such deduction or withholding shall deliver to the other Party the original or copy of the official receipt issued by the relevant Governmental Entity evidencing such payment, supporting calculations of such amounts and other evidence of such payment reasonably satisfactory to such other Party. Each Party (and any other applicable withholding agent) shall provide, at least five (5) Business Days prior to the date of the applicable payment (or, in the case that such Party or such other withholding agent becomes aware of the requirement to so deduct and withhold fewer than five (5) Business Days prior to the date on which such deduction or withholding is required, promptly upon becoming so aware), written notice of any deduction or withholding it believes is applicable in connection with this Agreement to the other Party. The Parties agree to reasonably cooperate to apply for any exemption from, or reduction in, any withholding amounts described in this Section 3.14.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as (a) set forth in the Seller Disclosure Letter or (b) disclosed in the Seller SEC Documents (excluding exhibits and other information incorporated therein) filed with, or furnished to, the SEC and publicly available on the SEC's EDGAR website from and after January 1, 2024 and prior to the date that is not less than two (2) Business Days prior to the date of this Agreement (excluding any disclosures contained in the "*Risk Factors*" section thereof, any disclosure contained in any "forward-looking statements" disclaimer or any other disclosure of risks or any other statements that are predictive or forward-looking in nature, but including any statements of historical facts or events included therein), provided, that disclosure in such Seller SEC Documents shall not be deemed to modify or qualify the representations and warranties in Sections 4.1, 4.2 or 4.18, Seller hereby makes, as of the date hereof and as of the Closing Date, the following representations and warranties to Purchaser:

4.1 Organization, Power and Standing.

(a) Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Seller is duly qualified to do business and in good standing in each jurisdiction wherein the character of its property, or the nature of the activities presently conducted by it, makes such qualification necessary, except where the failure to be so qualified or in such good standing would not have a Material Adverse Effect.

(b) Seller has the requisite corporate power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is currently conducted, except as would not reasonably be expected, individually or in the aggregate, to be materially adverse to the Product, the Acquired Assets and the Assumed Liabilities, taken as a whole, or Seller's ability to consummate the Transactions.

4.2 Authority, Non-Contravention, Required Filings.

(a) Seller has the requisite corporate power and authority to execute and deliver this Agreement and, subject to the receipt of the Stockholder Approval, to perform its obligations hereunder and to consummate the transactions contemplated hereby. Subject to the receipt of the Stockholder Approval, as of the Closing, Seller or its Affiliates, as applicable, will have the requisite corporate or other entity power and authority to execute and deliver each Ancillary Agreement to which it will be a party, to perform its or their obligations thereunder and to consummate the transactions contemplated thereby. Except for receipt of the Stockholder Approval, the execution and delivery of this Agreement by Seller, the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all necessary corporate or other entity action on the part of Seller. As of the Closing, the execution and delivery by Seller or its Affiliates, as applicable, of each Ancillary Agreement to which it will be a party, subject to the receipt of the Stockholder Approval, the performance by Seller or its Affiliates of its obligations thereunder and the consummation by Seller or its Affiliates of the transactions contemplated thereby will have been duly authorized by all necessary corporate or other entity action on the part of Seller or such Affiliates.

(b) This Agreement has been duly executed and delivered by Seller and, assuming this Agreement has been duly executed and delivered by Purchaser, constitutes a valid and binding obligation of Seller, enforceable against it in accordance with its terms, and, as of the Closing, each Ancillary Agreement to which Seller or its Affiliates will be a party will have been duly executed and delivered by Seller or its Affiliates, as applicable, and will constitute a valid and binding obligation of Seller or such Affiliates, enforceable against it in accordance with its terms, in each case subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at Law). The Board has unanimously (x) determined that this Agreement and the Transactions, including the Asset Sale, are fair to and in the best interests of Seller and its stockholders and declared it advisable to enter into this Agreement with Purchaser; and (y) adopted resolutions approving this Agreement, the Transactions, including the Asset Sale, and the consummation of the other transactions contemplated hereby and to provide the stockholders of Seller with the Board Recommendation pursuant to the DGCL.

(c) The execution and delivery of this Agreement by Seller does not, and the execution and delivery by Seller or its Affiliates, as applicable, of each Ancillary Agreement to which it is a party, as of the Closing, the performance by Seller or such Affiliate of its obligations hereunder or thereunder, and the consummation by Seller or such Affiliates, as applicable, of the Transactions will not (i) subject to receipt of the Stockholder Approval, contravene or conflict with any provision of the Organizational Documents of Seller or such Affiliate, (ii) subject to Seller's receipt of the Consents listed in Schedule 4.2(c) of Seller Disclosure Letter, constitute a material breach or result in a material default under, or give to any Third Party any rights of termination, acceleration or cancellation under, any Acquired Contract or any Contract to which any of the Acquired Assets is subject, (iii) result in the creation of any Encumbrance, other than any Permitted Encumbrance, upon any of the Acquired Assets, and (iv) assuming compliance with the matters referred to in Section 4.2(d) and Section 5.2(d), and subject to the receipt of the Stockholder Approval, violate in any respect any provision of any Law to which Seller or such Affiliate or any of the Acquired Assets is subject, except, in the case of each of clauses (ii), (iii), and (iv) above, for any such breaches, violations, defaults or other occurrences, if any, as would not (A) materially and adversely affect the ability of Seller to consummate the Transactions, or (B) reasonably be expected, individually or in the aggregate, to be materially adverse to the Product, the Acquired Assets and the Assumed Liabilities, taken as a whole.

(d) Except for (i) any filings or notices under the Competition Laws, (ii) the filing of the Seller FDA Letters as contemplated hereby, (iii) as may be required under the DGCL, the Exchange Act or the rules and regulations of the NASDAQ or (iv) filings with the SEC of the preliminary and definitive Proxy Statement relating to the Stockholders Meeting for the Stockholder Approval, the sale of the Acquired Assets and the Transactions, no Permit or Consent, waiting period expiration or termination, approval or authorization of, or designation, declaration or filing with, any Governmental Entity on the part of Seller or its Affiliates is required in connection with the execution or delivery by Seller of this Agreement, the execution and delivery by Seller or its Affiliates, as applicable, of each Ancillary Agreement as of the Closing, or the consummation of the Transactions.

4.3 Title to Acquired Assets.

(a) Except as set forth in Schedule 4.3(a) of the Seller Disclosure Letter and except as would not, individually or in the aggregate, reasonably be expected to be material to the Exploitation of the Product, the Acquired Assets and the Assumed Liabilities, taken as a whole, other than the Intellectual Property Rights which are addressed in Section 4.5, (i) Seller has good and marketable title to, or valid contract rights to, as applicable, all of the Acquired Assets free and clear of all Encumbrances (it being understood and agreed that any such Encumbrances on the Acquired Assets, including those created by or pursuant to any Existing Indebtedness, shall be released at Closing), and has complete and unrestricted power and unqualified right to sell, assign, transfer and deliver to Purchaser, as applicable, the Acquired Assets, (ii) there are no adverse claims of ownership to the Acquired Assets and Seller has not received written notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Acquired Assets, and (iii) at the Closing, Purchaser will acquire from Seller good and marketable title to, or valid contract rights to, as applicable, all of the Acquired Assets, free and clear of all Encumbrances (in each case of clauses (i) – (iii) above, other than Permitted Encumbrances).

(b) Except for the Excluded Assets, the rights set forth in the Cross-License Agreement and the services to be provided by Seller to Purchaser pursuant to the Transition Services Agreement, the Acquired Assets (assuming all Transferring Employees transfer to Purchaser or its Affiliates as of the Closing and assuming all approvals as may be required in connection with the consummation of the transactions contemplated hereby are obtained) constitute (i) all of the interests, assets and rights of Seller or any of its Affiliates acquired, conceived, collected, compiled, generated, reduced to practice or otherwise made, used or are reasonably useful in connection with the Exploitation of the Product by Seller and (ii) all of the interests, assets and rights of Seller or any of its Affiliates used or held for use in connection with the Exploitation of the Product. The Acquired Assets, together with the services to be provided by Seller to Purchaser pursuant to the Transition Services Agreement and the rights set forth in the Cross-License Agreement (assuming all Transferring Employees transfer to Purchaser or its Affiliates as of the Closing and assuming all approvals as may be required in connection with the consummation of the transactions contemplated hereby are obtained), are sufficient for the continued Exploitation of the Product after the Closing in all material respects as such activities were conducted prior to the Closing Date.

4.4 Financial Information.

(a) Set forth on Schedule 4.4(a) of the Seller Disclosure Letter is the following information with respect to the Exploitation of the Acquired Assets and the Product (collectively, the "Financial Information"): (i) Seller's statements of "Allowable Expenses" (solely for the purpose of this Section 4.4(a), as defined in the US License Agreement) for Calendar Year 2023 and the first Calendar Quarter of Calendar Year 2024, and (ii) Seller's invoices for Product supplied pursuant to the US License Agreement and the Supply Agreement (as defined in the US License Agreement) for each month in the Calendar Year 2023 and the first Calendar Quarter of Calendar Year 2024, disregarding any adjustments made in respect of Pre-Launch Supply Costs (as defined in the US License Agreement) pursuant to the Section 9.2 of the US License Agreement.

(b) The Financial Information is an accurate and true presentation of and does not materially misstate the Allowable Expenses (as defined in the US License Agreement) incurred by Seller and its Affiliates in connection with the Exploitation of the Product and the Supply Costs (solely for the purpose of this Section 4.4(b), as defined in the US License Agreement) and the Manufacturing Costs (solely for the purpose of this Section 4.4(b), as defined in the US License Agreement) for the periods covered thereby. The Financial Information was prepared in accordance with, and derived from, the books and accounts and other financial records of Seller which are maintained by Seller in accordance with GAAP, applied consistently by Seller for the respective periods presented and were prepared in accordance with the US License Agreement.

4.5 Intellectual Property.

(a) Except as set forth in Schedule 4.5(a) of the Seller Disclosure Letter, Seller or its Affiliates solely and exclusively owns or Controls all right, title and interest to the Acquired IP, in each case, free and clear of all Encumbrances (other than Permitted Encumbrances) except as provided in the MSK Agreement with respect to the MSK Patents. Seller has the right and authority to transfer all of its Intellectual Property Rights in respect of the Acquired IP to Purchaser, and except pursuant to the Existing Agreements, MSK Agreement or Cross-License Agreement, it has not previously transferred or granted any right, license or interest in or to the Acquired IP that would conflict with or limit the scope of any of the Intellectual Property Rights to be transferred to Purchaser under this Agreement.

(b) Except as provided in the MSK Agreement and the Oaktree Credit Agreement or as listed in Schedule 4.5(b) of the Seller Disclosure Letter, the Acquired IP is not subject to any liens in favor of, or written claims of ownership by, any Third Party.

(c) Schedule 4.5(c) of the Seller Disclosure Letter sets forth a complete and accurate list as of the Closing Date of all Contracts pursuant to which any Acquired IP is (i) licensed to Seller or its Affiliates by any other Person, or (ii) licensed by Seller to any other Person (including any obligations of such other Person to make any fixed or contingent payments, including royalty payments), in each case of (i) and (ii), other than (A) software licenses for unmodified commercially available off the shelf software, (B) employee proprietary inventions agreements (or similar employee agreements), or (C) non-exclusive licenses granted under customer contracts entered into in the Ordinary Course of Business in connection with the commercial sale of the Product. Any in-licenses under clause (i) necessary to use the Acquired IP is listed on Schedule 4.5(c) of the Seller Disclosure Letter. All material obligations for payment of monies currently due and payable by Seller and other material obligations in connection with such Contracts have been satisfied in a timely manner.

(d) There are no actual, pending, or, to Seller's knowledge, alleged or threatened, Actions involving the Product or the Acquired IP by or against Seller or any of its Affiliates in the Territory.

(e) To Seller's knowledge, no Third Party is infringing, violating or misappropriating the Acquired IP in the Territory.

(f) To Seller's knowledge, (i) the Exploitation of, and the conduct of Medical Affairs Activities in respect of, the Product existing as of the Closing Date do not and will not infringe, violate, or misappropriate the valid Intellectual Property Rights of any Third Party and (ii) Seller has not received any claim alleging any such infringement.

(g) To Seller's knowledge, the conception, development and reduction to practice of the Acquired IP have not constituted or involved the misappropriation of Trade Secrets or other proprietary rights or property of any Third Party.

(h) To Seller's knowledge, (i) none of the Patents in the Acquired IP are invalid or unenforceable, in whole or in part, (ii) no claim has been issued or served, and Seller has not received any written threat of an Action made by any Person, against Seller or any of its Affiliates that alleges that any Patents in the Acquired IP is invalid or unenforceable, and (iii) all Patents in the Acquired IP are being diligently prosecuted, in Seller's discretion, in the applicable patent offices in accordance with applicable Law and have been filed and maintained properly and correctly and all applicable fees have been paid on or before the due date for payment.

(i) Seller and its Affiliates have taken all reasonable measures to maintain the confidentiality of Know-How and Trade Secrets owned by Seller included in the Acquired IP. The Know-How and Trade Secrets that are owned or Controlled by Seller and its Affiliates in connection with the Exploitation of the Product have not been used, disclosed to or, to Seller's knowledge, discovered by any Person except pursuant to written non-disclosure or license agreements which have not, to Seller's knowledge, been breached.

(j) (i) All individuals who participated in the invention or authorship of any of the inventions claimed in the Patents in the Acquired IP have made effective assignments to Seller of all ownership rights therein either pursuant to a written agreement or by operation of applicable Law and (ii) to Seller's knowledge, all inventors of an invention claimed in a Patent contained in the Acquired IP are listed in such Patent.

(k) Seller has (i) prosecuted and maintained each of the Patents in the Acquired IP in good faith and complied with all duties of disclosure with respect thereto and (ii) to the knowledge of Seller, submitted all material prior art with respect to the Patents in the Acquired IP to the appropriate patent authority in each jurisdiction to the extent required by such patent authority.

(l) The MSK Agreement is in full force and effect as of the Closing Date, and Seller and its Affiliates are, and to Seller's knowledge, MSK is, in compliance with the MSK Agreement as of the Closing Date. Other than pursuant to the MSK Agreement, no funding, facilities, personnel or other resources of any Governmental Entity or university or other academic institution or academic research center has been used in connection with the conception, invention, reduction to practice, development or other creation by or on behalf of Seller and its Affiliates of any Acquired IP.

(m) Other than this Agreement, the Existing Agreements, Cross-License Agreement, and Transition Services Agreement, neither Seller nor any of its Affiliates are bound by any non-competition agreements related to the Product.

(n) The Acquired IP constitutes all Intellectual Property registered with a governmental authority and, to the Seller's knowledge, all Know How and Trade Secrets, in each case, owned by Seller or its Affiliates that is used or held for use primarily for the Exploitation of Vowst as conducted by Seller as of immediately before the Closing.

(o) The Acquired IP, together with the Intellectual Property Rights licensed to Purchaser under the Cross-License Agreement, constitute all Intellectual Property owned or Controlled by Seller that are necessary for the Exploitation of Vowst as conducted by Seller as of immediately before the Closing.

4.6 Data Privacy and Security.

(a) With respect to the Product and the Acquired Assets, Seller complies, and since June 1, 2021, has complied, in all material respects with the Privacy Policies, all applicable Data Protection Laws, and all applicable Data Processing Contracts (collectively, "Data Privacy and Security Requirements"). Without limiting the generality of the foregoing, during the past (3) years, Seller (i) has acquired, collected, processed, used, transferred, disposed of, protected and secured (collectively, "Processed") Personal Information in connection with the Product and the Acquired Assets in accordance with applicable Data Privacy and Security Requirements in all material respects, including as necessary to transfer such Personal Information to Purchaser under this Agreement; (ii) has made all necessary disclosures to and obtained any necessary consents from the applicable data subjects to receive, access, use and disclose Personal Information Processed in connection with the Product and Acquired Assets as required by applicable Data Protection Laws in all material respects, including as necessary to transfer such Personal Information to Purchaser under this Agreement; and (iii) has not received any written complaints, claims, demands, inquiries or other notices, including any notice of investigation, from any Person (including any Governmental Entity) regarding any noncompliance with applicable Data Protection Laws in connection with the Product and the Acquired Assets.

(b) Since June 1, 2021, the Privacy Policies have made all disclosures to employees or other data subjects to the extent required by Data Protection Laws, and none of such disclosures made or contained in the Privacy Policies has been inaccurate, misleading or deceptive in any material respect. No Privacy Policy prevents the transfer of Personal Information to Purchaser under this Agreement, and to the knowledge of the Seller, no Privacy Policy is in material violation of any Data Protection Laws.

(c) Seller has established, maintains and complies in all material respects with a written information security program with respect to the Product and the Acquired Assets that (i) complies with all applicable Data Privacy and Security Requirements in all material respects; (ii) includes and incorporates commercially reasonable administrative, technical, organization and physical security procedures and measures designed to preserve the confidentiality, integrity and availability of Personal Information and confidential information Processed by Seller in connection with the Product and the Acquired Assets; (iii) is designed to protect against material Security Incidents; and (iv) permits the secure transfer of Personal Information to Purchaser under this Agreement.

(d) With respect to the Product and the Acquired Assets, since June 1, 2021: (i) there has been no material Security Incident or other unauthorized use, access to, interruption, or corruption of any Personal Information; and (ii) Seller has not received written complaints from, notices from or actions conducted or claims asserted by any Person, including any Governmental Entity, against Seller regarding any actual or alleged Security Incident.

4.7 Acquired Contracts.

(a) Schedule 4.7(a)-1 (Acquired Contracts) of the Seller Disclosure Letter sets forth a true and accurate list of all Contracts (excluding the Excluded Contracts and inventor assignments and inventorship agreements entered into in the Ordinary Course of Business) of the following types, in each case that are primarily related to the Exploitation of the Product by or on behalf of Seller and its Affiliates:

(i) any Contract with any supplier of goods or services that (A) has resulted in or that is reasonably expected to result in expenditures of Seller or its Affiliates of more than Two Hundred Fifty Thousand US Dollars ($250,000) in 2023 or 2024, (B) requires Seller of its Affiliates to purchase all of its requirements for any good or service from such supplier, or (C) contains any minimum or “take or pay” purchase or volume requirements;

(ii) any Contract with any customer that (A) has resulted in or that is reasonably expected to result in sales of the Product of more than Two Hundred Fifty Thousand US Dollars ($250,000) in 2023 or 2024, (B) requires Seller or its Affiliates to sell the Product exclusively to such customer, or (C) obligates Seller or its Affiliates to provide the Product with equal or preferred pricing terms as compared to the pricing terms offered by Seller or its Affiliates to any other customer, including any Contract with any “most favored nation” provision;

(iii) any Contract under which Seller is a lessee of or holds or operates any equipment, vehicle, or other tangible personal property that is owned by another Person and that has resulted in or that is reasonably expected to result in expenditures by Seller or its Affiliates of more than Two Hundred Fifty Thousand US Dollars ($250,000) in 2023 or 2024;

(iv) any Contract with a sales representative, manufacturer's representative, distributor, dealer, broker, sales agency, advertising agency, or other Person engaged in sales, distribution, or promotional activities for or on behalf of Seller or its Affiliates, in each case that (A) has resulted in or that is reasonably expected to result in expenditures by Seller or its Affiliates of more than Two Hundred Fifty Thousand US Dollars ($250,000) in 2023 or 2024, or (B) grants such Person exclusive rights to sell, distribute, or promote the Product in any geographical area;

(v) any Contract that includes any right of first offer or refusal or other similar term favoring any other Person;

(vi) any Contract under which any other Person has agreed to perform any services for Seller that are required to be performed by Seller under any other Contract;

(vii) any Contract relating to the acquisition of any business, equity interests, or assets of any other Person (whether by merger, sale of equity interests, sale of assets, or otherwise) and that is primarily related to the Exploitation of the Product;

(viii) any Contract primarily related to the sale or other disposition of the Product or the Acquired Assets, other than the sale of inventory in the Ordinary Course of Business;

(ix) other than the Existing Agreements, any Contract relating to any joint venture, partnership, strategic alliance, or similar relationship;

(x) any Contract under which Seller has, directly or indirectly, made any advance, loan, or extension of credit to, or capital contribution or other investment in, any other Person;

(xi) other than the Existing Agreements, any Contract that limits the freedom of Seller or its Affiliates to compete with any Person or in any geographical area or that otherwise restricts the Exploitation of the Product;

(xii) any Contract restricting the ability of Seller or its Affiliates to solicit or hire any other Person in connection with the Exploitation of the Product;

(xiii) any power of attorney, except any such power of attorney that is terminated at or prior to the Closing;

(xiv) any Contract with any Governmental Entity in connection with the Exploitation of the Product;

(xv) any Contract not made in the Ordinary Course of Business and primarily related to the Exploitation of the Product; and

(xvi) any other Contract that is primarily related to the Exploitation of the Product and not previously disclosed pursuant to this Section 4.7.

Correct and complete copies of each such Contract have been made available to Purchaser or its advisors, except (A) to the extent any such Contract has been redacted to (x) enable compliance with Laws relating to antitrust or the safeguarding of data privacy or (y) comply with confidentiality obligations owed to Third Parties or (B) as indicated on Schedule 4.7(a)-1 (Acquired Contracts) of the Seller Disclosure Letter. Other than the Contracts set forth on Schedule 2.2(f), Schedule 4.7(a)-1 (Acquired Contracts), and Schedule 4.7(a)-2 (Shared Contracts) of the Seller Disclosure Letter, there are no other Contracts that are material to the Exploitation of the Product. Schedule 4.7(a)-2 (Shared Contracts) of the Seller Disclosure Letter sets forth a true and accurate list of all Shared Contracts (excluding the Excluded Contracts).

(b) Except as set forth on Schedule 4.7(b) of the Seller Disclosure Letter, (i) each of the Acquired Contracts (x) represents a valid and binding obligation of Seller or its Affiliate as a party thereto and, to the knowledge of Seller, each other party thereto, (y) is enforceable against Seller or its Affiliate (as applicable) and, to the knowledge of Seller, each other party thereto, in accordance with its terms, and (z) is in full force and effect, subject to (A) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting the enforcement of creditors' rights generally and (B) general equitable principles (whether considered in a proceeding in equity or at Law), and (ii) neither Seller nor any of its Affiliates nor, to the knowledge of Seller, any other party thereto is in breach of or default under, or has provided or received any written notice of any intention to terminate, any of the Acquired Contracts, or has committed or failed to perform any act which, with or without notice, lapse of time or both would constitute a breach of or default under any of the Acquired Contracts.

(c) (i) There are no material disputes under any Acquired Contract and (ii) neither Seller nor its Affiliates (if applicable), nor, to the knowledge of Seller, any other party to any Acquired Contract has taken, or failed to take, any action that would cause any Acquired Contract to terminate or fail to renew in accordance with its terms. Subject to obtaining the consents described on Schedule 4.7(c) of the Seller Disclosure Letter, with respect to each Acquired Contract, Purchaser will have the same rights under such Acquired Contract from and after the Closing as Seller or its applicable Affiliate has as of immediately before the Closing, and the consummation of the transactions contemplated hereby will not impair any such rights in any material respect or otherwise prevent such Acquired Contract from continuing in full force and effect without penalty or other adverse consequence following the Closing. Subject to obtaining the consents described on Schedule 4.7(c) of the Seller Disclosure Letter, immediately following the Closing, each Acquired Contract will continue to be in full force and effect, and valid, binding and enforceable in accordance with its terms.

4.8 Compliance with Law; Regulatory Approvals.

(a) Seller is, and since June 1, 2021, has been, in compliance in all material respects with all Laws applicable to the Exploitation of the Product and the Acquired Assets. Since June 1, 2021, Seller has not received any written notice from a Governmental Entity alleging that it is not in material compliance with any Law applicable to the Exploitation of the Product or the Acquired Assets.

(b) Seller holds all material Regulatory Approvals required for the conduct of the business and operations of Seller as such business and operations relate to the Exploitation of the Product or the Acquired Assets and all such material Regulatory Approvals have been validly issued and are in full force and effect. Seller has no knowledge of any facts or circumstances that would be reasonably likely to lead to the revocation, suspension, limitation, or cancellation of any material Regulatory Approval required under applicable Laws for the Exploitation of the Product or the Acquired Assets. Seller is the sole and exclusive owner of all of the Regulatory Approvals and none of the Regulatory Approvals have been sold, conveyed, delivered, transferred or assigned to another party. To Seller's knowledge, there are no facts, circumstances or conditions that would reasonably be expected to prevent the transfer or re-issuance of any such Regulatory Approval to Purchaser or its designated Affiliates on or after the Closing Date pursuant to and in accordance with Section 6.3.

(c) (i) To Seller's knowledge, Seller has made available to Purchaser all notices of inspection, inspection reports, warning letters, deficiency letters or similar communication received by Seller or its Affiliates regarding or related to the Product and (ii) Seller has prepared, filed, maintained or retained all material Regulatory Documentation relating to the Product that is required to be maintained or reported pursuant to Regulatory Authorities and such items have been prepared in accordance with the applicable requirements of all applicable Laws, and to Seller's knowledge, such material Regulatory Documentation does not contain any materially false or misleading statements.

(d) Since June 1, 2021, to Seller's knowledge, neither Seller, nor any of its Affiliates, nor any of their respective officers, employees, agents, or contractors has made, with respect to the Product, an untrue statement of a material fact to any Governmental Entity or in any material reports, applications, statements, documents, registrations, filings, corrections, updates, amendments, supplements, and submissions required to be filed and maintained under applicable Law or failed to disclose a material fact required to be disclosed to such Governmental Entity or in any such reports, applications, statements, documents, registrations, filings, corrections, updates, amendments, supplements, and submissions.

(e) All Data with respect to the Product that have been provided to a Regulatory Authority as of the date hereof have been generated in compliance in all material respects with applicable Health Care Laws.

(f) (i) Since June 1, 2021, all Development and Manufacturing activities conducted by or for the benefit of Seller or its Affiliates with respect to the Product have been conducted in all material respects in compliance with all applicable Health Care Laws and (ii) to Seller's knowledge, no contract manufacturer of Seller or its Affiliates with respect to the Product has received any written communication from any Governmental Entity that alleges that Seller, its Affiliates or such contract manufacturer is, with respect to the Product, in material violation of any applicable Health Care Laws.

(g) Since June 1, 2021, to Seller's knowledge, in the course of the Development of the Product, Seller has not used any employee or consultant who has been debarred by any Regulatory Authority, or was the subject of debarment proceedings by a Regulatory Authority, and to Seller's knowledge, no such employees or consultants have been used by any Third Party contractor of Seller in connection with the Development of the Product. All Third Party contractors engaged by Seller in connection with the Development of the Product are engaged pursuant to Contracts prohibiting the use of any such employee or consultant.

4.9 Litigation; Court Orders.

(a) There is no, and since June 1, 2021, there has not been any, material Action pending or, to the knowledge of Seller, threatened in writing against or affecting Seller or any of its Affiliates relating to the Exploitation of the Product or the Acquired Assets.

(b) There is no, and since June 1, 2021, there has not been, any material Court Order, or settlement agreement, consent agreement, memorandum of understanding or disciplinary agreement with any Governmental Entity, to which any of the Acquired Assets is or was subject or otherwise related to the Exploitation of the Product. Seller and its Affiliates have complied with all Court Orders, and settlement agreements, consent agreements, memoranda of understanding or disciplinary agreements with any Governmental Entity, to which any of the Acquired Assets is or was subject.

(c) There are no Actions pending or, to the knowledge of Seller, threatened by or against Seller with respect to this Agreement or the transactions contemplated by this Agreement.

4.10 Taxes.

(a) There are no Encumbrances for Taxes upon any of the Acquired Assets, other than Permitted Encumbrances.

(b) Except as set forth on Schedule 4.10(b) of the Seller Disclosure Letter, Seller has timely filed all income and other material Tax Returns in respect of the Acquired Assets with respect to any period ending on or prior to the Closing Date that it was required to file. All such Tax Returns were correct and complete in all material respects. All Taxes shown as due on such Tax Returns with respect to the Acquired Assets and all other Taxes due and payable with respect to the Acquired Assets have been paid or will be timely paid by the due date thereof.

(c) Except as set forth on Schedule 4.10(c) of the Seller Disclosure Letter, no audit, investigation, dispute, claims or proceeding by or before any other Governmental Entity is currently in progress or has been conducted since June 1, 2021, with respect to the Acquired Assets.

(d) No assessment or deficiency for any Tax or adjustment to any Tax item has been proposed or threatened in writing by a Governmental Entity relating to the Acquired Assets that has not been resolved.

(e) There are no unexpired waivers or extensions of the statute of limitations relating to any Taxes with respect to the Acquired Assets.

(f) Seller has no unclaimed or abandoned property or escheat obligation with respect to the Acquired Assets.

(g) All material Taxes that are required to be withheld, with respect to the Acquired Assets by Seller from amounts owing to any employee, creditor, equity holder or other Person, and remitted to any Governmental Entity have been properly withheld and remitted.

(h) No claim has ever been made by any Governmental Entity in a jurisdiction in which Seller does not file Tax Returns that Seller is or may be subject to taxation or required to file Tax Returns in that jurisdiction, in each case with respect to the Acquired Assets.

(i) None of the Acquired Assets is a United States real property interest, as defined in Section 897(c) of the Code.

4.11 Employees and Labor Matters.

(a) Seller has made available to Purchaser a true, complete and correct list, as of July 1, 2024, of the following information for each individual employed by the Seller or its Affiliates dedicated to the manufacture and supply chain operations of the Product ("Supply Chain Employees"), plus additional employees identified by Seller and Purchaser prior to the reference date that would meet the business needs of Purchaser with respect to the ongoing business of the Product under its ownership ("Identified Employees" and, together with the Supply Chain Employees, the "Employees"), and for each such Employee listed: such Employee's (i) current annual base salary or base hourly rate, (ii) if applicable, annual incentive compensation opportunity, (iii) job title, (iv) hire date, (v) work location, (vi) whether full-time or part-time and whether exempt or non-exempt, and (vii) whether absent from active employment and if so, the date such absence commenced, the reason for such absence, and the anticipated date of return to active employment.

(b) Schedule 4.11(b) of the Seller Disclosure Letter sets forth each contract for each individual independent contractor engaged by Seller or its Affiliates providing services related to the Exploitation of the Product.

(c) Seller and its Affiliates are, and have been, in material compliance with all Laws relating to the employment of labor, including but not limited to all such Laws relating to wages, hours, overtime, meal and break periods, discrimination, retaliation, leaves of absence, immigration, child labor, safety and health, collective bargaining, workers' compensation, unemployment compensation, the WARN Act and employee classifications. All independent contractors and consultants providing personal services to Seller or its Affiliates have in all material respects been properly classified as independent contractors for purposes of all Laws, including Laws with respect to employee benefits, and all Employees have been properly classified under the Fair Labor Standards Act.

(d) Except as set forth on Schedule 4.11(d) of the Seller Disclosure Letter, since June 1, 2021, (i) neither Seller nor its Affiliates has effectuated a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility, (ii) there has not occurred a "mass layoff" (as defined in the WARN Act) in connection with Seller or its Affiliates affecting any site of employment or one or more facilities or operating units within any site of employment or facility, and (iii) neither Seller nor its Affiliates has been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of the WARN Act. No employee of Seller or its Affiliates has experienced an "employment loss," as defined by the WARN Act or any similar applicable Law, requiring notice to employees in the event of a closing or layoff, within the past ninety (90) days.

(e) Seller or its Affiliates have investigated or reviewed all sexual harassment or other harassment, discrimination, retaliation, or material policy violation allegations involving any (i) Employees, or (ii) independent contractors providing services related to the Exploitation of the Product, in each case, of which Seller had knowledge since June 1, 2021. With respect to each such allegation, where appropriate, Seller or its applicable Affiliate has taken corrective action that is reasonably calculated to prevent further improper action under Seller's applicable policies.

(f) There have been no U.S. Department of Homeland Security or U.S. Department of Labor violations, investigations or adverse findings or penalties imposed against Seller or its Affiliates with respect to any Employees since June 1, 2021. Seller and its Affiliates have complied, and are in compliance, in all material respects, with the Immigration Reform and Control Act of 1986. Seller or its Affiliates, as applicable, have maintained I-9 employment authorization files on all of the Employees.

(g) There have not been any material Actions initiated, negotiated or litigated with Seller or its Affiliates by any of the Employees with respect to their employment or benefits incident thereto, or by any Governmental Entity, including harassment and discrimination claims, wage and hour claims, and claims arising under workers' compensation Laws, which are currently or have been pending since June 1, 2021 and, to Seller's knowledge, there is no state of facts or event which would reasonably be expected to form the basis of any such controversy, grievance, claim or Action.

(h) None of the Employees have terms and conditions of employment that are subject to a collective bargaining agreement to which Seller or its Affiliates is a party. There is no labor strike, dispute, slow down, work stoppage, unresolved material labor union grievance or labor arbitration proceedings, pending, or to Seller's knowledge, threatened against Seller or its Affiliates with respect to any such Employees and, to Seller's knowledge, there are no union organizing activities pending.

4.12 Seller Benefit Plans.

(a) Schedule 4.12(a) of the Seller Disclosure Letter sets forth a true, complete and accurate list of all material Seller Benefit Plans as of the date of this Agreement.

(b) A copy or summary of material terms of each of the material Seller Benefit Plans, in each case as in effect on the date of this Agreement, has been made available to Purchaser.

(c) Except as would not result in Liability to Purchaser, all Seller Benefit Plans comply in form in all material respects with all requirements of applicable Law and have been administered in all material respects in accordance with their terms and with all applicable requirements of Law, and no event has occurred which will or would reasonably be expected to cause any such Seller Benefit Plan to fail to comply with such requirements and no notice has been issued by any Governmental Entity questioning or challenging such compliance. All Seller Benefit Plans that are subject to section 409A of the Code comply in all material respects with section 409A of the Code in form and have been administered in all respects in compliance with their terms and section 409A of the Code.

(d) Each Seller Benefit Plan that is an employee pension benefit plan is the subject of a favorable determination letter issued by the Internal Revenue Service with respect to the qualified status of such plan under section 401(a) of the Code and the tax-exempt status of any trust which forms a part of such plan under section 501(a) of the Code, and to the Seller's knowledge, no event has occurred which will or would reasonably be expected to give rise to disqualification of any such plan under such sections.

(e) None of the assets of any Seller Benefit Plan are invested in employer securities or employer real property. Except as would not result in Liability to Purchaser, to the Seller's knowledge there have been no "prohibited transactions" (as described in section 406 of ERISA or section 4975 of the Code) with respect to any Seller Benefit Plan and none of Seller or any of its ERISA Affiliates has engaged in any prohibited transaction. None of Seller or any of its ERISA Affiliates is a nonqualified entity within the meaning of section 457A of the Code. No Seller Benefit Plan or any contract, agreement, plan, policy, or arrangement with any Employee or individual independent contractor of Seller or any of its ERISA Affiliates provides for a "gross-up" or similar payment in respect of any Taxes that may become payable under Sections 409A or 4999 of the Code.

(f) Except as would not result in Liability to Purchaser, there have been no acts or omissions by Seller or any of its ERISA Affiliates which have given rise to or may give rise to interest, fines, penalties, taxes or related charges under section 502 of ERISA or Chapters 43, 47, 68 or 100 of the Code for which Seller or any of its ERISA Affiliates may be liable or under section 409A of the Code for which Seller or any participant in any Seller Benefit Plan that is a nonqualified deferred compensation plan (within the meaning of section 409A of the Code) may be liable. No event has occurred, and no conditions or circumstance exists, that would reasonably be expected to subject Purchaser, to material penalties or excise taxes under Sections 4980D or 4980H of the Code or any other provision of the Healthcare Reform Laws.

(g) Except as set forth on Schedule 4.12(g) of the Seller Disclosure Letter, neither the consummation of the transactions contemplated by this Agreement nor the execution of this Agreement will (whether separately or together with any other action that would not by itself) (i) accelerate the time of vesting or the time of payment, or increase the amount, of compensation due to any Employee of Seller or any of its ERISA Affiliates or (ii) result in any excess parachute payments (as defined in section 280G of the Code (without regard to subsection (b)(4) thereof)) to any Employee.

(h) Except as would not result in Liability to Purchaser, there are no material Actions (other than routine claims for benefits) pending or, to the Seller's knowledge, threatened involving any Seller Benefit Plan or the assets thereof and no facts exist which could give rise to any such actions, suits or claims (other than routine claims for benefits).

(i) Neither Seller nor any of its ERISA Affiliates has now or at any time within the preceding six (6) years had an obligation to contribute to, or any Liability with respect to: (i) a plan subject to Title IV of ERISA, (ii) a "multiemployer plan" (as defined in Section 3(37) of ERISA), (iii) a "multiple employer plan" within the meaning of Section 413(c) of the Code, (iv) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA, or (v) post-retirement medical or life insurance benefits, other than (A) statutory liability for providing group health plan continuation coverage under Part 6 of Title I of ERISA and section 4980B of the Code or applicable state Law at the sole cost of the individual or (B) during the severance period under an employment contract or severance benefit plan that has been made available to Purchaser.

4.13 Absence of Certain Developments. Since March 31, 2024, (a) the Acquired Assets have been maintained in the Ordinary Course of Business; (b) the Exploitation of the Product has been conducted in the Ordinary Course of Business; and (c) there has not occurred any event or events that, individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect. Without limiting the generality of the foregoing, since March 31, 2024, except as set forth on Schedule 4.13 of the Seller Disclosure Letter, Seller has not, in respect of maintaining the Acquired Assets and the Exploitation of the Product, as applicable:

(i) mortgaged, leased, pledged or otherwise encumbered any Acquired Assets or sold, transferred, licensed, failed to maintain, permitted to lapse or otherwise disposed of any Acquired Assets except in the Ordinary Course of Business, in each case, other than (A) Permitted Encumbrances and (B) in connection with the sale of inventory, goods or services in the Ordinary Course of Business;

(ii) made any capital expenditures in an aggregate amount of more than Five Hundred Thousand US Dollars ($500,000);

(iii) entered into any transaction with any Affiliate of Seller that (A) is not on an arm's-length basis or (B) would be binding on the Acquired Assets or the Exploitation of the Product after the Closing;

(iv) terminated any Acquired Contract (other than any termination that occurs pursuant to the terms thereof without any action on the part of Seller or any of its Affiliates), or made any material amendment to, waived any material right or granted a license under or assigned any Acquired Contract;

(v) entered into any material Contract primarily relating to the Exploitation of the Product that involve payments in excess of One Hundred Fifty Thousand US Dollars ($150,000) or that are not terminable within ninety (90) days or less at the option of the Seller, other than Contracts entered into in the Ordinary Course of Business;

(vi) made or changed any Tax election, changed any annual Tax accounting period, filed any amended Tax Return, entered into any closing agreement, settled any Tax claim or assessment, consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment, or adopted or changed any accounting principle, policy, or procedure used by Seller regarding Taxes, in each case with respect to the Acquired Assets, to the extent such actions would have an adverse effect on the Acquired Assets or Purchaser after the Closing Date;

(vii) accelerated or delayed collection of any Accounts Receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the Ordinary Course of Business;

(viii) delayed or accelerated payment of any Liability beyond or in advance of its due dates or the date when such Liability would have been paid in the Ordinary Course of Business;

(ix) with respect to the Exploitation of the Product, (A) materially changed any practices with respect to inventory levels of the Product, including Product maintained at the wholesale, chain or institutional levels other than in the Ordinary Course of Business or (B) entered into or establish any material new business practices or programs or change or modify in any material way any business practices or program other than in the Ordinary Course of Business;

(x) waived any material claims or rights that relate solely or primarily to the Acquired Assets or the Assumed Liabilities;

(xi) commenced or settled any Action material to the Exploitation of the Product, the Acquired Assets or the Assumed Liabilities; or

(xii) agreed to do, committed, approved, or authorized any of the foregoing.

4.14 Real Property.

(a) Neither Seller nor any of its Affiliates own or have owned or have any right to acquire, any real property that is used primarily in the Exploitation of the Product.

(b) Schedule 4.14(b) of the Seller Disclosure Letter sets forth a true, complete and correct list as of the date hereof of all Acquired Contracts, including any and all amendments and other modifications of such Acquired Contracts (each, a "Real Property Lease"), pursuant to which Seller or any of its Affiliates leases or subleases, as tenant or subtenant, any real property that is used primarily in the Exploitation of the Product ("Leased Real Property"), together with the address of the Leased Real Property. Seller has provided to Purchaser a true, complete and correct copy of all Real Property Leases. Seller or its Affiliate, as applicable, has a valid leasehold interest free and clear of all Encumbrances (other than Permitted Encumbrances) under each Real Property Lease to which it is a party. Each such Real Property Lease is in full force and effect and constitutes a legal, valid and binding obligation of Seller or its Affiliate, as applicable, and, to the knowledge of Seller, the other parties thereto, in accordance with its terms, in each case subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at Law). Neither Seller or its applicable Affiliate nor, to the knowledge of Seller, any other party to a Real Property Lease is in material default under such Real Property Lease. Except as set forth on Schedule 4.14(b) of the Seller Disclosure Letter, neither Seller nor its applicable Affiliate subleases, as sublessor, any portion of the real property subject to any Real Property Lease to any other Person. Neither Seller nor any of its Affiliates owes or will owe in the future any brokerage commissions or finders' fees with respect to any Real Property Lease. All of the landlord's obligations to construct tenant improvements under each associated Real Property Lease have been paid and performed in all material respects and all concessions from the landlord under each associated Real Property Lease have been paid and performed in all material respects. The other party to the associated Real Property Lease is not an Affiliate of Seller or any of its Affiliates, and otherwise does not have any economic interest in Seller or any of its Affiliates. Neither Seller nor any of its Affiliates have collaterally assigned or granted any security interest in any Leased Real Property or any interest therein. Seller has not received written notice of any actual or threatened condemnation, eminent domain or similar Action affecting any part of the Leased Real Property. To the knowledge of Seller, the Leased Real Property is not subject to any actual or threatened condemnation, eminent domain or similar Action.

(c) To the knowledge of Seller, all buildings, structures, fixtures, improvements, and building systems, and all components thereof, included in the Leased Real Property that are now being used for the Exploitation of the Product (the "Improvements") are in good condition and repair in all material respects (subject to normal wear and tear) and sufficient for the Exploitation of the Product as currently conducted.

4.15 Condition of the Acquired Assets. To the Seller's knowledge, all tangible assets included within the Acquired Assets are free from material defects (other than such minor defects as do not interfere with the intended use thereof in the conduct of normal operations), are in good operating condition (reasonable wear and tear excepted), and are suitable for the uses for which intended.

4.16 Inventory. As of the Closing Date: (a) the Acquired Inventory will have been acquired or produced in the Ordinary Course of Business, (b) the Acquired Inventory will not be held on consignment, (c) the Acquired Inventory will have been Manufactured, labeled and stored in accordance with GMP and all applicable Laws, Regulatory Approvals and specifications, (d) the Acquired Inventory will be in good, saleable and useable condition, (e) the Acquired Inventory will not be adulterated or misbranded, and (f) finished goods inventory will have been tested in accordance with established protocol sufficient to release the Product for sale in the United States in accordance with applicable Law, except in each case as would not, individually or in the aggregate, reasonably be expected to be materially adverse to the Exploitation of the Product, the Acquired Assets and the Assumed Liabilities.

4.17 Product Liability. Since June 1, 2021, no claims have been made against Seller or any of its Affiliates or their insurers alleging any personal injury, death or economic damages, punitive or exemplary damages, contribution or indemnification, or any material defects in the Product, or alleging any material failure of the Product or the marketing thereof to meet the requirements of applicable Laws and, to the knowledge of Seller, no such claim has been threatened, except in each case for such claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No payment or settlement of any kind has been made in response to or in anticipation of any such claim.

4.18 Brokers. Except for Lazard Frères & Co, LLC and Houlihan Lokey Capital, Inc., neither Seller nor any of its Affiliates has incurred, nor will it incur, directly or indirectly, any Liability for brokers' or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the consummation of the transactions contemplated hereby for which Purchaser or its Affiliates will be liable.

4.19 Accuracy of Proxy Statement. None of the information included or incorporated by reference in the proxy statement (such proxy statement and any amendments thereof or supplement thereto, the "Proxy Statement") to be filed with the SEC in connection with this Agreement will, at the date it is first mailed to Seller's stockholders or at the time of the Stockholders Meeting or at the time of any amendment or supplement thereof, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, no representation or warranty is made by Seller with respect to statements made or incorporated by reference therein based on information supplied by Purchaser expressly for inclusion or incorporation by reference in the Proxy Statement. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act.

4.20 Exclusivity of Representations. SELLER ACKNOWLEDGES AND AGREES THAT PURCHASER HAS MADE NO REPRESENTATION OR WARRANTY WHATSOEVER RELATED TO THE PRODUCT OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND SELLER HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, EXCEPT, IN EACH CASE, FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN Article 5, THE ANCILLARY AGREEMENTS TO BE ENTERED INTO AT THE CLOSING AND THE CERTIFICATE DELIVERED BY PURCHASER PURSUANT TO SECTION 3.10(e). NOTWITHSTANDING ANYTHING IN THIS SECTION 4.20 TO THE CONTRARY, (A) NOTHING IN THIS AGREEMENT SHALL IN ANY WAY RESTRICT, LIMIT OR OTHERWISE ADVERSELY IMPACT SELLER'S OR ITS AFFILIATES' RIGHTS OR REMEDIES WITH RESPECT TO FRAUD COMMITTED BY OR ON BEHALF OF PURCHASER OR ANY OF ITS AFFILIATES CONCERNING ANY MATTER SET FORTH IN THIS AGREEMENT OR THE ANCILLARY AGREEMENTS, (B) ANY EXERCISE OF ANY SUCH RIGHTS OR REMEDIES BY SELLER OR ITS AFFILIATES WITH RESPECT TO ALLEGED FRAUD SHALL NOT CONSTITUTE A BREACH OF THIS SECTION 4.20, AND (C) NO ACKNOWLEDGMENT OR REPRESENTATION OR WARRANTY BY SELLER MAY BE USED AS A DEFENSE AGAINST ANY CLAIM OF FRAUD MADE BY SELLER OR ITS AFFILIATES.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby makes, as of the date hereof and as of the Closing Date, the following representations and warranties to Seller:

5.1 Organization, Power and Standing.

(a) Purchaser is a *société anonyme* duly organized, validly existing and in good standing under the Laws of Switzerland. Purchaser is duly qualified to do business and in good standing in each jurisdiction where the operations of its business requires such qualification, except where the failure to be so qualified or in such good standing would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(b) Purchaser has the requisite corporate power and authority to own and operate its business as presently conducted.

5.2 Authority, Non-Contravention, Required Filings.

(a) Purchaser has the requisite corporate or other entity power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. As of the Closing, Purchaser or its Affiliates, as applicable, will have the requisite corporate or other entity power and authority to execute and deliver each Ancillary Agreement, to perform its or their obligations thereunder and to consummate the transactions contemplated thereby. The execution and delivery of this Agreement by Purchaser and the performance by Purchaser of its obligations hereunder and the consummation by Purchaser of the transactions contemplated hereby have been duly authorized by all necessary corporate or other entity action on the part of Purchaser. As of the Closing, the execution and delivery of each Ancillary Agreement by Purchaser or its Affiliates, as applicable, the performance by Purchaser or its Affiliates of its obligations thereunder and the consummation by Purchaser or its Affiliates of the transactions contemplated thereby will have been duly authorized by all necessary corporate or other entity action on the part of Purchaser or such Affiliates.

(b) This Agreement has been duly executed and delivered by Purchaser and constitutes a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, and, as of the Closing, each Ancillary Agreement will have been duly executed and delivered by Purchaser or its Affiliates, as applicable, and will constitute a valid and binding obligation of Purchaser or such Affiliates, enforceable against it in accordance with its terms, in each case subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at Law).

(c) The execution and delivery of this Agreement by Purchaser does not, and the execution and delivery of each Ancillary Agreement by Purchaser or its Affiliates, as applicable, as of the Closing, the performance by Purchaser or its Affiliates, as applicable, of its obligations hereunder and thereunder and the consummation by Purchaser or its Affiliates, as applicable, of the Transactions will not (i) contravene or conflict with any provision of the Organizational Documents of Purchaser or its Affiliates, as applicable, (ii) contravene, conflict with, constitute a material breach or result in a material default under, or give to any Third Party any rights of termination, amendment, acceleration or cancellation under, any contract or agreement to which Purchaser or its Affiliates, as applicable, is a party or is otherwise bound, or (iii) assuming compliance with the matters referred to in Section 4.2(d) and Section 5.2(d), violate in any respect any provision of any Law to which Purchaser or any of its Affiliates, as applicable, is subject, except, in the case of each of clauses (ii) and (iii) above, for any such breaches, violations, defaults or other occurrences, if any, that would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the Transactions.

(d) No permit, consent, waiting period expiration or termination, approval or authorization of, or designation, declaration or filing with, any Governmental Entity on the part of Purchaser or any of its Affiliates is required in connection with the execution or delivery by Purchaser or any of its Affiliates of this Agreement or any Ancillary Agreement as of the Closing, or the consummation of the Transactions other than (i) any filings or notices under the Competition Laws, (ii) the Purchaser FDA Letters, and (iii) such permits, consents, approvals, authorizations, designations, declarations or filings the absence of which would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the Transactions.

5.3 Sufficient Funds Available. Purchaser and its applicable Affiliates have, and will have as of the Closing, sufficient funds available to make the payments required hereunder, including the Closing Date Payment, and to perform their respective obligations to be performed as of and following the Closing (including payment of the Closing Date Payment) and to pay the fees and expenses of Purchaser and its applicable Affiliates incurred in connection with the transactions contemplated by this Agreement.

5.4 Litigation. There are no Actions pending or, to the knowledge of Purchaser, threatened by or against Purchaser with respect to this Agreement or the transactions contemplated by this Agreement.

5.5 Brokers. Except for Evercore Inc., Purchaser has not incurred, nor will it incur, directly or indirectly, any Liability for brokers' or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the consummation of the transactions contemplated hereby for which Seller or its Affiliates will be liable.

5.6 Exclusivity of Representations.

(a) PURCHASER ACKNOWLEDGES AND AGREES THAT NEITHER SELLER NOR ANY OF ITS AFFILIATES HAVE MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER RELATED TO THE PRODUCT OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND PURCHASER HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, EXCEPT, IN EACH CASE, FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE 4, THE ANCILLARY AGREEMENTS TO BE ENTERED INTO AT THE CLOSING AND THE CERTIFICATE DELIVERED BY SELLER PURSUANT TO SECTION 3.9(d).

(b) Without limiting the representations and warranties of Seller and its Affiliates set forth in Article 4, the Ancillary Agreements to be entered into at the Closing and the certificate delivered by Seller pursuant to Section 3.9(d), Purchaser is relying on its own investigation, examination and valuation of the Acquired Assets, the Product and in effecting the Transactions. Purchaser has made all inspections and investigations of the Acquired Assets and the Product deemed necessary or desirable by Purchaser. Purchaser is purchasing the Acquired Assets and entering into this Agreement and the Ancillary Agreements based on the results of its inspections and investigations, and not in reliance on any representation or warranty of Seller or any of its Affiliates not expressly set forth in Article 4 of this Agreement, the Ancillary Agreements to be entered into at the Closing and the certificate delivered by Seller pursuant to Section 3.9(d). In light of these inspections and investigations and the representations and warranties made to Purchaser by Seller in Article 4 hereof, Purchaser is relinquishing any right to any claim (whether in warranty, contract, tort (including negligence or strict liability) or otherwise) based on any warranties other than those expressly set forth in Article 4 of this Agreement, the Ancillary Agreements to be entered into at the Closing and the certificate delivered by Seller pursuant to Section 3.9(d). Purchaser acknowledges and agrees that, except as otherwise expressly set forth in this Agreement and the Ancillary Agreements, the Acquired Assets are sold "as is, where is" and Purchaser and its Affiliates agree to accept the Acquired Assets on the Closing Date in the condition they are in based on their own inspection, examination and determination with respect to all matters, and without reliance upon any express or implied representations or warranties of any nature made by, on behalf of or imputed to Seller or its Affiliates. PURCHASER (ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES) AGREES THAT THE WARRANTIES GIVEN BY SELLER AND ITS AFFILIATES IN Article 4 AND IN THE ANCILLARY AGREEMENTS ARE IN LIEU OF, AND PURCHASER (ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES) HEREBY EXPRESSLY WAIVES ALL RIGHTS TO, ANY IMPLIED WARRANTIES THAT MAY OTHERWISE BE APPLICABLE BECAUSE OF THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER STATUTE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(c) In connection with Purchaser's investigation of the Acquired Assets, Purchaser has received from Seller (or any of its Affiliates or Representatives, as applicable) various forward-looking statements regarding the Acquired Assets and the Product (as may include any estimates, assumptions, projections, forecasts or plans) (the "Forward-Looking Statements"). Purchaser acknowledges and agrees that: (i) there are uncertainties inherent in attempting to make the Forward-Looking Statements; (ii) Purchaser and its Representatives are familiar with such uncertainties; (iii) Purchaser is taking full responsibility for making its own investigation, examination and valuation of the Acquired Assets and the Product and has employed outside professionals (including its Representatives) to assist it with the foregoing; (iv) Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Forward-Looking Statements; (v) Purchaser and its Representatives are not relying on any Forward-Looking Statement in any manner whatsoever except to the extent set forth in the representations and warranties of Seller and its Affiliates in Article 4, the Ancillary Agreements and the certificate delivered by Seller pursuant to Section 3.9(d); and (vi) with respect to the Forward-Looking Statements, Purchaser and its Representatives shall have no claim (whether in warranty, contract or tort (including negligence or strict liability)) against Seller or any of its Affiliates except in regard to any breach of the representations and warranties of Seller and its Affiliates set forth in Article 4, the Ancillary Agreements and the certificate delivered by Seller pursuant to Section 3.9(d). Purchaser acknowledges and agrees that neither Seller nor its Affiliates make any representation or warranty with respect to any Forward-Looking Statement (including the reasonableness of the assumptions underlying any of the Forward-Looking Statements) unless expressly set forth in the representations and warranties of Seller and its Affiliates in Article 4, the Ancillary Agreements and the certificate delivered by Seller pursuant to Section 3.9(d).

(d) NOTWITHSTANDING ANYTHING IN THIS SECTION 5.6 TO THE CONTRARY, (I) NOTHING IN THIS AGREEMENT SHALL IN ANY WAY RESTRICT, LIMIT OR OTHERWISE ADVERSELY IMPACT PURCHASER'S OR ITS AFFILIATES' RIGHTS OR REMEDIES WITH RESPECT TO FRAUD COMMITTED BY OR ON BEHALF OF SELLER OR ANY OF ITS AFFILIATES CONCERNING ANY MATTER SET FORTH IN THIS AGREEMENT OR THE ANCILLARY AGREEMENTS, (II) ANY EXERCISE OF ANY SUCH RIGHTS OR REMEDIES BY PURCHASER OR ITS AFFILIATES WITH RESPECT TO ALLEGED FRAUD SHALL NOT CONSTITUTE A BREACH OF THIS SECTION 5.6, AND (III) NO ACKNOWLEDGMENT OR REPRESENTATION OR WARRANTY BY PURCHASER MAY BE USED AS A DEFENSE AGAINST ANY CLAIM OF FRAUD MADE BY PURCHASER OR ITS AFFILIATES.

ARTICLE 6
COVENANTS AND AGREEMENTS

6.1 Conduct Prior to Closing. During the period beginning on the date of this Agreement through the earlier of the Closing Date and the date of termination of this Agreement in accordance with Article 8 (the "Pre-Closing Period"), Seller shall, and shall cause its Affiliates to, (x) conduct its business with respect to the Product and the Acquired Assets in the Ordinary Course of Business, and in all material respects in accordance with applicable Law, (y) use its commercially reasonable efforts to preserve the goodwill of such business and the present relationships with Employees (which efforts shall not include granting to Employees special financial or equity incentives unless the Parties mutually agree on a retention plan and funding responsibilities therefor), customers, vendors, suppliers, manufacturers and others having commercial relationships with such business and (z) except as the same may be restricted by applicable Competition Laws, consult with Purchaser regarding any material developments, strategic or other material decisions concerning the Exploitation of the Product or the Acquired Assets. Without limiting the generality of the foregoing, except as set forth on Schedule 6.1 of the Seller Disclosure Letter, Seller shall not, and shall cause its Affiliates not to, without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed), do any of the following:

(a) mortgage, lease, pledge or otherwise encumber any Acquired Assets or sell, transfer, license, fail to maintain, permit to lapse or otherwise dispose of any Acquired Assets except in the Ordinary Course of Business, in each case, other than (A) Permitted Encumbrances and (B) in connection with the sale of inventory, goods or services in the Ordinary Course of Business;

(b) terminate any Acquired Contract (other than any termination that occurs pursuant to the terms thereof without any action on the part of Seller or any of its Affiliates), or make any material amendment to, waive any material right or grant a license under or assign any Acquired Contract;

(c) waive any material claims or rights that relate solely or primarily to the Acquired Assets or the Assumed Liabilities;

(d) enter into any material Contract relating to the Exploitation of the Product, other than Contracts with respect to the sale of inventory entered into in the Ordinary Course of Business or purchase orders, change orders, and statements of work entered into under existing agreements in the Ordinary Course of Business;

(e) commence or settle any Action material to the Exploitation of the Product, the Acquired Assets or the Assumed Liabilities;

(f) abandon, fail to maintain or allow to lapse, or grant any license or sublicense under or with respect to any Acquired IP, other than in the Ordinary Course of Business;

(g) with respect to the Exploitation of the Product, (i) materially change any practices with respect to inventory levels of the Product, including Product maintained at the wholesale, chain or institutional levels other than in the Ordinary Course of Business or (ii) enter into or establish any material new business practices or programs or change or modify in any material way any business practices or program other than in the Ordinary Course of Business;

(h) make or change any Tax election, change any annual Tax accounting period, filed any amended Tax Return, entered into any closing agreement, settle any Tax claim or assessment, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, or adopt or change any accounting principle, policy, or procedure used by Seller regarding Taxes, in each case in respect of the Acquired Assets, to the extent such actions would have an adverse effect on the Acquired Assets or Purchaser after the Closing Date;

(i) (i) grant any promotion, increase in the base salary or wages, bonus opportunity, commission rates or severance benefits payable to any Employee; (ii) establish, adopt, enter into or amend in any material respect any material Seller Benefit Plan for Employees; or (iii) take any action to accelerate any rights or benefits of Employees under any material Seller Benefit Plan, in each case, except (A) as required by applicable Law or the terms of any Seller Benefit Plan in effect as of the date hereof or (B) with respect to clauses (ii) and (iii), in the Ordinary Course of Business and as applies to substantially all similarly situated employees of Seller or its Affiliates who are not Employees; provided that with respect to clause (iii), Seller shall promptly notify Purchaser of any such acceleration; or

(j) agree or commit to do any of the foregoing.

6.2 Publicity. Other than any press release or Form 8-K of a Party that has been agreed in writing by Purchaser and Seller to be issued by such Party following entry into this Agreement, no Party to this Agreement shall originate or permit any of their respective Representatives to originate any publicity, news release or other public announcement, written or oral, or otherwise make any public statement relating to this Agreement or any of the Ancillary Agreements or the existence of any arrangement between the Parties, without the prior written consent of the other Party, whether named in such publicity, news release or other public announcement or statement or not, except where such publicity, news release or other public announcement or statement is required by applicable Law or any listing or trading agreement concerning its or its Affiliates' publicly traded securities; provided that in such event, the Party issuing the same shall consult with the other Party, whether named in such publicity, news release or public announcement or statement or not, a reasonable time prior to its release to allow the other Party to comment thereon and, after its release, shall provide the other Party with a copy (or transcription) thereof. Notwithstanding the foregoing, Purchaser and Seller may make announcements to their respective investors and employees, reporters and other similar outlets and recipients that are consistent with the Parties' prior mutually agreed public disclosures regarding the transactions contemplated by this Agreement and information that has become publicly available by virtue of Seller's proxy filings or other securities filings related to this Agreement or otherwise. For the avoidance of doubt, the contents of any press release or similar publicity that has been reviewed and approved by the reviewing Party in accordance with this Section 6.2, and any publications made in accordance with Section 6.2, can be re-released or re-published by either Party without a requirement for re-approval.

6.3 Transfer of Acquired Regulatory Approvals, Regulatory Documentation and Marketing Records.

(a) Except as otherwise contemplated in the Transition Services Agreement, within ten (10) Business Days after the Closing Date, Purchaser and Seller shall submit all documentation, including filing with the FDA the Purchaser FDA Letters and the Seller FDA Letters (and providing a copy to the other party), and subsequently, take all other actions reasonably necessary to effectuate the transfer to Purchaser of ownership of the Acquired Regulatory Approvals.

(b) Except as otherwise contemplated in the Transition Services Agreement, Seller shall (i) transfer to Purchaser the Acquired Regulatory Documentation, the Acquired Marketing Records and the Acquired Books and Records within fifteen (15) Business Days following the Closing Date via virtual data room or other file-share platform reasonably acceptable to Purchaser (or such other method as mutually agreed by the Parties) and (ii) solely to the extent any Acquired Regulatory Documentation, Acquired Marketing Records and Acquired Books and Records held by or on behalf of Seller and its Affiliates is only available in paper format, deliver to Purchaser (or such other location as Purchaser may designate in advance of such delivery) such documents in paper format as soon as reasonably practicable following the Closing Date and in any event within forty five (45) days following the Closing Date; provided, that, with respect to clause (b)(ii), if such Acquired Regulatory Documentation, the Acquired Marketing Records or the Acquired Books and Records are required to be retained by Seller for the performance of the Services (as defined in the Transition Services Agreement) pursuant to the Transition Services Agreement, such Acquired Regulatory Documentation, the Acquired Marketing Records or the Acquired Books and Records shall be delivered to Purchaser within ten (10) Business Days after the expiration or early termination of the Service Period (as defined in the Transition Services Agreement) for the applicable Service (as defined in the Transition Services Agreement). Notwithstanding anything to the contrary, Seller may retain an archival copy of all such Acquired Regulatory Documentation, Acquired Marketing Records and Acquired Books and Records.

6.4 Third Party Consents.

(a) Notwithstanding anything to the contrary in this Agreement, with respect to any Contract or Regulatory Approval that is included in the Acquired Assets, this Agreement will not constitute an agreement to assign or transfer, whether directly or indirectly, any such Contract or Regulatory Approval, or any claim, right, or benefit arising under or resulting from any such Contract or Regulatory Approval, if (i) an assignment or transfer of such Contract or Regulatory Approval, without the Consent of any applicable Third Party, would constitute a breach or violation of such Contract or Regulatory Approval, impose any Liability on Purchaser or any of its Affiliates under such Contract or Regulatory Approval, result in the termination, cancellation, or revocation of such Contract or Regulatory Approval, or result in the creation of any Encumbrance on any of the Acquired Assets and (ii) such Consent is not obtained at or prior to the Closing; provided, however, that, without limiting Seller's obligations under Section 6.4(c) and 6.3, Seller shall, and shall cause its Affiliates to, use, prior to the Closing Date and for a period of twelve (12) months after the Closing Date, commercially reasonable efforts to obtain all necessary Consents to the assignment and transfer thereof.

(b) If the Consent of any Third Party has not been obtained with respect to any Contract or Regulatory Approval that is included in the Acquired Assets, in each case as contemplated by Section 2.1 at or prior to the Closing (each such Contract or Regulatory Approval, a "Non-Assignable Asset"), then until such time as such Consent is obtained, (i) Purchaser and its Affiliates shall be entitled to the benefits of such Contract or Regulatory Approval accruing after the Closing to the extent that Seller or its Affiliate may provide such benefits without violating the terms of such Contract or Regulatory Approval or any applicable Law, (ii) Seller shall, and shall cause its Affiliates to, enforce, at the request of and for the benefit of Purchaser, any rights of Seller or its Affiliates arising thereunder against any Third Party, including the right to seek any available remedies or to elect to terminate in accordance with the terms thereof upon the request of Purchaser and (iii) Purchaser or its applicable Affiliate shall perform, at the written direction of Seller, the obligations of Seller to be performed after the Closing under such Contract or Regulatory Approval (to the extent Purchaser or any of its Affiliates is receiving such benefits). Without limiting the generality of the foregoing or Seller's obligations under Section 6.4(c) and 6.3, at the written request of Purchaser, Seller shall, and shall cause its Affiliates to, use its commercially reasonable efforts to cooperate with, and assist, Purchaser's efforts in obtaining a replacement Contract or Regulatory Approval with respect to any Non-Assignable Asset following Closing.

(c) To the extent that any Regulatory Approvals that are included in the Acquired Assets are not transferable or assignable to Purchaser or its Affiliates, Seller shall use its, and shall cause its Affiliates to use their, commercially reasonable efforts to cooperate with, and assist, Purchaser or its Affiliates in obtaining such Regulatory Approvals to be issued in Purchaser's or its Affiliate's name on or after Closing, including reasonably assisting with Purchaser's or its Affiliate's preparation of applications and corresponding with Governmental Entities.

6.5 Governmental Consents.

(a) On the terms and subject to the conditions of this Agreement, each Party shall use its reasonable best efforts to cause the Closing to occur as promptly as practicable after the date of this Agreement, including taking all reasonable actions necessary (i) to comply promptly with all legal requirements that may be imposed on it or any of its Affiliates with respect to the Closing and (ii) to obtain or make each Consent of or with a Governmental Entity that, if not obtained or made, would have a material adverse effect on the ability of the Parties to consummate the transactions contemplated by this Agreement; provided that notwithstanding the foregoing or anything else in this Agreement to the contrary, Purchaser shall not be required to license, sell, divest, hold separate, or otherwise dispose of any of Purchaser's own assets or take any action that limits any freedom of action with respect to Purchaser's ability to retain or operate any of its businesses, other than with respect to the Product.

(b) As soon as reasonably practicable and advisable after the date of this Agreement, the Parties shall each make all required registrations and filings with Governmental Entities, and seek all required approvals under the Competition Laws. As of the date hereof, the Parties have filed their respective notification and report form and the waiting period has expired pursuant to the HSR Act. The Parties shall use their respective commercially reasonable efforts to provide any additional information requested by any Governmental Entity under any applicable Competition Law as promptly as practicable and advisable.

(c) Subject to applicable legal limitations, including redaction where necessary, and the instructions of any Governmental Entity, during the Pre-Closing Period, each Party agrees, solely with respect to the transactions between the Parties contemplated hereby, to (i) cooperate and consult with the other Party; (ii) furnish to the other Party such necessary information and assistance as the other Party may reasonably request in connection with its preparation of any notifications or filings with, or requests for additional information from, any Governmental Entity; (iii) keep each other apprised of the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other Party with copies of notices or other communications received by such Party from, or given by such Party to, any Third Party and/or any Governmental Entity with respect to such transactions; (iv) permit the other Party to review and incorporate the other Party's reasonable comments in any communication to be given by it to any Governmental Entity with respect to obtaining the necessary Consents; and (v) not participate in any substantive meeting or discussion, either in person or by telephone, with any Governmental Entity unless, to the extent not prohibited by such Governmental Entity, it gives the other Party the opportunity to attend and observe any such meeting or discussion.

(d) Purchaser and Seller shall each be responsible for paying fifty percent (50%) of the fees payable (whether by Purchaser, Seller or their respective Affiliates) to any Governmental Entity in connection with any filings made pursuant to Competition Laws in accordance with this Section 6.5.

6.6 Support. Following the Closing, Purchaser and its Affiliates, on the one hand, and Seller and its Affiliates, on the other hand, shall reasonably cooperate with each other in the defense or settlement of any Liabilities or Actions claimed or commenced by Third Parties involving the Product, the Acquired Assets, this Agreement or the Ancillary Agreements, in each case for which the other Party has responsibility under this Agreement, by providing the other Party and such other Party's legal counsel reasonable access to employees, records, documents, data, equipment, facilities, products, parts, prototypes and other information primarily related to the Product or the Acquired Assets, as such other Party may reasonably request, to the extent maintained or under the possession or control of the requested Party; provided, however, that such access shall not unreasonably interfere with Purchaser's or its Affiliates', or Seller's or its Affiliates', as the case may be, respective businesses; provided, further, that either Party may restrict the foregoing access to the extent that (a) such restriction is required by applicable Law, (b) such access or provision of information would reasonably be expected to result in a violation of confidentiality obligations to a Third Party or (c) disclosure of any such information would be reasonably likely to result in the loss or waiver of the attorney-client or other legal privilege. The requesting Party shall reimburse the other Party for reasonable out-of-pocket expenses paid by the other Party to Third Parties in performing its obligations under this Section 6.6.

6.7 Regulatory Matters.

(a) From and after the Closing Date, subject to the Quality Agreement, Purchaser shall be responsible for satisfying all pharmacovigilance obligations with respect to the Product under applicable Law, and Seller agrees to notify Purchaser, at the contact information set forth in the packaging and labeling of the Product, as soon as reasonably practicable (and in any event, within forty eight (48) hours during the term of the Transition Services Agreement) of any information of which it becomes aware concerning any product complaints and Adverse Event with respect to the Product or fecal microbiota spores live-brpk; provided that, during the period from the Closing Date until the BLA Transfer Date, Purchaser shall reasonably consult with Seller with respect to the conduct of pharmacovigilance activities with respect to the Product. Subject to the Transition Services Agreement and to the extent allowable under applicable Health Care Laws, after the Closing, Purchaser shall be responsible for investigating all complaints and Adverse Events with respect to the Product (whether sold before or after Closing).

(b) The Parties acknowledge and agree that, from the Closing Date until the date that the FDA has effectively transferred the Vowst BLA (the "BLA Transfer Date"):

(i) Seller shall have the sole right to communicate with the FDA regarding the Vowst BLA, which communications shall be conducted at the reasonable direction of Purchaser, and Seller shall reasonably consult with Purchaser in connection with the content of any such communications to the FDA regarding the Vowst BLA, except for such routine correspondence as may be required in connection with the maintenance of the Vowst BLA. Purchaser shall not make any communications with the FDA with respect to the Vowst BLA prior to the BLA Transfer Date without the prior written approval of Seller, which shall not be unreasonably withheld, except that Purchaser shall have the right to communicate directly with the FDA regarding the Purchaser FDA Letters in response to requests from FDA directed to Purchaser, without consulting with Seller in connection with any such communications.

(ii) From and after the Closing, Purchaser shall be responsible for paying all fees first coming due and payable after the Closing in respect of the Vowst BLA, regardless of whether such fee payments are sent to the FDA or other Governmental Entity by Seller or Purchaser and such fees paid during the Profit Sharing Period shall constitute Allowable Expenses; provided, however, that Seller shall provide Purchaser reasonable assistance as reasonably requested by Purchaser to facilitate Purchaser's actions described in this Section 6.7(b)(ii) or as otherwise contemplated or required under the this Agreement; provided, further, Seller shall be responsible for paying the fee payable in respect of the Product pursuant to the U.S. Prescription Drug User Fee Act for the period beginning on October 1, 2024 and ending on September 30, 2025 (the "PDUFA Fee"), which amount shall constitute and be reflected in the first Quarterly Report as an Allowable Expense paid by Seller.

(iii) Seller shall provide Purchaser with notice of all material meetings, conferences and discussions scheduled with any relevant Regulatory Authority concerning Regulatory Filings and/or Regulatory Approvals relating to the Product as promptly as practicable, and in any event within five (5) Business Days, after Seller has knowledge of such meeting, conference or discussion.

(iv) Purchaser will have the right to attend, and Purchaser and Seller shall reasonably agree on the attendees and objectives with respect to, any formal meetings, conferences or discussions with the FDA relating to the Vowst BLA.

(c) From and after the BLA Transfer Date, subject to the Quality Agreement, Purchaser shall be solely responsible and liable for (a) taking all actions and conducting all communication with the appropriate Governmental Entity required by applicable Health Care Laws in respect of the Vowst BLA, including preparing and filing all reports with the appropriate Governmental Entity; (b) taking all actions and conducting all communications with Third Parties or Governmental Entities in respect of Product sold pursuant to such Vowst BLA (whether sold before or after the Closing), including responding to all complaints in respect thereof, and (c) investigating all complaints and reports of adverse experiences in respect of Product sold or distributed pursuant to the Vowst BLA (whether sold before or after the Closing); provided, however, that Seller shall provide Purchaser reasonable assistance and reasonable access to Seller's books as otherwise contemplated or required under this Agreement.

(d) The Parties acknowledge that Employees, advisors, and independent contractors who have been involved in the Exploitation of the Product ("Key Personnel"), may have information necessary or reasonably useful to enable Purchaser to enjoy the value of the Acquired Assets (the "Business Information"). Purchaser anticipates that, Key Personnel may be hired or engaged by Purchaser or its Affiliates. The Parties acknowledge that Key Personnel may have entered into employment agreements or other written agreements with Seller or its Affiliates, that contain (i) obligations of confidentiality, non-use and non-disclosure with respect to any information related to the Exploitation of the Product, or (ii) non-compete obligations with respect to the Exploitation of the Product ("Key Personnel Agreements"). Seller hereby consents, during the term of Key Personnel's employment or engagement by Purchaser, to Key Personnel's disclosure or use of Business Information in furtherance of Purchaser's business efforts.

6.8 Trade Notification. From the date hereof through the Closing, Seller and Purchaser shall cooperate in good faith to agree in writing on the method and content of the notifications to customers and suppliers and other applicable third parties of the sale of the Acquired Assets to Purchaser hereunder; provided that Seller shall have the sole right to deliver such notifications to customers and suppliers prior to the Closing. Purchaser (prior to the Closing) and Seller (after the Closing) shall not make any communications or give any other notices to customers or suppliers or other applicable third parties relating to the transactions contemplated hereby prior to the date of, or inconsistent with the terms of, such written agreement.

6.9 Seller Retained IP.

(a) Subject to the Cross-License Agreement, Purchaser covenants that neither Purchaser nor any of its Affiliates shall use in any manner any Seller Retained IP, including any Seller Names, except as expressly permitted in this Section 6.9. Seller (on behalf of its and its Affiliates) hereby grant to Purchaser a limited, nonexclusive, fully paid up transition license to continue using the Seller Names (i) for a period of six (6) months after the Closing Date, for the purpose of creating new inventory, signage or other materials bearing the Seller Names and (ii) for a period of eighteen (18) months after the Closing Date, on inventory, signage and other materials either existing and included in the Acquired Assets as of the Closing Date or created in accordance with the transition license granted under clause (i) above. Purchaser shall ensure that the quality of all goods and services offered or sold under any of the Seller Names shall be at least as high as the quality maintained by Seller as of the Closing, shall comply with all applicable Laws and industry practices in connection with its use of the Seller Names and, at Seller's reasonable request, shall provide Seller with samples of its use of the Seller Names to permit Seller to confirm Purchaser's compliance with the quality control requirements of this sentence. All use of the Seller Names as permitted hereunder shall inure solely to the benefit of Seller and its Affiliates.

(b) The Parties acknowledge that this Agreement does not, and shall not, convey, transfer or assign any right, title or interest in any Trademark of any Third Party.

6.10 Further Assurances; Wrong-Pockets. Each of Seller and Purchaser shall, at any time or from time to time after the Closing, at the request and expense of the other, execute and deliver to the other all such instruments and documents or further assurances as the other may reasonably request in order to vest in Purchaser and its Affiliates all of Seller's right, title and interest in, to and under the Acquired Assets as contemplated hereby. Until the fifth anniversary of the Closing Date, if either Purchaser or Seller becomes aware that any of the Acquired Assets has not been transferred to Purchaser or its Affiliate (including any Intellectual Property owned by Seller or its Affiliates that is used or held for use primarily for the Exploitation of the Product and was not included in Acquired IP) or that any of the Excluded Assets has been transferred to Purchaser or its Affiliate (other than as contemplated in the Ancillary Agreements), Purchaser or Seller, as applicable, shall promptly notify the other Party and the Parties shall, as soon as reasonably practicable, ensure that such property is transferred, with any necessary prior Third Party consent or approval, to (i) Purchaser or its applicable Affiliate, in the case of any Acquired Asset which was not transferred to Purchaser at the Closing (including any Intellectual Property owned by Seller or its Affiliates that is used or held for use primarily for the Exploitation of the Product and was not included in Acquired IP); or (ii) Seller, in the case of any Excluded Asset which was transferred to Purchaser at the Closing. Without limiting the foregoing, Purchaser agrees that, after the Closing Date, (x) if Purchaser or any of its Affiliates receives any payment in respect of any Accounts Receivable, Purchaser shall hold and shall promptly transfer and deliver such payment to Seller (at an account designated by Seller), from time to time as and when received by Purchaser and in the currency received, and Purchaser shall account to Seller for all such receipts, and (y) Purchaser shall promptly deliver to Seller any invoice Purchaser or any of its Affiliates receives in respect of any Accounts Payable.

6.11 Certain Tax Matters.

(a) Transfer Taxes. The Parties agree to cooperate in good faith with one another and use reasonable efforts to avoid or reduce any Transfer Tax in respect of any payments made under this Agreement, including the provision of applicable exemption certificates, to the extent permitted by applicable Law. All Transfer Tax resulting from the sums payable under this Agreement shall be borne equally by Purchaser and Seller.

(b) Tax Cooperation. Purchaser and Seller shall cooperate, as and to the extent reasonably requested by the other Party, and shall retain and, upon the other Party's request, furnish or cause to be furnished to the other Party, as promptly as practicable, such information and assistance relating to the Acquired Assets and the Assumed Liabilities as is reasonably necessary for financial reporting, the preparation and filing of any Tax Return or financial statement, claim for any Tax refund or other required or optional filings relating to Tax matters, for the preparation for any Tax audit, for the preparation for any Tax protest, or for the prosecution or defense of any suit or other proceeding relating to Tax matters.

6.12 Employee Matters.

(a) Between the date of this Agreement and the Employee Transfer Date, periodically upon Purchaser's reasonable request, Seller agrees to update the list of employees described in Section 4.11(a) (the "Employee List") with any changes allowed for under this Agreement or the Employee Support Agreement. Purchaser may in its sole discretion offer employment to any Employees listed on the Employee List effective as of the Employee Transfer Date. Purchaser will extend any such employment offers to such Employees and will provide Seller with copies of all such employment offers, in each case, at least five (5) Business Days prior to the Closing. Each Employee who is offered and accepts Purchaser's offer of employment is referred to herein as a "Transferring Employee". With respect to any Employee listed on the Employee List who is offered and accepts Purchaser's offer of employment but who is absent on the Employee Transfer Date due to short-term or long-term disability leave or parental leave (collectively, the "Employees on Disability Leave"), any such Employee on Disability Leave must be able to commence active employment and present themselves to Purchaser or one of its Affiliates for active employment within three (3) months (or twenty (20) weeks solely for purposes of parental leave) following the Employee Transfer Date or such Employee on Disability Leave's offer will no longer be valid. Each Employee on Disability Leave who returns to work not later than three (3) months (or twenty (20) weeks solely for purposes of parental leave) following the Employee Transfer Date shall become a Transferring Employee effective as of the date of such return and, for the avoidance of doubt, shall remain an employee of Seller (or one of its Affiliates) until such date of their return. Each Employee (including any Employee on Disability Leave) shall remain an employee of Seller (or one of its Affiliates) and continue participating in any Seller Benefit Plan in which he or she participated immediately prior to the Employee Transfer Date (subject to its terms) until such Employee becomes a Transferring Employee of Purchaser (or one of its Affiliates). The offers of employment extended by Purchaser to Employees hereunder (the "Qualifying Offers") shall be on terms determined by the Purchaser in its sole discretion, provided, however, that Purchaser agrees that, during the period commencing on the Closing Date and ending on the first anniversary of the Closing Date (or, if earlier, a relevant Transferring Employee's termination date), each Transferring Employee will be provided with (i) annual base compensation which is no less than the annual base compensation provided by Seller or its Affiliates to each such Transferring Employee immediately prior to the Closing Date, (ii) annual cash bonus opportunities that are substantially comparable to the annual cash bonus opportunities that are provided to similarly situated employees of Purchaser or its Affiliates, and (iii) employee benefits (including paid time off, but excluding any severance, defined benefit pension, deferred compensation, equity or equity- based, or retiree or post-termination welfare benefits or change of control agreements) which are substantially comparable in the aggregate to the employee benefits (other than any severance, deferred compensation, equity or equity-based compensation, defined benefit pension or retiree or post-termination welfare benefits or change of control agreements) that are provided to similarly situated employees of Purchaser or its Affiliates; provided that Purchaser or an Affiliate may make cash payments to the Transferring Employee to satisfy its obligations (or a portion thereof) under this clause (iii). Notwithstanding the foregoing, each Qualifying Offer shall be subject to (x) the satisfaction of Purchaser's standard hiring requirements, (y) each Employee's confirmation in the Employee's Qualifying Offer that the Employee acknowledges and agrees that the Employee does not have "Good Reason" under the Severance Plan on or prior to the hire date or as a result of any of the terms of such Qualifying Offer, and (z) each Employee's confirmation in the Employee's Qualifying Offer that, in the event the Employee accepts Purchaser's offer of employment, the Employee consents and agrees to Seller providing Purchaser their previously completed Form I-9 and supporting documentation verifying their identity and authorization to work in the United States (and that Seller is an intended third party beneficiary of such consent and agreement), and Purchaser's (or an Affiliate's) refusal to hire any Employee due to his or her failure to satisfy such standard hiring requirements, as determined by Purchaser (or an Affiliate) in its sole discretion, shall not constitute a failure by Purchaser (or an Affiliate) to provide a Qualifying Offer to such Employee; and provided further, that nothing herein shall prohibit Purchaser from amending or terminating any benefit plans, arrangements or agreements in accordance with their terms after the Employee Transfer Date or from terminating the employment of any Transferring Employee to the extent permitted by applicable Laws. Seller shall, subject to Seller's prior receipt of an Employee's executed Qualifying Offer or of Purchaser's certification to Seller of such execution and no later than one (1) day prior to Closing, provide Purchaser with copies (the originals of which may be retained by Seller) of such Transferring Employee's previously completed Form I-9 and supporting documentation verifying their identity and authorization to work in the United States.

(b) Purchaser expressly agrees as of the Closing to honor the obligations and liabilities of Seller under the Seres Therapeutics, Inc. Change in Control Severance Plan (the "Severance Plan") with respect to each Transferring Employee to the extent that any such obligation or liability is triggered under the Severance Plan during the one (1)-year period following the Closing Date, but shall not expressly assume the Severance Plan.

(c) Purchaser agrees that, from and after the Employee Transfer Date, Purchaser shall use commercially reasonable efforts to grant all Transferring Employees credit for any employment service with or for the benefit of Seller or its Affiliates earned prior to the Employee Transfer Date for purposes of vesting (other than for purposes of any annual retirement contribution) and eligibility under any employee benefit plan, program or arrangement that may be established or maintained by Purchaser ("Purchaser Benefit Plans") and, for purposes of vacation and severance plans established or maintained by Purchaser, for purposes of benefit accrual. In addition, Purchaser shall use commercially reasonable efforts to (i) waive all pre-existing condition exclusion and actively-at-work requirements and similar limitations, eligibility waiting periods and evidence of insurability requirements under any Purchaser Benefit Plans to the extent waived or satisfied by a Transferring Employee under any Seller Benefit Plan as of the Employee Transfer Date, and (ii) cause any covered expenses incurred on or before the Employee Transfer Date by any Transferring Employee to be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions after the Employee Transfer Date under any applicable Purchaser Benefit Plan. The Parties acknowledge and agree that from and after the Employee Transfer Date, Seller and its Affiliates shall retain all Liabilities under all Seller Benefit Plans, except as provided in Section 6.12(b). Effective as of the Employee Transfer Date, the Transferring Employees shall cease all active participation in and accrual of benefits under the Seller Benefit Plans.

(d) Seller shall, or shall cause an Affiliate to, offer and continue to provide, as applicable, continuation coverage pursuant to Section 4980B of the Code and Section 601 of ERISA to all M&A qualified beneficiaries (as defined in Treas. Reg. § Section 54.4980B-0, Q&A-4(a)) under the applicable Seller Benefit Plans.

(e) Seller and its Affiliates shall pay to the Transferring Employees all unused accrued vacation balances pursuant to Seller's or its Affiliates' applicable policies and Law, on or as soon as administratively practicable after the Employee Transfer Date, but in any case, no later than the date required by applicable Law.

(f) With respect to any situation in which Seller or its Affiliates effectuate terminations or layoffs prior to the Employee Transfer Date, such that there is or is deemed to be an employment loss or layoff triggering notice requirements and/or Liability under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the "WARN Act"), Seller or its Affiliates shall be responsible for all Liabilities and obligations, including relating to providing any notices, arising under or pursuant to the WARN Act thereunder, subject to the terms of the Employee Support Agreement.

(g) Subject to the terms of the Employee Support Agreement, Seller and its Affiliates shall retain all Liabilities with respect to the Transferring Employees under the commission, equity and equity-based, and other retention and bonus plans sponsored or maintained by Seller or any of its Affiliates with respect to the period prior to the Employee Transfer Date. Purchaser shall, or shall cause one of its Affiliates to, pay to the Transferring Employees annual cash bonuses for the Calendar Year in which the Closing occurs, subject to such conditions as otherwise would be applicable to the payment thereof under Seller's plan but assuming one hundred percent (100%) performance for the period prior to Closing, and subject to such conditions as otherwise would be applicable to the payment thereof under Purchaser's plan from and after Closing, and payable at such time as such amounts would have been paid to the Transferring Employees under Purchaser's plan (and in no event later than March 15 following the Calendar Year in which the Closing occurs) and further subject to Seller and its Affiliates providing such information as is reasonably necessary or requested by Purchaser to calculate and make such payments; provided that, for the avoidance of doubt, in no event shall such bonuses be eligible compensation under the qualified plans maintained by Purchaser and its Affiliates. Following the Employee Transfer Date, Transferring Employees who are eligible to participate in annual incentive or short-term bonus and/or commission plans sponsored or maintained by Purchaser or its Affiliates shall participate in such plans for the balance of the fiscal year in which the Employee Transfer Date occurs consistent with Purchaser's Qualifying Offer obligations.

(h) Seller shall, (i) following the execution of this Agreement and at least ten (10) Business Days prior to Closing (based on the information then available to Seller), and (ii) promptly upon obtaining any additional or different information that would impact such calculations, determine whether any payments or benefits to any Transferring Employees as a result of or in connection with the transactions contemplated herein will be deemed to constitute "parachute payments" (within the meaning of section 280G of the Code and the regulations promulgated thereunder) and, if applicable, shall provide a copy of Seller's parachute payment analysis for Transferring Employees to Purchaser and consider in good faith Purchaser's reasonable comments thereon.

(i) Nothing contained herein, express or implied, (i) is intended to confer upon any Employee any right to continued employment for any period, (ii) shall constitute an amendment to or any other modification of any employee benefit plan or any program, policy or arrangement of Seller, Purchaser or any of their respective Affiliates, or (iii) shall create any third party beneficiary rights in any Employee or Former Employee or any beneficiary or dependent thereof.

6.13 Bulk Transfer Laws. Purchaser acknowledges that Seller and its Affiliates have not taken, and do not intend to take, any action required to comply with any applicable bulk sale or bulk transfer Laws or similar Laws of any jurisdiction. Purchaser hereby waives compliance by Seller and its Affiliates with the provisions of any bulk sale or bulk transfer Laws or similar Laws of any jurisdiction in connection with the transactions contemplated by this Agreement.

6.14 Access. During the Pre-Closing Period, Seller shall provide, and shall cause its Affiliates to provide, Purchaser and its Representatives with reasonable access, during regular business hours and upon reasonable notice, to the properties, books, records and personnel of Seller and its Affiliates relating to the business represented by the Exploitation of the Product as Purchaser may from time to time reasonably request.

6.15 Confidentiality.

(a) From and after the Closing, and except as set forth in the Cross-License Agreement or Transition Services Agreement, (i) Seller shall, and shall cause its Representatives to, hold in confidence and not disclose any information, whether written or oral, concerning the Acquired Assets, Assumed Liabilities, Budgets, Milestone Reports or Quarterly Reports and (ii) Purchaser shall, and shall cause its Representatives to, hold in confidence and not disclose any information, whether written or oral, concerning the Excluded Assets or Excluded Liabilities.

(b) The foregoing obligations of confidentiality in this Section 6.15 do not pertain to the disclosure of information that (a) is now or later becomes available publicly through no fault of the receiving party, (b) the receiving party obtains from a Third Party having no preexisting confidentiality obligation or commitment with respect to such information and having the legal right to disclose the same, or (c) the receiving party already has in its possession as indicated in its written records and was not acquired directly or indirectly from the disclosing party, (d) is required to be disclosed by any court or other Governmental Entity, is required to be disclosed in connection with the prosecution or defense of any claims or that any receiving party discloses, upon advice of counsel, in order to comply with applicable Law; provided that the receiving party provides a prior notice to the disclosing party to the extent not prohibited by the applicable Law.

6.16 Restrictive Covenants.

(a) In furtherance of the sale of the Acquired Assets to Purchaser under this Agreement and to more effectively protect the value and goodwill of the business represented thereby, Seller hereby covenants and agrees that, it shall not, and shall cause its Affiliates not to, directly or indirectly:

(i) except as contemplated under this Agreement, including Section 6.7, or under the Transition Services Agreement, for the period beginning on the Closing Date and ending on the fifth (5th) anniversary of the Closing Date, own, manage, engage in, operate, control, participate in, consult or perform services for, sell materials to, or otherwise participate in the ownership, management, operation or control of, whether as principal, partner, agent, independent contractor, consultant, shareholder, or otherwise, any business in the Field, including the Exploitation of any product in the Field (each a "Restricted Business") in any jurisdiction in the entire world; provided, that the restrictions contained in this Section 6.16(a)(i) shall not apply to the acquisition by Seller, directly or indirectly, of less than five percent (5%) of the outstanding capital stock of any corporation or other entity listed on a national securities exchange that is engaged in a Restricted Business. For the avoidance of doubt, Seller and its Affiliates, directly or indirectly, shall be permitted to conduct research and development activities in infection protection for products outside of the Field. Seller hereby acknowledges that the geographical boundaries, scope of prohibited activities and the time duration of the provisions of this Section 6.16(a)(i) are reasonable and are no broader than are necessary to protect the legitimate business interests of Purchaser, including the ability of Purchaser to realize the benefits of the bargain and enjoy the goodwill of the business represented by the Acquired Assets;

(ii) for the period beginning on the Closing Date and ending on the fifth (5th) anniversary of the Closing Date, (A) solicit any customer, vendor, supplier, licensor, licensee, distributor or other business relationship of Purchaser and its Affiliates relating to the Exploitation of the Product, on behalf of a Restricted Business, (B) induce or encourage, or attempt to induce or encourage, any customer, vendor, supplier, licensor, licensee, distributor or other business relationship of Purchaser and its Affiliates relating to the Exploitation of the Product to terminate, curtail or modify its relationship, or otherwise cease doing business with, Purchaser or its Affiliates or (C) in any way interfere with the relationship between Purchaser or its Affiliates with any customer, vendor, supplier, licensor, licensee, distributor or other business relationship of Purchaser and its Affiliates relating to the Exploitation of the Product; or

(iii) for the period beginning on the date hereof and ending on the second (2nd) anniversary of the Closing Date, hire or engage any Transferring Employees, solicit for employment or services any such Transferring Employees, or cause, induce or encourage any such Transferring Employees to leave employment with Purchaser or its Affiliates; provided, however, that the foregoing will not restrict Seller's ability to solicit (or hire) any person (i) who contacts Seller or such Affiliate on his or her own initiative; (ii) who responds to a general solicitation of employment through an advertisement not specifically targeted at Purchaser, its Affiliates or any of their respective officers or employees; or (iii) whose employment has been terminated by Purchaser or its Affiliate at least six (6) months prior to such solicitation.

(b) Each of Seller and Purchaser hereby covenants and agrees that it shall not, and shall cause its Affiliates not to, directly or indirectly, for the period beginning on the Closing Date and ending on the fifth (5th) anniversary of the Closing Date, knowingly publish or communicate to any Person any disparaging remarks, comments or statements concerning the other Party or its Affiliates in any way that would reasonably be understood to adversely affect the goodwill or impugn the reputation of any such entity. Notwithstanding the foregoing, nothing in this Section 6.16(b) shall preclude such Party from (A) providing truthful testimony obtained through court order, deposition, subpoena or similar legal process, (B) providing any truthful information pursuant to investigation by any Governmental Entity or (C) providing any truthful information pursuant to any claim by either Party under this Agreement or any other agreement to which Purchaser or any of its Affiliates, on the one hand, and Seller or any of its Affiliates, on the other hand, are parties.

(c) Purchaser hereby covenants and agrees that it shall not, and shall cause its Affiliates not to, directly or indirectly, for the period beginning on the date hereof and ending on the first (1st) anniversary of the Closing Date, hire, engage or solicit for employment or services any such any Employee who is not a Transferring Employee (a "Non-Transferring Employee"), or cause, induce or encourage any such Non-Transferring Employees to leave employment with Seller or its Affiliates; provided, however, that the foregoing will not restrict Purchaser's ability to solicit (or hire) any person (i) who contacts Purchaser or such Affiliate on his or her own initiative; (ii) who responds to a general solicitation of employment through an advertisement not specifically targeted at Seller, its Affiliates or any of their respective officers or employees; or (iii) whose employment has been terminated by Seller or its Affiliate at least six (6) months prior to such solicitation.

(d) The covenants and undertakings contained in this Section 6.16 relate to matters which are of a special, unique and extraordinary character and a violation of any of the terms of this Section 6.16 would cause irreparable injury to Purchaser or Seller, as applicable, the amount of which would be impossible to estimate or determine and which cannot be adequately compensated. Accordingly, the remedy at law for any breach of this Section 6.16 will be inadequate and each Party shall be entitled to the remedies contemplated by Section 10.16. Each Party further acknowledges that this Section 6.16 constitutes a material inducement, and a condition, to the other Party to enter into this Agreement and to complete the transactions contemplated by this Agreement (including the sale of the Acquired Assets and the related goodwill).

6.17 No Solicitation of Other Bids.

(a) From and after the date of this Agreement until the earlier to occur of (i) the Closing Date and (ii) the termination of this Agreement in accordance with Article 8, except as expressly permitted by this Section 6.17, Seller shall not, and Seller shall cause its Representatives not to, directly or indirectly: (A) (1) solicit, initiate, knowingly induce, knowingly encourage or knowingly facilitate (including by way of furnishing information) any communication, inquiries or the making of any submission, announcement, proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal; (2) participate in any discussions or negotiations or cooperate in any way not permitted by this Section 6.17 with any Person (other than Purchaser or its Representatives) regarding any submission, announcement, proposal or offer the consummation of which would constitute an Acquisition Proposal; (3) provide any information or data concerning Seller or the Acquired Assets to any Person (other than Purchaser or its Representatives) in connection with, or in response to, any submission, announcement, proposal or offer the consummation of which would constitute an Acquisition Proposal; (4) approve, endorse or recommend, make any public statement approving or recommending, or enter into any agreement relating to, any proposal or offer that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal or requiring Seller to abandon, terminate or fail to consummate the sale of the Acquired Assets in accordance with the terms hereof; (5) execute or enter into any letter of intent or any Contract contemplating or otherwise relating to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement); or (6) take any action that would reasonably be expected to lead to an Acquisition Proposal or Seller otherwise becoming required to abandon, terminate or fail to consummate the sale of the Acquired Assets in accordance with the terms hereof; or (B) publicly propose to do any of the foregoing. Seller shall, and Seller shall instruct and use its reasonable best efforts to cause its Representatives to, immediately cease and cause to be terminated any discussions, negotiations and communications with any Person conducted heretofore with respect to any Acquisition Proposal, or that would reasonably be expected to lead to an Acquisition Proposal, and shall promptly terminate access by any such Person to any physical or electronic data room hosted by Seller or its Representatives relating to any such Acquisition Proposal and request the destruction or return (to the extent provided for by the applicable confidentiality agreement) of any and all nonpublic information previously provided to such Person (other than Purchaser), in each case, as soon as reasonably practicable (but in any event within three (3) Business Days) after the date of this Agreement. For purposes hereof, "Acquisition Proposal" means any inquiry, proposal or offer from any Person (other than Purchaser or any of its Affiliates) concerning (x) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving Seller; (y) the issuance or acquisition of shares of capital stock or other equity securities of Seller in one or more related transactions which would cause any Person which is not a stockholder of Seller on the date of this Agreement to own twenty percent (20%) or more of Seller's outstanding equity, other than any issuance pursuant to the Equity Financing Documents; or (z) the sale, lease, exchange or other disposition of any significant portion of the Acquired Assets.

(b) Notwithstanding anything to the contrary in this Section 6.17, prior to the time, but not after, the Stockholder Approval is obtained, Seller may, in response to an unsolicited bona fide, written Acquisition Proposal from any Person or group of Persons, which Acquisition Proposal was made or renewed on or after the date of this Agreement and which did not result from a material breach of this Section 6.17, (i) contact the Person or group of Persons making such Acquisition Proposal solely to inform such Person or group of Persons of the terms of this Section 6.17, (ii) provide access to non-public information regarding Seller to the Person who made such Acquisition Proposal; provided that such information has previously been made available to Purchaser or is provided to Purchaser substantially concurrently with the making of such information available to such Person and that, prior to furnishing any such material non-public information, Seller receives from the Person making such Acquisition Proposal an executed confidentiality agreement in customary form and that does not prohibit Seller from providing any information to Purchaser in accordance with, and otherwise complying with, this Agreement (such confidentiality agreement, an "Acceptable Confidentiality Agreement") and (iii) engage or participate in any discussions or negotiations with any such Person regarding such Acquisition Proposal if, and only if, prior to taking any action described in clauses (i), (ii) or (iii) above, Seller has provided prior written notice to Purchaser and the Board determines in good faith after consultation with (A) Seller's financial advisor and outside legal counsel that based on the information then available, that such Acquisition Proposal either constitutes a Superior Proposal or would reasonably be expected to result in a Superior Proposal and (B) Seller's outside legal counsel, that the failure to take such action would reasonably be expected to be inconsistent with the fiduciary duties of the Board to Seller's stockholders under applicable Law. Seller shall provide Purchaser with an accurate and complete copy of any Acceptable Confidentiality Agreement entered into as contemplated by this Section 6.17 promptly (and in any event within twenty-four (24) hours) of the execution thereof.

(c) Prior to the Closing, Seller shall promptly (and, in any event, within twenty-four (24) hours) notify Purchaser if (i) any written or other requests, inquiries, proposals or offers with respect to an Acquisition Proposal, or any inquiries, proposals, offers or requests for information relating to an Acquisition Proposal, are received by Seller or any of its Representatives, (ii) any information is requested from Seller or any of its Representatives in connection with any Acquisition Proposal or (iii) any discussions or negotiation with respect to an Acquisition Proposal are sought to be initiated or continued with Seller or any of its Representatives, providing, in connection with such notice, unredacted copies of any written requests, inquiries, proposals or offers or other materials, including proposed agreements and a summary of the material terms and conditions of any such oral request, inquiry, proposal or offer (including any proposed term sheet, letter of intent, acquisition agreement or similar agreement with respect thereto), the name of such Person or group and a summary of any material unwritten terms and conditions thereof, and thereafter shall keep Purchaser reasonably informed of the status and terms of any material developments, discussions or negotiations of such requests, inquiries proposals or offers (including by furnishing copies of any amendments or modifications thereto) on a prompt basis (and in any event within twenty-four (24) hours of such material development, discussion or negotiation).

(d) Except as provided in Section 6.17(e), the Board and each committee of the Board shall not (i) withhold, withdraw, qualify or modify (or publicly propose or resolve to withhold, withdraw, qualify or modify), in a manner adverse to Purchaser, the Board Recommendation (it being understood that publicly taking a neutral position or no position with respect to an Acquisition Proposal (other than a "stop, look and listen" communication to the stockholders of Seller pursuant to Rule 14d-9(f) of the Exchange Act) shall be considered a modification of the Board Recommendation in a manner adverse to Purchaser), fail to include the Board Recommendation in the Proxy Statement, fail to publicly reaffirm the Board Recommendation within three (3) Business Days after Purchaser requests in writing that such action be taken, or adopt, approve, recommend or otherwise declare advisable (or publicly propose or resolve to adopt, approve, recommend or otherwise declare advisable) any Acquisition Proposal or make or authorize the making of any public statement (oral or written) that has the substantive effect of such a withdrawal, qualification or modification (each, a "Change in Recommendation") or (ii) adopt, approve, recommend or declare advisable, or propose to approve, recommend or declare advisable, cause or permit Seller to execute or enter into any Contract, including any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, option agreement, joint venture agreement, license agreement, partnership agreement, lease agreement or other agreement (other than an Acceptable Confidentiality Agreement referred to in Section 6.17(b) entered into in compliance therewith) with respect to, or that is intended to or would reasonably be expected to lead to, any Acquisition Proposal or requiring, or reasonably expected to cause, Seller (or that would require Seller) to abandon, terminate, delay or fail to consummate, or that would otherwise materially impede, interfere with or be inconsistent with, the transactions contemplated by this Agreement (an "Alternative Acquisition Agreement"). Unless this Agreement is otherwise terminated pursuant to Section 8.1, Seller's obligation to call, give notice of and hold the Stockholders Meeting in accordance with Section 6.19 shall not be limited by or otherwise affected by the commencement, disclosure, announcement or submission of any Acquisition Proposal or by any Change in Recommendation.

(e) Notwithstanding anything to the contrary set forth in Section 6.17(d), following (i) receipt of an unsolicited, bona fide written Acquisition Proposal by Seller that was made on or renewed on or after the date of this Agreement that did not result from a material breach of this Section 6.17 that has not been withdrawn and with respect to which Seller has received a written, definitive form of Alternative Acquisition Agreement, and the Board determining in good faith, after consultation with its financial advisors and outside legal counsel, that such Acquisition Proposal constitutes a Superior Proposal or (ii) the occurrence of an Intervening Event, the Board may, at any time prior to the time the Stockholder Approval is obtained, make a Change in Recommendation with respect to such Superior Proposal or Intervening Event, only if all of the following conditions are met:

(i) Seller shall have (A) in the case of an Acquisition Proposal, complied in all material respects with the provisions of this Section 6.17, (B) provided to Purchaser five (5) Business Days' prior written notice (the "Determination Notice"), which shall state expressly (1) (I) with respect to an Acquisition Proposal, that it has received a written Acquisition Proposal that constitutes a Superior Proposal and the material terms and conditions of the Acquisition Proposal (including the consideration offered therein and the identity of the Person or group making the Acquisition Proposal) and (II) with respect to an Intervening Event, that an Intervening Event has occurred and a reasonably detailed description of such Intervening Event (including the material facts and circumstances of such Intervening Event), and (2) that, subject to clause (ii) below, the Board has determined to hold a meeting at which it intends to effect a Change in Recommendation, and (C) during such five (5) Business Day period, (1) engaged in good faith negotiations with Purchaser (to the extent Purchaser wishes to engage) with respect to any revisions to the terms and conditions of this Agreement, or another proposal, which may be proposed in writing by Purchaser, and (2) in determining whether to make a Change in Recommendation, the Board shall take into account any changes to the terms of this Agreement, or another proposal, proposed in writing by Purchaser;

(ii) the Board shall have determined, in good faith, after consultation with outside legal counsel, that, in light of such Superior Proposal or Intervening Event and taking into account any revised terms proposed in writing by Purchaser, (A) with respect to a Superior Proposal, such Superior Proposal continues to constitute a Superior Proposal and (B) with respect to a Superior Proposal or an Intervening Event, after consultation with outside legal counsel, that the failure to make such Change in Recommendation would be inconsistent with the directors' fiduciary duties to Seller's stockholders under applicable Law.

The provisions of this Section 6.17(e) shall also apply to any change to any financial terms (including the form, amount and timing of payment of consideration) or any other material amendment or modification to any Acquisition Proposal or the facts or circumstances relating to an Intervening Event, in which event a new Determination Notice shall be required and that Seller shall comply anew with the provisions of this Section 6.17(e).

(f) Nothing contained in this Section 6.17 shall be deemed to prohibit Seller from complying with its disclosure obligations under applicable U.S. federal or state Law with regard to an Acquisition Proposal; provided that any "stop look and listen" communication to its stockholders of the nature contemplated by Rule 14d-9 under the Exchange Act shall include an affirmative statement to the effect that the recommendation of the Board is affirmed or remains unchanged; provided, further, that this Section 6.17(f) shall not be deemed to permit Seller or the Board to effect a Change in Recommendation except in accordance with Section 6.17(e).

6.18 Proxy Statement. Seller will, as soon as practicable following the date of this Agreement (and in any event, within fifteen (15) Business Days thereof), prepare and file with the SEC the Proxy Statement in connection with the Stockholders Meeting in preliminary form. Seller shall cause the Proxy Statement to (a) comply with the applicable rules and regulations promulgated by the SEC and (b) not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Seller will use its reasonable best efforts to respond as promptly as practicable to any comments of the SEC with respect thereto and will give Purchaser and its counsel reasonable opportunity to review and comment on the initial preliminary Proxy Statement and all subsequent forms or versions of or amendments or supplements to the Proxy Statement prior to the filing thereof with the SEC or dissemination to the stockholders and Seller shall give reasonable and good faith consideration to any timely comments thereon made by the other Party or its counsel. Seller will (i) notify Purchaser promptly (and in any event, within twenty-four (24) hours) of the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff for amendments or supplements to the Proxy Statement or for additional information and will promptly supply Purchaser with copies of all correspondence between Seller or any of its Representatives, on the one hand, and the SEC or its staff, on the other hand, with respect to the Proxy Statement (including copies of all comments from the SEC) and advise Purchaser of any oral comments with respect to the Proxy Statement received from the SEC, (ii) provide Purchaser and its counsel with a reasonable opportunity to review and comment on any proposed correspondence between it or any of its Representatives and on the one hand and the SEC or its staff on the other hand with respect to the Proxy Statement and shall give reasonable and good faith consideration to any comments thereon made by Purchaser or its counsel and (iii) promptly provide Purchaser with final copies of any correspondence sent by Seller or any of its Representatives to the SEC or its staff with respect to the Proxy Statement, and of any amendments or supplements to the Proxy Statement. If at any time prior to receipt of the Stockholder Approval there shall occur any event that should be set forth in an amendment or supplement to the Proxy Statement, including correcting any information that has become false or misleading in any material respect or correcting the omission of any information necessary to make the statements therein not misleading in any material respect, Seller will promptly prepare and deliver to its stockholders such an amendment or supplement. Seller shall (A) commence mailing the Proxy Statement to Seller's stockholders as promptly as practicable after the earlier of (i) being informed by the SEC staff that it does not plan to provide comments or it has no further comments on the preliminary form of the Proxy Statement or (ii) the date on which the ten (10)-day period referred to in Rule 14a-6 of the Exchange Act has expired without receipt of SEC comments or notice from the SEC that it will provide comments, and (B) take all necessary action, including establishing a record date and completing a broker search pursuant to Section 14a-13 of the Exchange Act in accordance with Section 6.19, to permit the foregoing. Subject to the terms and conditions of this Agreement (including Section 6.17), the Proxy Statement will include the Board Recommendation and the Board consents to such inclusion. The Proxy Statement shall include the notice of the Stockholders Meeting.

6.19 Stockholders Meeting. Seller will, as soon as practicable following the date of this Agreement, duly call, give notice of, convene and hold a meeting of its stockholders (the "Stockholders Meeting") for the purpose of seeking the Stockholder Approval and, subject to Section 6.17, will use its reasonable best efforts to solicit approval of this Agreement and the Asset Sale pursuant to the terms of this Agreement. Seller will schedule the Stockholders Meeting to be held within thirty (30) Business Days of the initial mailing of the Proxy Statement. Any adjournments or postponements of the Stockholders Meeting shall require the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed). Seller, in consultation with Purchaser, shall set a record date for Persons entitled to notice of, and to vote at, the Stockholders Meeting, and, shall not change such record date without the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed). Seller shall conduct a broker search in accordance with Rule 14a-13 of the Exchange Act on a date selected by Seller in consultation with Purchaser to enable such record date to be set within sixty-one (61) days following the date of this Agreement. Unless the Board shall have made a Change in Recommendation, Seller shall use reasonable best efforts to obtain the Stockholder Approval, including to solicit proxies in favor of approval of this Agreement and the Asset Sale and the other transactions contemplated by this Agreement. Seller shall ensure all proxies solicited by Seller and its Representatives in connection with the Stockholders Meeting are solicited in compliance with all applicable Law. Seller shall, upon the reasonable request of Purchaser, advise Purchaser at least on a daily basis on each of the last seven (7) Business Days prior to the date of the Stockholders Meeting as to the aggregate tally of proxies received by Seller with respect to the Stockholder Approval. The Stockholder Approval matters shall be the only matters (other than a customary adjournment proposal) that Seller shall propose to be acted on by the stockholders of Seller at the Stockholders Meeting without the prior written consent of Purchaser (such consent not to be unreasonably withheld, conditioned or delayed).

6.20 Stockholder Litigation. During the Pre-Closing Period, Seller shall promptly notify Purchaser of any Action commenced against Seller or its directors by any stockholder of Seller (on its own behalf or on behalf of Seller) relating to this Agreement or the Transactions, including the Asset Sale, of which Seller becomes aware. Seller shall give Purchaser the right to review and comment on all material filings or responses to be made by Seller in connection with such Action, and the right to consult on the settlement with respect to such Action, and Seller shall in good faith take such comments into account. No such settlement shall be agreed to without Purchaser's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed), except to the extent the settlement would not result in the imposition of any restriction on the business or operations of the Acquired Assets. Seller will keep Purchaser reasonably informed with respect to the status of any such Action.

6.21 Restriction on Indebtedness. During the period commencing on the date hereof and ending on December 31, 2025, Seller shall not incur any Indebtedness (including by providing any guarantee, indemnity or creating or incurring any Encumbrance in connection with indebtedness for borrowed money), in excess of an aggregate amount of Ten Million US Dollars ($10,000,000) without the prior written consent of Purchaser (which consent shall not be unreasonably withheld).

6.22 Ongoing Safety Study. From and after the Closing, Purchaser shall assume and bear full responsibility for the conduct and completion of the Ongoing Safety Study; provided, that, during the Profit Sharing Period, Seller shall reimburse Purchaser for the Ongoing Safety Study Expenses within thirty (30) days following Purchaser's delivery of an invoice therefor. Seller shall provide such assistance as Purchaser may reasonably request in connection with the conduct and completion of the Ongoing Safety Study.

6.23 Delayed Transferring Assets. Notwithstanding anything herein or in the Transition Services Agreement to the contrary, on the Closing Date, title to the Delayed Transferring Assets shall be transferred and conveyed to Purchaser but Seller shall retain physical possession of the Delayed Transferring Assets at its facility located at 200 Sidney Street, Cambridge, MA 02139 through the expiration or early termination of the Service Period (as defined in the Transition Services Agreement) for the PRMS Services (as defined in the Transition Services Agreement) for the purpose of facilitating the provision of PRMS Services following the Closing Date. For the avoidance of doubt, all of Seller's or its Affiliate's rights, title and interest in and to the Delayed Transferring Assets shall be sold, conveyed, assigned and transferred to Purchaser or its designated Affiliates at and effective as of the Closing. Following the expiration or early termination of the Service Period (as defined in the Transition Services Agreement) for the applicable Service (as defined in the Transition Services Agreement) as set forth across such Delayed Transferring Asset on Schedule 1.1(b)-3 (Delayed Transferring Assets) of the Seller Disclosure Letter, Seller shall, and shall cause its Affiliates to, promptly deliver with reasonable care the Delayed Transferring Assets to Purchaser or its designated Affiliates to such location as may be specified by Purchaser, which delivery costs shall be borne by Purchaser.

6.24 Delayed Assignment Contracts.

(a) Notwithstanding anything herein or in the Transition Services Agreement to the contrary, subject to Section 6.4, each Delayed Assignment Contracts shall not be sold, conveyed, assigned, transferred and delivered to Purchaser at the Closing but instead shall be assigned and transferred on the date of expiration or early termination of the Service Period (as defined in the Transition Services Agreement) for the applicable Service (as defined in the Transition Services Agreement) as set forth across such Delayed Assignment Contract on Schedule 1.1(b)-2 (Delayed Assignment Contracts) of the Seller Disclosure Letter (each of such date(s), the "Delayed Assignment Contracts Transfer Date") (it being understood, for the avoidance of doubt, that the Delayed Assignment Contracts shall otherwise be deemed to be Acquired Contracts for all purposes hereunder and Purchaser shall be responsible for the Assumed Liabilities relating to the Delayed Assignment Contracts from and after the Closing and shall be entitled to all rights and benefits accruing after the Closing under such Delayed Assignment Contracts).

(b) From the Closing Date and until the date on which the Delayed Assignment Contracts are effectively assigned to Purchaser, Seller shall not, and shall cause its applicable Affiliate not to, terminate such Delayed Assignment Contracts, or make any material amendment to, waive any material right or grant any license under or assign any Delayed Assignment Contracts, without the prior written consent of Purchaser. On a contract by contract basis, the Parties shall or shall cause their respective Affiliates to execute an assignment and assumption agreement with respect to each Delayed Assignment Contract, as of the date such Delayed Assignment Contract is to be assigned to Purchaser or any of its Affiliates as contemplated by Section 6.24(a). For the avoidance of doubt, subject to the Transition Services Agreement, nothing in this Section 6.24 shall obligate Seller to take any action with respect to any Delayed Assignment Contract that will terminate pursuant to its terms prior to any Delayed Assignment Contracts Transfer Date, unless otherwise agreed upon by the Parties in writing, in which case Seller shall consult with Purchaser and use commercially reasonable efforts to extend the term of any such Delayed Assignment Contract.

6.25 PRMS Technology Transfer. Promptly following execution of this Agreement and subject to (a) Purchaser entering into a contract with a third-party contract manufacturer which requires such third party to receive such technology transfer and (b) such third party's cooperation in connection with such technology transfer, Seller shall initiate a technology transfer with respect to PRMS (as defined in the Transition Services Agreement) as contemplated by Section 1.09 (*Technology Transfer*) of the Transition Services Agreement and Seller shall diligently implement such technology transfer. The costs incurred in connection with such technology transfer during the period prior to the Closing shall constitute Allowable Expenses (as defined in the US License Agreement) solely to the extent Closing does not occur and, otherwise, shall constitute Allowable Expenses under this Agreement as of and following Closing.

ARTICLE 7
CONDITIONS

7.1 Conditions to the Obligation of the Parties. The respective obligations of the Parties hereunder to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived, to the extent legally permissible, in writing, in whole or in part, by the Parties in their sole discretion).

(a) Government Consents. Any Consents from Governmental Entities necessary for the consummation of the transactions contemplated hereby shall have been obtained, or the waiting periods (and any extensions thereof) under any applicable Competition Laws shall have expired or been terminated.

(b) No Order. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Law or Court Order (whether temporary, preliminary or permanent) which is then in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise enjoining or prohibiting the consummation of such transactions.

(c) Seller Stockholder Approval. Seller's Stockholder Approval shall have been obtained at a duly convened Stockholders Meeting.

(d) Closing on the Equity Financing Transaction. All conditions to the closing of the Equity Financing Transaction shall have been satisfied or waived pursuant to the terms of the Equity Financing Documents and each of Seller and Purchaser shall be irrevocably bound to complete the transactions contemplated thereby, such transactions to be consummated concurrently with the Closing hereunder.

7.2 Conditions to the Obligations of Purchaser. The obligations of Purchaser hereunder to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing, in whole or in part, by Purchaser in its sole discretion).

(a) Representations and Warranties. (i) Each of the representations and warranties of Seller in Article 4, other than the Fundamental Representations in Article 4, shall be true and correct (without giving effect to materiality, Material Adverse Effect or any similar qualification contained therein) as of the Closing as if made at such time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier date), unless the failure of any such representations and warranties to be true and correct would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and (ii) each of the Fundamental Representations in Article 4 shall be true and correct (without giving effect to materiality, Material Adverse Effect or any similar qualification contained therein) in all material respects as of the Closing as if made at such time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier date).

(b) Covenants. The covenants and agreements contained in this Agreement to be complied with by Seller on or before the Closing shall have been complied with in all material respects.

(c) Seller Closing Deliveries. Seller shall have delivered to Purchaser each of the items listed in Sections 3.9(a), 3.9(b), 3.9(c), 3.9(d) and 3.9(e).

(d) No Material Adverse Effect. No event, occurrence, effect, matter, change, development or state of facts shall have occurred or exist that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

7.3 Conditions to the Obligations of Seller. The obligations of Seller hereunder to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing, in whole or in part, by Seller in its sole discretion):

(a) Representations and Warranties. (i) Each of the representations and warranties of Purchaser in Article 5, other than the Fundamental Representations in Article 5, shall be true and correct (without giving effect to materiality or any similar qualification contained therein) as of the Closing as if made at such time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier date), unless the failure of any such representations and warranties to be true and correct would not reasonably be expected to, individually or in the aggregate, prevent or materially delay the ability of Purchaser and its Affiliates to consummate the Transactions; and (ii) each of the Fundamental Representations in Article 5 shall be true and correct (without giving effect to materiality, Material Adverse Effect or any similar qualification contained therein) in all material respects as of the Closing Date as if made at such time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier date).

(b) Covenants. The covenants and agreements contained in this Agreement to be complied with by Purchaser on or before the Closing shall have been complied with in all material respects.

(c) Purchaser Closing Deliveries. Purchaser shall have delivered to Seller each of the items listed in Sections 3.10(b), 3.10(c) and 3.10(e).

ARTICLE 8
TERMINATION

8.1 Termination.

(a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the transactions contemplated by this Agreement abandoned at any time prior to the Closing:

(i) by mutual written consent of the Parties;

(ii) by either Seller or Purchaser if the Closing does not occur on or prior to the six (6) months anniversary of the date of this Agreement (the "Termination Date"); provided, that the right to terminate this Agreement pursuant to this clause (ii) shall not be available to the Party whose breach of or failure to comply with its representations, warranties or covenants under this Agreement is the cause of, or results in, the failure of the Closing to occur on or before the Termination Date;

(iii) by either Seller or Purchaser, if any Governmental Entity of competent jurisdiction issues an Court Order permanently restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, and such Court Order becomes final and non-appealable; provided, however, that the right to terminate this Agreement under this Section 8.1(a)(iii) shall not be available to the Party whose failure to perform its covenants or agreements contained in this Agreement has been the cause of or has resulted in the imposition of such Court Order or the failure of such Court Order to be resisted, resolved, or lifted;

(iv) by Purchaser, if Seller breaches or fails to perform in any material respect any of its representations, warranties, covenants, or agreements contained in this Agreement, which breach or failure to perform (A) would result in a failure of a condition set forth in Section 7.1 or Section 7.2 and (B) (1) if capable of being cured, has not been cured by Seller by the earlier of (I) the Termination Date and (II) the date that is thirty (30) days after Seller's receipt of written notice from Purchaser stating Purchaser's intention to terminate this Agreement pursuant to this Section 8.1(a)(iv) and the basis for such termination, or (2) is incapable of being cured;

(v) by Purchaser, if at any time prior to the Stockholder Approval having been obtained, (A) the Board shall have made a Change in Recommendation or (B) Seller shall have failed to include the Board Recommendation in the Proxy Statement;

(vi) by Purchaser or Seller, if the Stockholder Approval shall not have been obtained at the Stockholders Meeting duly convened and held or any adjournment or postponement thereof permitted by this Agreement; or

(vii) by Seller, if Purchaser breaches or fails to perform in any material respect any of its representations, warranties, covenants, or agreements contained in this Agreement, which breach or failure to perform (A) would result in a failure of a condition set forth in Section 7.1 or Section 7.3 and (B) (1) if capable of being cured, has not been cured by Purchaser by the earlier of (I) the Termination Date and (II) the date that is thirty (30) days after Purchaser's receipt of written notice from Seller stating Seller's intention to terminate this Agreement pursuant to this Section 8.1(a)(vii) and the basis for such termination, or (2) is incapable of being cured.

8.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1, any obligation to complete the Closing or the other transactions contemplated by this Agreement shall terminate and this Agreement forthwith shall become void and there shall be no Liability on the part of either Party except that Section 6.2, this Section 8.2 and Article 1, Article 10 and the Existing Agreements shall survive any termination of this Agreement. Nothing herein shall relieve either Party from Liability for any willful breach of this Agreement occurring prior to such termination or for Fraud.

8.3 Fee Following Termination.

(a) If this Agreement is terminated pursuant to Section 8.1(a)(v), Seller shall pay to Purchaser an amount equal to Four Million Seven Hundred Thousand US Dollars ($4,700,000) (the "Reimbursement Expense Amount") within two (2) Business Days after the date of such termination.

(b) If (i) this Agreement is terminated pursuant to Section 8.1(a)(ii) or Section 8.1(a)(iv), (ii) during the period from the date of this Agreement until the date of termination of this Agreement, a Superior Proposal shall have been publicly announced or made to the Board and not withdrawn, and (iii) within twelve (12) months after the date on which this Agreement shall have been terminated an Acquisition Proposal is consummated or a definitive agreement relating to an Acquisition Proposal is entered into by Seller or any of its subsidiaries, Seller shall pay to Purchaser the Reimbursement Expense Amount upon the earlier of the execution of such definitive agreement or upon consummation of such Acquisition Proposal.

(c) The Reimbursement Expense Amount shall be paid by Seller in US Dollars by wire transfer of immediately available funds to such account or accounts and in accordance with such instructions as are provided by Purchaser to Seller in writing. If Seller fails to promptly make any payment required under this Section 8.3 and Purchaser commences an Action to collect such payment, Seller shall also pay Purchaser for its fees and expenses (including attorneys' fees and expenses) incurred in connection with such Action and shall pay interest on the amount of the payment at an annual rate equal to two (2) percentage points above the U.S. prime interest rate, as reported by The Wall Street Journal (New York edition) in effect on the date the payment was payable pursuant to this Section 8.3.

(d) The Parties hereby acknowledge and agree that in the event that the Reimbursement Expense Amount becomes payable by, and is paid by, Seller, the Reimbursement Expense Amount shall be Purchaser's sole and exclusive remedy for damages against Seller and its former, current or future stockholders, directors, officers, Affiliates, agents or other Representatives for any loss suffered as a result of any breach of any representation, warranty, covenant or agreement set forth in this Agreement or the failure of the Transactions to be consummated; provided that, until such time as the Reimbursement Expense Amount is paid by Seller, the Reimbursement Expense Amount shall be in addition to any other remedy to which Purchaser is entitled at law or in equity and Purchaser may pursue both a grant of specific performance pursuant to Section 10.16 and the payment of the Reimbursement Expense Amount. The Parties acknowledge and agree that Seller shall not be obligated to pay the Reimbursement Expense Amount on more than one occasion.

ARTICLE 9
INDEMNIFICATION AND SURVIVAL

9.1 Survival.

(a) The representations and warranties made by the Parties in this Agreement (other than the Fundamental Representations and the representations and warranties in Section 4.10) shall survive the Closing until the first anniversary of the Closing Date. The Fundamental Representations and the representations and warranties in Section 4.10 shall survive the Closing until the date that is thirty (30) days after the expiration of the applicable statute of limitations. The covenants and agreements to be performed by or on behalf of a Party prior to the Closing shall terminate as of the Closing, provided that, notwithstanding such termination, Purchaser shall be entitled to make a Claim in respect of a breach of the covenants and agreements set forth in Section 6.1 for a period of six (6) months following the Closing Date. The covenants and agreements that by their terms are to be performed by or on behalf of a Party after the Closing shall survive until the date that such covenants and agreements are fully performed.

(b) The termination of the representations, warranties, covenants and agreements provided herein shall not affect the rights of a Party in respect of any Claim made by such Party in a writing and received by Seller (in the case of a Claim made by Purchaser) or Purchaser (in a case of a Claim made by Seller) prior to the expiration of the applicable survival period.

9.2 Indemnification.

(a) Subject in all cases to the limits on indemnification in this Article 9, following the Closing, Seller shall indemnify, save, defend and hold harmless Purchaser, its Affiliates and each of their respective officers, directors, employees, agents and Representatives (collectively, the "Purchaser Indemnified Parties") from and against any Damages incurred by any such Purchaser Indemnified Party that arise out of or result from (i) any breach or inaccuracy as of the date of this Agreement or as of the Closing Date (as though made on and as of the Closing Date) of any representation or warranty of Seller contained in this Agreement, (ii) any breach or failure to perform by Seller of any covenant or agreement of Seller contained in this Agreement or (iii) the Excluded Liabilities; provided that, without limiting Seller's obligations under this Section 9.2(a), Purchaser shall take, and shall cause the other Purchaser Indemnified Parties to take, all commercially reasonable steps to mitigate any such Damages upon becoming aware of any event that would reasonably be expected to, or does, give rise thereto.

(b) Subject in all cases to the limits on indemnification in this Article 9, following the Closing, Purchaser shall indemnify, save, defend and hold harmless Seller, its Affiliates and each of their respective officers, directors, employees, agents and Representatives (each a "Seller Indemnified Party" and, collectively together with Purchaser Indemnified Parties, "Indemnified Parties") from and against any Damages incurred by any such Seller Indemnified Party that arise out of or result from (i) any breach or inaccuracy as of the date of this Agreement or as of the Closing Date (as though made on and as of the Closing Date) of any representation or warranty of Purchaser contained in this Agreement, (ii) any breach or failure to perform by Purchaser of any covenant or agreement of Purchaser contained in this Agreement or (iii) the Assumed Liabilities; provided that, without limiting Purchaser's obligations under this Section 9.2(b), Seller shall take, and shall cause the other Seller Indemnified Parties to take, all commercially reasonable steps to mitigate any such Damages upon becoming aware of any event that would reasonably be expected to, or does, give rise thereto.

9.3 Limitations on Indemnification.

(a) Notwithstanding anything to the contrary in this Agreement, Seller shall not be liable to the Purchaser Indemnified Parties in respect of claims under Section 9.1(a), until such time as the aggregate amount of all Damages claimed by the Purchaser Indemnified Parties under Section 9.1(a) exceeds an aggregate amount equal to one percent (1.0%) of the sum of the Closing Date Payment and Installment Payments (the "Basket"), in which case Seller shall indemnify the Purchaser Indemnified Parties for all such Damages which are in excess of the Basket; provided, that the foregoing limitation shall not be applicable to the Fundamental Representations in Article 4, the representations and warranties in Section 4.10 or any claim for Fraud with respect to the representations and warranties of Seller set forth in Article 4. The aggregate liability of Seller in respect of claims for indemnification pursuant to (i) Section 9.1(a) (other than with respect to Fundamental Representations in Article 4 and the representations and warranties in Section 4.10) shall not exceed an amount equal to twelve and one half percent (12.5%) of the sum of the Closing Date Payment and Installment Payments and (ii) Section 9.1(a) (solely with respect to Fundamental Representations in Article 4 and the representations and warranties in Section 4.10) shall not exceed the Purchase Price; provided, that the foregoing limitations in clauses (i) and (ii) shall not be applicable to any claim for Fraud with respect to the representations and warranties of Seller set forth in Article 4.

(b) With respect to each indemnification obligation in this Agreement: (i) all Damages shall be net of any insurance proceeds actually received by the Indemnified Party from a Third Party insurer, net of costs reasonably incurred by the Indemnified Party in seeking such collection and net of any Taxes incurred with respect to such insurance proceeds ("Eligible Insurance Proceeds") and (ii) all payments made by an Indemnifying Party to an Indemnified Party in respect of any claim pursuant to Section 9.2 shall be treated as adjustments to the Purchase Price for income Tax purposes (unless otherwise required by a final determination, within the meaning of section 1313 of the Code (or similar provision of state, local or non-U.S. Tax Law)).

(c) In any case where an Indemnified Party recovers from a Third Party any Eligible Insurance Proceeds or any other amount in respect of any Damages for which an Indemnifying Party has actually paid or reimbursed such Indemnified Party pursuant to this Article 9, such Indemnified Party shall promptly pay over to the Indemnifying Party such Eligible Insurance Proceeds or the amount so recovered (after deducting therefrom the amount of expenses incurred by it in procuring such recovery), but not in excess of any amount previously paid by the Indemnifying Party to or on behalf of the Indemnified Party in respect of such claim. Each Indemnified Party shall use commercially reasonable efforts to seek, in good faith, full recovery of any Eligible Insurance Proceeds under all insurance policies covering any Damages to the same extent as it would if such Damages were not subject to indemnification hereunder.

9.4 Sole and Exclusive Remedy. Following the Closing (other than as expressly set forth in Section 10.16), recovery pursuant to Section 9.2 shall be the sole and exclusive remedy of the Indemnified Parties for any and all Damages related to this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, (a) nothing in this Section 9.4 shall be deemed to restrict any Indemnified Party from asserting any indemnification claims and receiving indemnification payments (without giving effect to any limitations set forth in this Article 9) pursuant to this Article 9, in respect of any claims for Fraud and (b) nothing in this Agreement shall be deemed to restrict any claim for Fraud.

9.5 Procedure for Claims.

(a) If a claim for indemnification pursuant to Section 9.2 (a "Claim") is to be made by an Indemnified Party entitled to indemnification hereunder, the Indemnified Party claiming indemnification shall give written notice to the other Party (the "Indemnifying Party") reasonably promptly after the Indemnified Party becomes aware of any fact, condition or event that may give rise to Damages for which indemnification may be sought under Section 9.2, or receipt by the Indemnified Party of notice of a claim involving the assertion of a claim by a Third Party that may give rise to Damages for which indemnification may be sought under Section 9.2 (whether pursuant to a lawsuit, other legal action or otherwise, a "Third Party Claim"). The failure of any Indemnified Party to give timely notice hereunder shall not affect its rights to indemnification hereunder, except to the extent that the Indemnifying Party is actually prejudiced by such failure. The Indemnifying Party shall have thirty (30) days (or such lesser number of days set forth in the notice as may be required by court proceeding in the event of a litigated matter) after receipt of the notice to notify the Indemnified Party that it desires to defend the Indemnified Party against such Third Party Claim. Notwithstanding the foregoing, if such Third Party Claim (i) seeks injunctive, equitable or other relief or remedies that are not money damages against the Indemnified Party, or (ii) involves criminal allegations against the Indemnified Party, then the Indemnified Party shall have the right to control the defense, compromise or settlement of such Third Party Claim with counsel of its choice (and the costs thereof, for the avoidance of doubt, shall constitute Damages for which indemnification may be sought under Section 9.2).

(b) If the Indemnifying Party assumes the defense, compromise or settlement of such Third Party Claim, (i) the Indemnified Party shall make available to the Indemnifying Party any documents and materials in its or its Affiliates' possession or control that may be necessary to the defense of such Third Party Claim (provided that the Indemnified Party shall not be required to furnish any such documents or materials which would (in the reasonable judgment of such party upon advice of counsel) be reasonably likely to (A) constitute a waiver of the attorney-client or other privilege held by such party or any of its Affiliates, (B) violate any applicable Laws or (C) breach any agreement of such party or any of its Affiliates with any Third Party; provided that such Indemnified Party shall use reasonable best efforts to obtain any required consents and take such other reasonable action (such as the entry into a joint defense agreement or other arrangement to avoid loss of attorney-client privilege) to permit such disclosure) and (ii) the Indemnifying Party shall keep the Indemnified Party reasonably informed of all material developments and events relating to such Third Party Claim. The Indemnified Party, at its sole option, may participate in any defense and investigation of such Third Party Claim or settlement negotiations with respect to such Third Party Claim. The fees and disbursements of counsel retained by such Indemnified Party shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, there are legal defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party, or there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to such Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required (and the costs thereof, for the avoidance of doubt, shall constitute Damages for which indemnification may be sought under Section 9.2). Except with the written consent of the other Party (not to be unreasonably withheld, conditioned or delayed), neither the Indemnifying Party nor the Indemnified Party shall, in the defense of a Third Party Claim, consent to the entry of any judgment or enter into any compromise or settlement (x) which does not include as an unconditional term thereof the giving to the other Party and its Affiliates by the Third Party of a release from all liability with respect to such suit, claim, action or proceeding, (y) if such judgment, compromise or settlement involves a finding or admission of (1) any violation of Law by the other Party (or any Affiliate thereof) or (2) any liability on the part of the Indemnified Party (or any Affiliate thereof) not indemnified hereunder, or (z) which involves injunctive, equitable or other relief or remedies that are not money damages against the other Party. With respect to Claims other than Third Party Claims, after the giving of any notice of a Claim pursuant to this Section 9.5, the amount of indemnification to which an Indemnified Party shall be entitled under this Article 9 shall be determined (aa) by the written agreement between the Indemnified Party and the Indemnifying Party, (bb) in accordance with Section 10.6 or (cc) by any other means to which the Indemnified Party and the Indemnifying Party shall agree.

9.6 Right to Indemnification Not Affected by Knowledge. The representations, warranties, covenants, agreements and indemnities of the Parties contained in this Agreement, and the rights and remedies of the Purchaser Indemnified Parties and the Seller Indemnified Parties with respect thereto, will not be affected by any investigation, inquiry, or examination made by or on behalf of either Party, or the knowledge of either Party or their respective Representatives, regardless of whether such investigation, inquiry, or examination was conducted, or such knowledge was obtained (or should have been obtained), prior to, at, or after the execution of this Agreement or the consummation of the Closing and regardless of whether such knowledge was obtained from another Party, any of its Representatives, or any other Person.

9.7 Right to Offset. Purchaser shall have a right to offset any payments that it is required to make to Seller in respect of the Installment Payments, the Milestone Payments or the Net Profit amounts payable to Seller pursuant to this Agreement against any Damages in respect of which Purchaser is entitled to indemnification from Seller as finally determined by a court of competent jurisdiction or claimed in good faith (other than any amounts disputed in good faith by Seller).

ARTICLE 10
MISCELLANEOUS

10.1 Expenses. Whether or not the transactions contemplated hereby are consummated and, except as otherwise specified herein or in any Ancillary Agreement, each Party shall bear its own expenses with respect to the transactions contemplated by this Agreement.

10.2 Notices. Unless otherwise specified herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered personally, sent by a nationally recognized overnight courier service, or transmitted by email (receipt verified), and shall be deemed to be effective upon receipt. Any such notices shall be addressed to the receiving Party at such Party's address or email address set forth below, or at such other address or email address as may from time to time be furnished by similar notice by Seller or Purchaser:

If to Seller:

Seres Therapeutics, Inc.
101 Cambridge Park Drive, Cambridge, MA 02140
Attention: Chief Financial Officer; Chief Legal Officer/General Counsel
Email: [***]; [***]

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

Latham & Watkins LLP
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Peter Handrinos; Scott Shean
Email: peter.handrinos@lw.com
scott.shean@lw.com

If to Purchaser:

Société des Produits Nestlé S.A.
Avenue Nestlé 55
1800 Vevey, Switzerland
Attention: Martin Hendrix and Claudio Kuoni
Email: [***]
[***]

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

Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: David A. Carpenter
Email: dacarpenter@mayerbrown.com

10.3 Entire Agreement; Modification. This Agreement (including all Schedules, Exhibits and attachments hereto), the Ancillary Agreements and the other agreements, certificates and documents delivered in connection herewith or therewith or otherwise in connection with the Transactions, contain the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede all previous agreements, negotiations, commitments and writings between the Parties with respect to the subject matter hereof and thereof. In the event of any inconsistency between this Agreement and any Schedules hereto or any certificate delivered in connection herewith, the terms of this Agreement shall govern. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by both Parties.

10.4 Severability. If any provision of this Agreement, including Section 6.16, or any other document delivered under this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable nor the remaining provisions hereof, nor render unenforceable such provision in any other jurisdiction, unless the effect of rendering such provision ineffective would be to substantially deviate from the expectations and intent of the Parties in entering into this Agreement. In the event any provisions of this Agreement, including Section 6.16, shall be held to be invalid, illegal or unenforceable, the Parties shall use reasonable best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes hereof.

10.5 No Waiver; Cumulative Remedies. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no failure or delay on the part of a Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the Party giving such waiver. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable Law except as expressly set forth herein.

10.6 Governing Law. This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Delaware, without giving effect to any laws, rules or provisions of the State of Delaware that would cause the application of the laws rules or provisions of any jurisdiction other than the State of Delaware. Each of the Parties hereto further agrees to waive and hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now have or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such action in any such court.

10.7 Jurisdiction, Services and Venue. Each Party agrees: (a) to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware) (the "Specified Courts") for any Actions arising out of or relating to this Agreement or any Ancillary Agreements or the Transactions; (b) to commence any Action arising out of or relating to this Agreement or any Ancillary Agreements or the Transactions only in the Specified Courts; (c) that service of any process, summons, notice, or document by U.S. registered mail to the address of such Party set forth in Section 10.2 will be effective service of process for any Action brought against such Party in any of the Specified Courts (provided that, in the case of Purchaser, service of process must be delivered to the registered agent in Delaware of Nestlé USA, Inc.); (d) to waive any objection to the laying of venue of any Action arising out of or relating to this Agreement or any Ancillary Agreements or the Transactions in the Specified Courts; and (e) to waive and not to plead or claim that any such Action brought in any of the Specified Courts has been brought in an inconvenient forum; provided, however, that such submission to the jurisdiction of the Specified Courts is solely for the purpose referred to in this Section 10.7 and shall not be deemed to be a general submission to the jurisdiction of such courts or any other courts other than for such purpose.

10.8 WAIVER OF TRIAL BY JURY. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, DEMAND, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ANCILLARY AGREEMENTS OR ANY OF THE TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.8.

10.9 Counterparts. This Agreement and any amendment or supplement hereto may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become binding when any number of counterparts, individually or taken together, shall bear the signatures of both Parties. This Agreement may be executed and delivered by facsimile or any other electronic means, including ".pdf" or ".tiff" files, and any facsimile or electronic signature shall constitute an original for all purposes.

10.10 Assignments. Neither Party shall be permitted to assign this Agreement or any of its rights or obligations under this Agreement, directly or by operation of law or otherwise, without Seller's (in the case of Purchaser) or Purchaser's (in the case of Seller) express, prior written consent, except that (a) each Party may assign this Agreement or any of its rights and obligations hereunder, in whole or in part, to one or more Affiliates without the other Party's consent; provided that no such assignment shall relieve such Party of any of its obligations under this Agreement, such assignment shall only be valid for so long as such entity remains an Affiliate and any new or increased obligations for withholding or deduction under Section 3.14 or Transfer Taxes under Section 6.11(a) arising as a result of such assignment shall be borne by the assigning Party or its Affiliate (including any gross-up necessary to put the other Party in the same position it would have been in had no such assignment been made), and (b) Purchaser may assign this Agreement or any of its rights and obligations hereunder, in whole or in part, to any Person to whom it sells substantially all of the Acquired Assets provided that such Person shall be responsible for any new or increased obligations for withholding or deduction under Section 3.14 or Transfer Taxes under Section 6.11(a) arising as a result of such assignment (including any gross-up necessary to put Seller in the same position it would have been in had no such assignment been made). Any such purported assignment or sublicense in violation of this Agreement shall be null and void *ab initio*.

10.11 Prevailing Party Attorneys' Fees. In the event of any Action between the Parties or their Affiliates arising as a result of a breach of this Agreement or the failure to perform hereunder, or the breach or inaccuracy of any representation or warranty contained in this Agreement, the prevailing Party in such Action shall be entitled to collect the costs and expenses of bringing or defending such Action, including reasonable attorneys' fees, court costs and other out-of-pocket fees and expenses reasonably incurred by the prevailing Party, from the non-prevailing Party.

10.12 Reservation of Rights; No Implied Licenses. All rights in or to Intellectual Property not expressly assigned, licensed, covenanted or otherwise conveyed to Purchaser or one of its Affiliates under this Agreement or any Ancillary Agreement are reserved by Seller and its Affiliates. Nothing contained in this Agreement shall be construed as conferring any rights, by implication, estoppel or otherwise, under any Intellectual Property, other than the rights expressly granted under this Agreement or any Ancillary Agreement.

10.13 No Third Party Beneficiaries. Except as otherwise expressly provided in Sections 9.2(a) or 9.2(b), this Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, shall give or be construed to give to any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

10.14 No Partnership. The Parties intend that nothing in this Agreement shall be construed to create a partnership or deemed partnership, joint venture or other business entity for any Tax purposes.

10.15 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the execution of this Agreement, each of the Parties, at its own expense, shall execute and deliver such instruments of transfer, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

10.16 Specific Performance. The Parties agree that irreparable damage, for which monetary damages (even if available) would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that each Party shall be entitled to, in addition to any other remedy to which such Party is entitled in Law or in equity, an injunction or injunctions against the other Party to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement (without posting of bond or other security).

10.17 Conflicts; Privilege. Recognizing that Latham & Watkins LLP has acted as legal counsel to Seller and its Affiliates, and that Latham & Watkins LLP intends to act as legal counsel to Seller and its Affiliates after the Closing, Purchaser hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with Latham & Watkins LLP representing Seller and its Affiliates prior to the Closing or after the Closing as such representation may relate to Seller and its Affiliates or the transactions contemplated hereby. In addition, all communications involving attorney-client confidences between Seller and its Affiliates prior to the Closing, on the one hand, and Latham & Watkins LLP, on the other hand, in the course of the negotiation, documentation and consummation of the transactions contemplated hereby shall be deemed to be attorney-client confidences that belong solely to Seller and its Affiliates. Accordingly, Purchaser and its Affiliates shall not control the privilege with respect to any such communications or their access to the files of Latham & Watkins LLP relating to such engagement from and after the Closing.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized officers of Seller and Purchaser as of the date first above written.

SERES THERAPEUTICS, INC.

By: /s/ Eric Shaff
Name: Eric Shaff
Title: President and Chief Executive Officer

[*Seller Signature Page to Asset Purchase Agreement*]

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

By: /s/ Claudio Kuoni

Name: Claudio Kuoni

Title: Vice-President

[*Seller Signature Page to Asset Purchase Agreement*]

Exhibit 10.1

FORM OF
SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "Agreement") is made and entered into as of [●], 2024 by and between Seres Therapeutics, Inc., a Delaware corporation (the "Company"), and Société des Produits Nestlé S.A., a *société anonyme* organized under the laws of Switzerland (the "Investor").

RECITALS

A. The Company and the Investor have entered into that certain Asset Purchase Agreement, dated as of August 5, 2024 (as amended, supplemented, restated or otherwise modified from time to time, the "VOWST Acquisition Agreement");

B. In connection with and as a closing condition of the transactions contemplated by the VOWST Acquisition Agreement, the Investor has agreed to purchase from the Company, and the Company has agreed to sell to the Investor shares of common stock, par value $0.001 per share, of the Company (the "Common Stock"), upon the terms and subject to the conditions set forth in this Agreement; and

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

In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is controlled by, or is under common Control with, such Person.

"Board" has the meaning set forth in Section 7.1(a).

"Closing" has the meaning set forth in Section 3.1.

"Closing Date" has the meaning set forth in the VOWST Acquisition Agreement.

"Control" (including the terms "controlling", "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Financial Statements" has the meaning set forth in Section 4.6.

"Investor Designee" has the meaning set forth in Section 7.1(a).

"Lock-Up Period" has the meaning set forth in Section 7.2.

"Lock-Up Securities" has the meaning set forth in Section 7.2.

"Material Adverse Effect" means a material adverse effect on (a) the assets, liabilities, results of operations, financial condition or business of the Company and its Subsidiaries taken as a whole, (b) the legality or enforceability of any of this Agreement or (c) the ability of the Company to perform its obligations under this Agreement; *provided*, *however*, that in no event shall any of the following occurring after the date hereof, alone or in combination, be deemed to constitute, or be taken into account in determining whether a Material Adverse Effect has occurred: (i) any change in the Company's stock price or trading volume, or (ii) any effect caused by the announcement or pendency of the transactions contemplated by this Agreement or the VOWST Acquisition Agreement, or the identity of the Investor or any of its Affiliates as the purchaser or acquirer, as applicable, in connection with the transactions contemplated by this Agreement or the VOWST Acquisition Agreement.

"Material Contract" means any contract, instrument or other agreement to which the Company is a party or by which it is bound which is material to the business of the Company, including those that have been filed as an exhibit to the SEC Filings pursuant to Item 601(b)(10) of Regulation S-K.

"Nasdaq" means The Nasdaq Stock Market, LLC.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Purchase Price" means $1.05.

"Registrable Securities" means (a) the Shares issued pursuant to this Agreement, and (b) any other shares of Common Stock issued as (or issuable upon conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, in exchange for or in replacement of the Shares; *provided*, *however*, that any such Registrable Securities shall cease to be Registrable Securities when (i) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the 1933 Act and such Registrable Securities have been disposed of in accordance with such effective Registration Statement, (ii) such Registrable Securities have been sold or transferred in accordance with Rule 144, or (iii) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rules 144.

"Registration Statement" has the meaning set forth in Section 7.3(a).

"Rule 144" means Rule 144 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

"SEC" means the Securities and Exchange Commission.

"SEC Documents" has the meaning set forth in Section 4.6.

"SEC Filings" has the meaning set forth in Section 4.

"Shares" has the meaning set forth in Section 2.

"Subscription Amount" means, as to the Investor, the aggregate amount to be paid for the Shares purchased hereunder by the Investor in U.S. Dollars and in immediately available funds.

"Subsidiaries" has the meaning set forth in Section 4.1.

"Trading Day" means a day on which Nasdaq is open for trading.

"VOWST Acquisition Agreement" has the meaning set forth in the Recitals.

"1933 Act" has the meaning set forth in the Recitals.

"1934 Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

2. Purchase and Sale of the Shares. Upon the terms and subject to the conditions set forth herein, the Company agrees to issue and sell, and the Investor agrees to purchase 14,285,715 shares of Common Stock (the "Shares"), at a price per share equal to the Purchase Price.

3. Closing.

3.1. The closing of the purchase and sale of Shares pursuant to this Agreement (the "Closing") shall occur on the Closing Date.

3.2. At the Closing, the Investor shall purchase, and the Company shall issue and sell, the Shares, for a price per share equal to the Purchase Price, which shall be paid by the Investor by wire transfer of immediately available funds pursuant to wire instructions delivered to the Investor by the Company.

3.3. At the Closing, the Company shall deliver or cause to be delivered to the Investor the Shares. The Shares shall be issued in book entry form or, upon request by the Investor, certificated form.

4. Representations and Warranties of the Company. The Company hereby represents and warrants to the Investor that, except as otherwise described in the Company's filings pursuant to the 1934 Act (collectively, the "SEC Filings"), which qualify these representations and warranties in their entirety, as of the date hereof:

4.1. Organization, Good Standing and Qualification. The Company is an entity duly incorporated, validly existing and in good standing under the laws of the State of Delaware, with the requisite corporate power and authority to own or lease and use its properties and assets, to execute and deliver this Agreement, to carry out the provisions of this Agreement, to issue and sell the Shares and to carry on its business as presently conducted as described in the SEC Filings. Each of the Company's subsidiaries required to be disclosed pursuant to Item 601(b)(21) of Regulation S-K under the 1933 Act in an exhibit to its annual report on Form 10-K filed with the SEC for the year ended December 31, 2023 (the "Subsidiaries") is an entity duly incorporated or otherwise organized, validly existing and in good standing (to the extent such concept exists in the relevant jurisdiction) under the laws of the jurisdiction of its incorporation or organization, as applicable, and has all requisite power and authority to carry on its business and to own and use its properties. Neither the Company nor any of its Subsidiaries is in violation or default in any material respect of any of the provisions of its respective articles of association, charter, certificate of incorporation, bylaws, limited partnership agreement or other organizational or constitutive documents. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign entity and is in good standing (to the extent such concept exists in the relevant jurisdiction) in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification necessary, except to the extent any failure to so qualify has not had and would not reasonably be expected to have a Material Adverse Effect.

4.2. Authorization. The Company has the requisite corporate power and authority and has taken all requisite corporate action necessary for, and no further action on the part of the Company, its officers, directors and stockholders is necessary for, (a) the authorization, execution and delivery of this Agreement, (b) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (c) the authorization, issuance and delivery of the Shares. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the Investor, constitutes valid and binding obligations of the Company enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, (ii) general principles of equity that restrict the availability of equitable remedies and (iii) to the extent that the enforceability of indemnification provisions may be limited by applicable laws.

4.3. Valid Issuance. The Shares have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all security interests, liens, other encumbrances and restrictions (other than those created by the Investor), except for restrictions on transfer set forth in this Agreement or imposed by applicable securities laws.

4.4. Consents. The execution, delivery and performance by the Company of this Agreement and the offer, issuance and sale of the Shares require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than filings that have been made pursuant to applicable state securities laws and post-sale filings pursuant to applicable state and federal securities laws and the rules and regulations of Nasdaq, which the Company undertakes to file within the applicable time periods and the filings contemplated by the VOWST Acquisition Agreement.

4.5. No Conflict, Breach, Violation or Default. The execution, delivery and performance of this Agreement by the Company and the issuance and sale of the Shares in accordance with the provisions thereof will not (a) conflict with or result in a breach or violation of (i) any of the terms and provisions of, or constitute a default under, the Company's Restated Certificate of Incorporation, as amended, or Amended and Restated Bylaws, both as in effect on the date hereof (true and complete copies of which have been made available to the Investors through the EDGAR system), or (ii) assuming the accuracy of the representations and warranties in Section 5, any applicable statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or its Subsidiaries, or any of their assets or properties, or (b) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien, encumbrance or other adverse claim upon any of the properties or assets of the Company or its Subsidiaries or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract except, in the case of clauses (a)(i) and (b) only, for such conflicts, breaches, violations and defaults as have not and would not reasonably be expected to have a Material Adverse Effect.

4.6. SEC Documents; Financial Statements. The Company has filed in a timely manner all documents that the Company was required to file with the SEC under Sections 13, 14(a) and 15(d) of the 1934 Act, since becoming subject to the requirements of the 1934 Act. As of their respective filing dates (or, if amended prior to the date of this Agreement, when amended), all documents filed by the Company with the SEC (the "SEC Documents") complied as to form in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder. None of the SEC Documents as of their respective dates contained any untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements of the Company and its subsidiaries included in the SEC Documents (the "Financial Statements") present fairly the financial condition, results of operations and cash flows of the Company on a consolidated basis as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the 1934 Act and have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as otherwise noted therein).

4.7. Compliance with Nasdaq Continued Listing Requirements. Except as described in the SEC Filings, the Company is in compliance with applicable Nasdaq continued listing requirements. Except as described in the SEC Filings, there are no proceedings pending or, to the Company's knowledge, threatened against the Company relating to the continued listing of the Common Stock on Nasdaq and the Company has not received any notice of, nor to the Company's knowledge is there any reasonable basis for, the delisting of the Common Stock from Nasdaq.

4.8. Capitalization. All of the issued and outstanding shares of the Company's capital stock have been duly authorized and validly issued and are fully paid and nonassessable, and none of such shares were issued in violation of any pre-emptive rights, and such shares were issued in compliance in all material respects with applicable state and federal securities law and any rights of third parties. Except as described in the SEC Filings, no Person is entitled to pre-emptive or similar statutory or contractual rights with respect to the issuance by the Company of any securities of the Company. Except as described in the SEC Filings, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company is or may be obligated to issue any equity securities of any kind and except as contemplated by this Agreement.

4.9. No General Solicitation. None of the Company, any of its Subsidiaries or any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising in connection with the offer or sale of the Shares.

4.10. Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company or the Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company.

4.11. No Integrated Offering. None of the Company, any of its Subsidiaries or any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security of the Company or any of its Subsidiaries, under circumstances that would adversely affect reliance by the Company on Section 4(a)(2) of the 1933 Act or require registration of any of the Shares under the 1933 Act or cause this offering of the Shares to be integrated with prior offerings by the Company or any of its Subsidiaries for purposes of the 1933 Act.

4.12. Investment Company. The Company is not and, after giving effect to the offering and sale of the Shares, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.

5. Representations and Warranties of the Investor. The Investor hereby represents and warrants to the Company that:

5.1. Organization and Existence. The Investor is a validly existing *société anonyme*, organized under the laws of Switzerland and has all requisite corporate power and authority to enter into and consummate the transactions contemplated by this Agreement and to carry out its obligations hereunder, and to invest in the Shares pursuant to this Agreement.

5.2. Authorization. The execution, delivery and performance by the Investor of this Agreement have been duly authorized and this Agreement has been duly executed and constitutes the valid and legally binding obligation of the Investor, enforceable against the Investor in accordance with its terms, except: (a) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (c) insofar as indemnification and contribution provisions may be limited by applicable law.

5.3. No Government Recommendation or Approval. The Investor understands that no United States federal or state agency, or similar agency of any other country, has reviewed, approved, passed upon, or made any recommendation or endorsement of the Company or the purchase of the Shares.

5.4. No Conflicts. The execution, delivery and performance by the Investor of this Agreement and the consummation by the Investor of the transactions contemplated hereby will not (a) result in a violation of the organizational documents of the Investor or (b) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Investor is a party, or (c) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Investor, except in the case of clauses (b) and (c) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

5.5. Subscription Entirely for Own Account. The Shares to be received by the Investor hereunder will be acquired for the Investor's own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the 1933 Act without prejudice, however, to the Investor's right at all times to sell or otherwise dispose of all or any part of such Shares in compliance with applicable federal and state securities laws and this Agreement. The Investor is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.6. Investment Experience. The Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Shares and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.7. Disclosure of Information. The Investor has had an opportunity to receive, review and understand all information related to the Company that it deems relevant to its decision to purchase the Shares hereunder and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Shares.

5.8. Restricted Securities. The Investor understands that the Shares are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.

5.9. Legends. It is understood that, except as provided below, certificates evidencing the Shares may bear the following or any similar legend:

> "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, ACCORDINGLY, MAY NOT BE TRANSFERRED UNLESS (I) SUCH SECURITIES HAVE BEEN REGISTERED FOR SALE PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, (II) SUCH SECURITIES MAY BE SOLD PURSUANT TO RULE 144 OR OTHER AVAILABLE EXEMPTION, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THESE SECURITIES ARE SUBJECT TO TRANSFER AND OTHER RESTRICTIONS SET FORTH IN A SHARE SUBSCRIPTION AGREEMENT, DATED [●], 2024, A COPY OF WHICH IS ON FILE WITH THE COMPANY. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES."

If required by the authorities of any U.S. state in connection with the issuance of sale of the Shares, the legend required by such state authority.

5.10. Accredited Investor. The Investor is an "accredited investor" within the meaning of Rule 501 under the 1933 Act. The Investor has sufficient knowledge, sophistication and experience in business, including transactions involving private placements in public equity, to properly evaluate the risks and merits of its purchase of the Shares. The Investor has determined based on its own independent review and such professional advice as it deems appropriate that its purchase of the Shares and participation in the transactions contemplated by this Agreement, are fully consistent with its financial needs, objectives and condition, comply and are fully consistent with all investment policies, guidelines and other restrictions applicable to the Investor, and are a fit, proper and suitable investment for the Investor, notwithstanding the substantial risks inherent in investing in or holding the Shares.

5.11. No General Solicitation. The Investor did not learn of the investment in the Shares as a result of any general solicitation or general advertising.

5.12. Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company or the Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Investor.

6. Conditions to Closing.

6.1. Conditions to the Investor's Obligations to Closing. The obligation of the Investor to purchase Shares at the Closing is subject to the fulfillment to such Investor's satisfaction of the following conditions, any of which may be waived by the Investor:

(a) The Company shall have executed the VOWST Acquisition Agreement, all of the conditions to closing under the VOWST Acquisition Agreement shall have been fulfilled (other than the issuance of the Shares hereunder) or waived pursuant to the terms thereof, no breach by the Company of any term of or obligation under the VOWST Acquisition Agreement shall have occurred and be continuing, and the VOWST Acquisition Agreement shall not have been terminated in accordance with its terms.

(b) The representations and warranties made by the Company in Section 4 hereof shall be true and correct in all material respects as of the Closing with the same force and effect as if they had been made on and as of the Closing. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing.

(c) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary for consummation of the purchase and sale of the Shares and the consummation of the other transactions contemplated by this Agreement, all of which shall be in full force and effect.

(d) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby.

(e) No stop order or suspension of trading shall have been imposed by Nasdaq, the SEC or any other governmental or regulatory body with respect to public trading in the Common Stock.

6.2. Conditions to Obligations of the Company. The Company's obligation to sell and issue Shares at the Closing is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing of the following conditions, any of which may be waived by the Company:

(a) The Investor or its Affiliates shall have executed the VOWST Acquisition Agreement, all of the conditions to closing under the VOWST Acquisition Agreement shall have been fulfilled (other than the issuance of the Shares hereunder) or waived pursuant to the terms thereof, no breach by the Company of any term of or obligation under the VOWST Acquisition Agreement shall have occurred and be continuing, and the VOWST Acquisition Agreement shall not have been terminated in accordance with its terms.

(b) The representations and warranties made by the Investor in Section 5 hereof shall be true and correct in all material respects as of the Closing with the same force and effect as if they had been made on and as of the Closing. The Investor shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing.

(c) The Investor shall have paid in full its Subscription Amount to the Company for the Shares.

6.3. Termination of Obligations to Effect Closing; Effects.

(a) The obligations of the Company, on the one hand, and the Investor, on the other hand, under this Agreement shall terminate as follows:

(i) Upon the termination of the VOWST Acquisition Agreement;

(ii) Upon the mutual written consent of the Company and Investor;

(iii) By the Company if any of the conditions set forth in Section 6.2 shall have become incapable of fulfillment, and shall not have been waived by the Company; or

(iv) By the Investor if any of the conditions set forth in Section 6.1 shall have become incapable of fulfillment, and shall not have been waived by the Investor;

provided, however, that, except in the case of clauses (i) and (ii) above, the party seeking to terminate its obligation to effect a Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the VOWST Acquisition Agreement if such breach has resulted in the circumstances giving rise to such party's seeking to terminate its obligation to effect such Closing.

(b) Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement.

7. Additional Covenants.

7.1. Board Designee

(a) For so long as the Investor (together with its Affiliates) beneficially owns at least ten percent (10%) of the Company's outstanding shares of Common Stock, the Company shall take such actions within its control to include in the slate of nominees, recommended by the Board of Directors of the company (the "Board") and/or the applicable committee thereof (including the Nominating and Corporate Governance Committee of the Board) for election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected, one individual designated by the Investor (the "Investor Designee").

(b) Any Investor Designee must be qualified to serve as a member of the Board under all applicable legal, regulatory and stock exchange requirements and the Company's policies and guidelines applicable to the Company's directors and the Nominating and Corporate Governance Committee of the Board or any successor committee thereto must have determined that such Investor Designee qualifies to serve as a member of the Board. In the event the Board and/or the applicable committee thereof finds a nominee of the Investor does not meet the criteria to serve as a member of the Board, the Investor shall be entitled to propose a different nominee to the Board within thirty (30) days of the Company's notice to the Investor of its objection to the nominee (which notice should set forth the reason for the Board's objection in reasonable details).

7.2. Lock-Up and Restriction on Transfers. During the period commencing on the Closing and ending on the date that is six (6) months after the Closing (the "Lock-Up Period"), the Investor will not, without the prior written consent of the Company, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, or enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, the Shares or of any interest (including any voting interest) therein (such shares and/or interests, the "Lock-Up Securities"); *provided*, *however*, that the foregoing shall not prohibit (a) the Investor from transferring any Lock-Up Securities to (i) an Affiliate of the Investor or (ii) the Company and (b) the disposition of Lock-Up Securities pursuant to any (i) business combination, consolidation or similar transaction to which the Company is a constituent corporation or (ii) tender offer or exchange offer to be made to all of the holders of Common Shares by a third party (other than a third party acting on behalf of or as part of a group or in concert with the Investor).

7.3. Registration Rights.

(a) The Company shall use its reasonable best efforts to register the resale by the Investor of the Registrable Securities on a registration statement on Form S-3 (or, if Form S-3 is not available to the Company at such time, such other form of registration statement that is available to the Company at such time for registration of the resale of the Registrable Securities) (the "Registration Statement") within ninety (90) days of the Closing Date, and shall use its reasonable best efforts to have the Registration Statement declared effective as soon as practicable, but in no event later than ten (10) Business Days after the SEC has notified the Company that it will not review, or has completed its review, of the Registration Statement, and to keep such Registration Statement effective until the earlier of (i) five (5) years after the Closing Date, or (ii) there are no longer any Registrable Securities.

(b) Notwithstanding anything to the contrary contained herein, the Company may, upon written notice to the Investor, suspend the use of any Registration Statement, including any prospectus that forms a part of a Registration Statement, if the Company (i) determines that it would be required to make disclosure of material information in the Registration Statement that the Company has a bona fide business purpose for preserving as confidential, (ii) the Company determines it must amend or supplement the Registration Statement or the related prospectus so that such Registration Statement or prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the case of the prospectus, in light of the circumstances under which they were made, not misleading or (iii) the Company has experienced or is experiencing some other material non-public event, including a pending transaction involving the Company, the disclosure of which at such time, in the good faith judgment of the Company, would adversely affect the Company; *provided, however,* in no event shall the Investor be suspended from selling the Registrable Securities pursuant to the Registration Statement for a period that exceeds ninety (90) consecutive Trading Days or an aggregate of one hundred twenty (120) Trading Days (which need not be consecutive) in any given three hundred sixty (360)-day period. Upon disclosure of such information or the termination of the condition described above, the Company shall provide prompt notice to holders whose Registrable Securities are included in the Registration Statement, and shall promptly terminate any suspension of sales it has put into effect and shall take such other reasonable actions to permit registered sales of Registrable Securities as contemplated hereby.

8. Miscellaneous.

8.1. Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or the Investor, as applicable; *provided, however,* that the Investor may assign its rights and delegate its duties hereunder in whole or in part to an Affiliate without the prior written consent of the Company, provided such assignee agrees in writing to be bound by the provisions hereof that apply to the Investor. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective permitted successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8.2. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

8.3. Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

8.4. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth below, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 8.4.

If to the Company:

Seres Therapeutics, Inc.
101 Cambridge Park Drive
Cambridge MA 02140
Attention: General Counsel
Email: [***]; [***]

With a copy (which will not constitute notice) to:

Latham & Watkins LLP
200 Clarendon Street
Boston, MA 02116
Facsimile: (617) 948-6001
Attention: Peter N. Handrinos; Wesley C. Holmes
Email: Peter.Handrinos@lw.com; Wesley.Holmes@lw.com

If to the Investor:

Société des Produits Nestlé S.A.
Avenue Nestlé 55
1800 Vevey, Switzerland
Attention: Martin Hendrix and Claudio Kuoni
Email: [***]; [***]

With a copy (which will not constitute notice) to:

Mayer Brown LLP
1221 Avenue of Americas
New York, NY 10020
Attention: David A. Carpenter
Email: dacarpenter@mayerbrown.com

8.5. Expenses. The parties hereto shall pay their own costs and expenses in connection herewith regardless of whether the transactions contemplated hereby are consummated.

8.6. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor.

8.7. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

8.8. Entire Agreement. This Agreement, including the signature pages hereto, constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

8.9. Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

8.10. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof (other than Sections 5-1401 and 5-1402 of the General Obligations Law) that would result in the application of the laws of any other jurisdiction. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement, or in the case of the Investor, by serving the registered agent of Nestlé USA, Inc. in the state of Delaware. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

COMPANY:

SERES THERAPEUTICS, INC.

By: _____
Name: Eric D. Shaff
Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

INVESTOR:

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

By: _____
Name:
Title:

Exhibit 10.2

[***] Certain information in this document has been excluded pursuant to Regulation S-K, Item (601)(b)(10). Such excluded information is both (i) not material and (ii) the type that the Registrant treats as private or confidential.

FORM OF

TRANSITION SERVICES AGREEMENT

By and Between

Seres Therapeutics, Inc.,

and

[Société des Produits Nestlé S.A]

Dated as of [●], 2024

THIS TRANSITION SERVICES AGREEMENT (this "**Agreement**") is dated as of [●], 2024 (the "**Effective Date**"), by and between Seres Therapeutics, Inc., a Delaware corporation ("**Seller**"), and [Société des Produits Nestlé S.A., a *société anonyme* organized under the laws of Switzerland] ("**Purchaser**"). Seller and Purchaser are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**." Capitalized terms used but not defined herein shall have the respective meanings given to them in that certain Asset Purchase Agreement, dated as of August 5, 2024 (the "**Purchase Agreement**"), by and between Seller and Purchaser.

BACKGROUND

A. Seller and Purchaser are parties to the Purchase Agreement, pursuant to which, among other things, Seller has agreed to sell, transfer and assign to Purchaser, and Purchaser has agreed to purchase from the Seller, the Acquired Assets and Seller has agreed to assign to Purchaser, and Purchaser has agreed to assume from Seller, certain Assumed Liabilities.

B. Purchaser acknowledges that Seller and its Affiliates are not in the business of providing the Services to unaffiliated Third Parties but are willing to provide the Services to Purchaser as an accommodation to Purchaser in connection with the execution of, and consummation of the transactions contemplated by, the Purchase Agreement.

C. In connection with the transactions contemplated by the Purchase Agreement, for a certain period after the Effective Date, Seller will perform certain Services (as defined below) for the benefit of Purchaser with respect to the transition to Purchaser of the Acquired Assets.

NOW, THEREFORE, in consideration of the premises and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as set forth herein.

ARTICLE 1

SERVICES

Section 1.01 Provision of Services.

(a) Pursuant to the terms of this Agreement and subject to Section 1.06(b), during the Transition Period (as defined in Section 6.01), Seller shall provide or cause to be provided to Purchaser and its Affiliates the transitional services and perform the transitional activities set forth on Schedule 1 and the services set forth in Appendix C of Schedule 1 that Purchaser requests Seller provide (collectively, the "**Services**").[1]

(b) If either Party identifies any additional service that (i) is not described or included in Schedule 1, (ii) is reasonably necessary for the VOWST Business to continue to operate as conducted on the Effective Date, and (iii) was provided to the VOWST Business by Seller or its Affiliates (other than by the Transferring Employees) during the six (6) month period immediately prior to the Effective Date (an "**Omitted Service**"), then, at Purchaser's request, the Parties will amend the Services as set forth on Schedule 1 to add such Omitted Service on terms to be mutually agreed in good faith between the Parties consistent with terms of this Agreement, including the scope of Omitted Services, Services Fees (including FTE Costs, fixed non-labor costs), Out-of-Pocket Costs and related duration (which in no event will exceed the Transition Period immediately prior to the addition of such Omitted Service as a Service hereunder). The Services Fees and Out-of-Pocket Costs for any Omitted Service shall, in each case, be provided to Purchaser without profit or markup. Upon execution of such amendment, the Omitted Services shall constitute "Services" under this Agreement. Any such amendment shall be consistent with the terms of this Agreement.

[1] **Note to Draft**: Parties (i) to discuss changes to the TSA Services Schedules in good faith between signing and closing and (ii) to make such changes thereto to the extent reasonably necessary or appropriate for the continued operation of the Vowst Business following Closing.

(c) The Parties may, in accordance with the procedures specified in this Section 1.01: (i) agree to modify the terms and conditions relating to the performance of a previously agreed-upon Service in order to reflect, among other things, new procedures or processes for providing such Service or increased Services Fees (which in all cases shall be based on Seller's or its Affiliates' FTE Costs and out-of-pocket costs to provide such Services, without a markup), including but not limited to Seller's right, from time to time, to upgrade, customize, enhance, supplement, modify, replace, substitute or otherwise change any of the Services (a "**Service Modification**"), or (ii) agree upon terms and conditions related to the provision of services that are in addition to any of the previously agreed-upon Services and are not Omitted Services (an "**Additional Service**"). Seller shall not be required to implement any Service Modification or Additional Service except as set forth in this Section 1.01.

(d) In the event either of the Parties desires a Service Modification or an Additional Service (in each case, a "**Change**"), the Party requesting the Change will deliver a written description of the proposed Change (a "**Change Request**") to the other Party's Project Manager.

(e) Unless the Party receiving the Change Request agrees to implement the Change Request as proposed, the Project Managers will meet in person or by telephone to discuss and consider in good faith the Change Request no later than ten (10) Business Days after delivery of the Change Request to the other Party.

(f) Each Party's Change Requests must be approved by both Parties in writing before the Change may be implemented in accordance with Section 1.01(d), such approval not to be unreasonably withheld, conditioned, or delayed. The Parties agree that it is not unreasonable to: (i) withhold such consent to the extent that such proposed Change would materially adversely affect Seller's operations or business continuity or Purchaser's receipt of the Services (including any adverse effects to either Party regarding care, quality, priority timeliness, volume, amount, scope, detail and skill) after giving effect to the Change Request, or (ii) condition such consent on Purchaser agreeing to reimburse Seller for any costs incurred by Seller to implement or accommodate such Change. In addition, notwithstanding the foregoing, Seller may, in Seller's sole discretion, make Changes to the extent required as a result of a change in applicable Law.

(g) Subject and without prejudice to Seller's obligations to perform the Services in accordance with Section 1.03 and Section 1.04, Seller may make changes from time to time in the manner of performing the Services if (i) performing the Services materially and adversely affects any of Seller's other obligations and commitments (including its and its Affiliates' business operations) or (ii) Seller can no longer provide a Service using the same resources and capabilities that Seller uses in its ordinary course of Seller's business outside of the Services; provided, however, that, with respect to the foregoing, Seller shall provide Purchaser with reasonable advance prior written notice of any such changes promptly, and in such case shall discuss such changes in good faith with Purchaser and shall work together with Purchaser to devise and perform a mutually acceptable alternative arrangement for the provision of the impacted Service and provided that any increase in costs of providing the Services as a result of the change shall be for the sole account of Seller.

(h) Notwithstanding anything to the contrary herein, neither Seller nor any of its Affiliates will be required to perform or to cause to be performed any Service (a) for the benefit of any Person other than Purchaser, its Affiliates, its sublicensees or its suppliers or service providers; or (b) that exceed the scope of the services provided by Seller or its Affiliates to the Acquired Assets immediately prior to the Effective Date, unless otherwise agreed in writing by the Parties.

(i) Each Party represents that it has obtained and will maintain, and has caused and will cause each of its affiliates, subcontractors and licensees (including Seller Affiliate and Subcontractor), if applicable, to obtain and maintain, in full force and effect all licenses, registrations, and permits required to perform its obligations under this Agreement. Each Party shall inform the other Party within [***] should any such license, registration or permit be withdrawn or if any regulatory authority initiates any enforcement action against a Party or any of its affiliates, subcontractors or licensees with respect to any obligation to perform hereunder.

Section 1.02 Duration of Services. During the Transition Period (as defined in Section 6.01), and in consideration of Purchaser's payment of Services Fees in accordance with Article 2, Seller shall provide or cause to be provided to Purchaser, subject to the terms and conditions of this Agreement, each Service for the time period associated with such Service set forth on Schedule 1 (each, a "**Service Period**").

Section 1.03 Services Performed by Affiliates and Subcontractors. Seller shall have the right, but not the obligation, to perform any Service itself or through any Affiliate of Seller or through any Subcontractor that Seller engaged to provide such Service in the course of Seller's operation of the VOWST Business or facility immediately prior to the Effective Date; provided, however, that (a) designation of any such Affiliate or Subcontractor shall not limit or diminish the obligations of Seller, and Seller shall in all cases retain responsibility for the provision to Purchaser of the Services in accordance with this Agreement, (b) the use of any Affiliate or Subcontractor shall not increase any fees or other amounts payable by Purchaser (or its Affiliate) (as compared to the amount of fees or other amounts payable for use of such Affiliate or Subcontractor immediately prior to the Effective Date) except to the extent there is an increase in the actual Services Fees and Out-of-Pocket Costs incurred by Seller in the provision of such Services, without a markup, and (c) Seller shall provide reasonable prior written notice to Purchaser of such designation.

Section 1.04 Performance Standard.

(a) Seller shall provide, and cause its Personnel to provide, each Service in a professional and workmanlike manner and in accordance with all Specifications set forth in the BLA and other Acquired Regulatory Approvals, to the extent applicable to a Service, using knowledgeable, skilled and qualified Personnel who have not been disbarred or otherwise sanctioned by a Regulatory Authority, with substantially the same degree of skill, quality, volume, scope, detail and care as its past practice in performing or causing to be performed the Services for the VOWST Business during the six (6) month period prior to the Effective Date (except to the extent changes in the provision of Services are necessary due to Purchaser's acts or omissions), in each case, in accordance with industry standards, applicable guidelines and processes (but in all cases with at least reasonable care and at least in the manner and at the levels that Seller provides, or causes to be provided, similar services for itself and its Affiliates), and, solely in the case of the PRMS Services performed by Seller (which, for the avoidance of doubt, shall not include any Services performed by any Transferring Employee that is no longer an employee of Seller as of the Effective Date, regardless of whether such Transferring Employee use Seller's payroll system after the Effective Date), in accordance with the PRMS Services Quality Standards set forth in the Quality Agreement (collectively, the "**Services Standard**"), except as such Services differ because of the need to follow corporate formalities or to keep Acquired Assets separate from other data or by virtue of the transition of responsibility for the Services to Purchaser or its Affiliates. Notwithstanding the foregoing, nothing in this Agreement shall require Seller to favor Purchaser's operation of the Acquired Assets over Seller's own business operation.

(b) Under no circumstances shall either Party or its respective Representatives, Personnel, Affiliates or Subcontractors be held accountable to a greater standard of care or skill than the Services Standard. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY LAW, EACH SERVICE PROVIDED BY SELLER TO PURCHASER PURSUANT TO THIS AGREEMENT IS FURNISHED WITHOUT CONDITION, WARRANTY OR OTHER TERM OF ANY KIND, EXPRESSED OR IMPLIED. NEITHER PARTY NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH SERVICE AND ALL IMPLIED TERMS, WHETHER IMPLIED BY CUSTOM, STATUTE, COURSE OF DEALING OR OTHERWISE (INCLUDING ANY TERM OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY EXCLUDED, IN EACH CASE, EXCEPT AS OTHERWISE SPECIFICALLY CONTEMPLATED BY THIS AGREEMENT.

Section 1.05 Transition Management; Disputes.

(a) General. Purchaser acknowledges and agrees that each Service provided by Seller hereunder is intended only to be transitional in nature and shall be furnished by Seller only during the Transition Period and solely in connection with the sale and transfer of Acquired Assets under the Purchase Agreement.

(b) Transition Management. The Parties shall establish a transition steering committee (the "**TSA Steering Committee**"), consisting of a mutually agreed upon number of representatives of each Party. The Parties agree that, at all times during the Transition Period, the TSA Steering Committee shall serve as transition management with respect to all questions and issues relating to the provision and receipt of the Services. Each Party shall appoint one (1) of its representatives on the TSA Steering Committee as a project manager (a "**Project Manager**"). Each Party's Project Manager shall have responsibility for overseeing such Party's day-to-day activities under this Agreement and will be authorized to act for and on behalf of the appointing Party concerning all matters relating to this Agreement. Each Party may change its designated Project Manager at any time by providing notice to the other Party. All Project Managers shall have the requisite skills, knowledge, experience and authority to discuss, coordinate and make arrangements with respect to the applicable Services. The TSA Steering Committee shall meet in-person, telephonically or by videoconference once per month during the Transition Period, or as otherwise mutually agreed by the Parties. Attendance of each Party's Project Manager at each such meeting is required. The Project Managers shall meet telephonically on a weekly basis in between the TSA Steering Committee meetings. The Parties shall host meetings for each Service function either in-person, telephonically or by videoconference at least twice per month during the Transition Period. Such meetings shall be attended by respective representatives of each Party for each Service function. In furtherance of the foregoing, the Parties shall collaborate in good faith to generate a detailed plan for (x) the transition of the Acquired Assets in accordance with any applicable terms of this Agreement, the Purchase Agreement and the Cross-License Agreement and (y) the transition of the Services from Seller to Purchaser. If the TSA Steering Committee is unable to reach unanimous decision on a particular matter within a reasonable period (not to exceed thirty (30) days, unless extended by mutual agreement of the Parties) following the TSA Steering Committee meeting, then the matter will be referred to, as appropriate, Seller's Chief Executive Officer, Chief Financial Officer, Chief Technology Officer, or other senior officers and Purchaser's Chief Executive Officer, Chief Operations Officer/Chief Technology Officer, Chief Medical Officer, or other senior officers, depending on the subject matter of the dispute (the "**Senior Officers**"), which Senior Officers will have authority to settle the dispute and shall be charged with resolving such dispute, who will use good faith efforts to resolve such matter after the matter is submitted to them for resolution in accordance with Section 1.05(c).

(c) Prior to initiating any legal action in accordance with Section 8.06, any dispute, controversy or claim arising out of, relating to or otherwise in connection with the Services or this Agreement, or the breach, termination, or validity thereof (each, a "**Dispute**"), shall be submitted first to the relevant Senior Officers of each Party, and the Senior Officers shall seek to resolve such Dispute through informal, good-faith negotiation. In the event that any Dispute is not resolved by the Senior Officers within twenty (20) Business Days after the claiming Party notifies the other Party of the Dispute (during which time the Senior Officers shall meet in person or by telephone as often as reasonably necessary to attempt to resolve the Dispute), either Party may bring an action in accordance with Section 8.06 to resolve the Dispute.

Section 1.06 Cooperation. Each Party will use commercially reasonable efforts to cooperate in a professional and workmanlike manner with the other Party to the extent necessary to assist the other Party in performance of its obligations under this Agreement, including with respect to the provision and receipt of Services. Such cooperation shall include exchanging or providing information, Raw Materials, and SRM reasonably necessary for the provision or receipt of Services hereunder and the performance of such other duties and tasks as may be reasonably required for the provision or receipt of Services, subject to each Party's obligations herein including Article 4. Each Party shall, and shall cause its Personnel and Affiliates to, comply, in all material respects, with all Laws which may be applicable to the Services. Each Party shall be responsible for its Personnel adhering to any health, safety and security regulations and other published policies of the other Party notified to such Party when given access to any equipment, computer, software, network or other files owned or controlled by the other Party. Without limiting the generality of the foregoing sentence:

(a) Each Party agrees that, subject to applicable Law, it shall provide such reasonable access during regular business hours (or otherwise upon reasonable prior notice) to such premises, computer systems, data, Raw Materials, SRM and Personnel as are necessary for providing or receiving the Services, and records as reasonably requested by a Party to facilitate such Party's provision or receipt of the Services. Unless otherwise agreed to in writing by the Parties, each Party will: (i) use the premises, computer systems, data, Raw Materials, SRM and Personnel of the other Party solely for the purpose of providing or receiving the Services; (ii) limit such access to those of its Personnel with a bona fide need to have such access in connection with the Services and who have been duly approved in writing by the receiving Party, such approval not to be unreasonably withheld, conditioned or delayed, to have such access: and (iii) comply, and cause its employees, Subcontractors and Third Party service providers to comply, with all policies and procedures governing access to and use of such premises, computer systems, data, Raw Materials, SRM and Personnel made known to such Party in advance. All user identification numbers and passwords disclosed by a Party to the other Party and any information obtained by either Party as a result of such Party's access to and use of the other Party's computer systems shall be deemed to be, and treated as, Confidential Information of the disclosing Party hereunder in accordance with the provisions set forth in Article 4, with the same degree of care as such receiving Party uses for its own information of a similar nature, but in no event a lower standard than a reasonable standard of care. The Parties shall cooperate in good faith in the investigation of any apparent unauthorized access to any premises, computer system, data, Raw Materials, SRM and/or Personnel of either Party. These provisions concerning access to premises, computer systems, data, Raw Materials, SRM or Personnel shall apply equally to any access and use by a Party of the other Party's electronic mail system, electronic switched network, either directly or via a direct inward service access or calling card feature, data network or any other property, equipment or service of the other Party, and any software that may be accessible by either Party in connection with this Agreement.

(b) Seller shall be excused from performing any obligation under this Agreement, nor shall Purchaser be excused from making Installment Payments in accordance with Section 3.1(b) of the Purchase Agreement, if Purchaser fails to perform its obligations under this Agreement, including but not limited to Purchaser's failure to provide cooperation as set forth in this Section 1.06, a failure by Purchaser to deliver to Seller all SRM that is reasonably necessary by Seller to manufacture PRMS for the PRMS Services, and a failure by Purchaser to perform quality control testing of PRMS in order to support the release of PRMS for drug substance manufacturing, in each case, solely (i) to the extent such failure to perform by Purchaser was not caused by Seller's material breach of or failure to perform its obligations under this Agreement, (ii) to the extent that such failure prevents Seller's performance of such obligation after using commercially reasonable efforts to perform and (iii) until such time as such failure to perform by Purchaser has been remedied or cured. Seller shall notify Purchaser within ten (10) Business Days of its discovery of such failure. Where Purchaser fails to perform its obligations under this Agreement, and if as a result of such failure Seller incurs additional costs in order to perform its obligations hereunder, Seller may recover from Purchaser its reasonable and documented additional costs of performing the relevant obligations hereunder incurred as a result of Purchaser's failure.

(c) Concurrently with the execution of this Agreement, the Parties shall amend and restate the Quality Agreement to reflect the PRMS Services being provided.

Section 1.07 Third Party Consents.

(a) Seller shall use its commercially reasonable efforts to obtain any Contract, license (including any modification to, extension or renewal of, or replacement for an existing license), or consent or waiver under its own Contracts entered into with any Third Party and that pertain to any software, equipment, systems or other materials or associated services required in connection with performance or receipt of the Services under this Agreement (each, a "**Required Consent**"); provided, that if, in order to obtain any Required Consent, costs or expenses must be incurred, the costs and expenses incurred to obtain Required Consents required by Seller in connection with its performance of the Services shall be solely borne by Purchaser and constitute Allowable Expenses under the Purchase Agreement. Purchaser shall use its commercially reasonable efforts to cooperate with the Seller in obtaining such Required Consents from Third Parties.

(b) If, despite using commercially reasonable efforts, Seller is unable to obtain a Required Consent hereunder, Purchaser and Seller shall work together in good faith to develop a mutually acceptable alternative arrangement that is sufficient to enable Seller to provide, and Purchaser to receive, the Services without such Required Consent. Purchaser shall bear the costs and expenses of such alternative arrangement incurred by either Party, as applicable, which costs and expenses shall constitute Allowable Expenses under the Purchase Agreement to the extent the costs of the Service to which such alternative arrangement relates are included in Allowable Expenses pursuant to the Purchase Agreement. If such alternative arrangement cannot be agreed upon by Purchaser and Seller or is required for a period longer than thirty (30) days following the Effective Date, either Party may request that the affected Services be terminated, in which case the Services Fees and Out-of-Pocket Costs for such Services, if any, shall be equitably adjusted to account for such terminated Services, reflecting the actual FTE Costs and Out-of-Pocket Costs incurred by Seller. Seller shall have no obligation (and no Liability for failing) to provide (or cause the provision of) a Service for which a Required Consent has not been obtained, unless and until such Required Consent is obtained, so long as Seller has complied with this Section 1.07.

(c) Purchaser acknowledges and agrees that any Services provided through or involving Third Parties or using any Intellectual Property owned by a Third Party or systems or facilities are subject to the terms and conditions of any applicable Contracts between Seller or its Affiliates or Subcontractors (as applicable) and such Third Parties, as well as compliance with applicable Law. Purchaser shall comply, and shall cause its Affiliates to comply, with the terms and conditions of any such applicable Contracts notified to Purchaser from time to time in all material respects, and with applicable Law in connection with the receipt by Purchaser or its designees of the Services, provided that Seller shall, and shall use commercially reasonable efforts to, and cause its Affiliates and Subcontractors to, provide Purchaser reasonable information in advance with respect to such terms and conditions, subject to any confidentiality obligations under the applicable Contract.

Section 1.08 PRMS Supply.

(a) Manufacturing and supply of PRMS under this Agreement shall solely, in each case, be pursuant to this Section 1.08.

(b) No later than the tenth Business Day following the Effective Date, Purchaser shall provide to Seller a purchase order for PRMS for the entire quantity of PRMS listed in the Demand Plan (the "**Order**"), the quantity of which shall be binding on Purchaser. Orders will be submitted in such form as is mutually agreed upon by the Parties. Seller shall respond to each Order within two (2) Business Days of receipt (or such other date as agreed between the Parties). Unless otherwise agreed by the Parties, Seller shall be obligated to acknowledge the Order which comply with the requirements of this Section 1.08 without proposed amendments ("**Firm Order**"). Seller shall deliver the PRMS for the Firm Order to Purchaser at the delivery schedule as set forth in the Demand Plan.

(c) Upon six (6) months' prior written notice to Seller delivered no later than June 30, 2025, Purchaser may request from Seller up to [***] PRMS batches in excess of the volume contemplated in the Demand Plan (any such excess quantities requested, "**Additional PRMS Batches**"). Seller will use its commercially reasonable efforts to supply the Additional PRMS Batches in accordance with the purchase order by December 31, 2025; provided that, in the event Seller foresees any problem in supplying such Additional PRMS Batches in accordance with a purchase order for Additional PRMS Batches due to either (x) factors beyond its reasonable control or (y) Seller's other business obligations and commitments (including but not limited to [***]), in each case of (x) and (y) despite such commercially reasonable efforts, Seller shall inform Purchaser, together with a good faith estimate of any overtime or rush charges required for Seller to supply the Additional PRMS Batch in accordance with such purchase order, if applicable, within [***] of its receipt of the request for Additional PRMS Batches, in which case, at Purchaser's written election, (i) Seller shall deliver the Additional PRMS Batches within at least six (6) months of Seller's receipt of the purchase order and Purchaser shall pay the documented and pre-approved overtime or rush charges actually incurred by Seller, if applicable, or (ii) Seller shall deliver the Additional PRMS Batches within at least nine (9) months of Seller's receipt of the purchase order. Other than in the case of Purchaser's election of clause (i) in the immediately preceding sentence, the Additional PRMS Batches shall be provided at the same per-batch cost as set forth in the Demand Plan for the Minimum Requirement.

(d) Without prejudice to the Parties' obligations with respect to the Demand Plan, the Parties shall discuss in good faith any changes in quantity or volume in respect of PRMS that may be requested by either Party.

(e) Notwithstanding anything in this Section 1.08, Purchaser shall be obligated to purchase from Seller no fewer than the amount of PRMS set forth in the Demand Plan ("**Minimum Requirement**"). If at the end of the Service Period for the PRMS Services, the aggregate PRMS amount for all Firm Orders is less than the Minimum Requirement, then Seller shall invoice Purchaser for an amount equal to the difference in quantity between the Minimum Requirement and the aggregate amount of PRMS included in confirmed Firm Orders multiplied by the variable cost per batch stipulated on Schedule 1. Any such amounts so invoiced by Seller shall be paid by Purchaser in accordance with Section 2.04 and Section 2.05.

(f) If Purchaser requests the production of any PRMS batches that are not included in the Minimum Requirement and Additional PRMS Batches, the Parties will discuss in good faith the terms of the production of any such PRMS batches, including the costs of such PRMS batches and delivery timeline.

Section 1.09 PRMS Technology Transfer. During the Transition Period, at Purchaser's request, Seller shall transfer to Purchaser or its designated Affiliate or one or more Third Party contract manufacturers the specifications for materials and documentation in the Control of Seller, its Affiliates or its subcontractors and as reasonably necessary to enable Purchaser or such Affiliate or Third Party contract manufacturers, as applicable, to conduct the PRMS Services. Within ninety (90) days after Purchaser's written request, the Parties shall mutually agree (such agreement not to be unreasonably withhold, delayed or conditioned) on a technology transfer plan consistent with Purchaser's rights set forth in the immediately preceding sentence (the "PRMS Technology Transfer Plan") setting forth a description of the technology transfer services, including the scope of the services, to be provided and the timing and cost of such services, and each Party's obligations in connection therewith. Such costs and expenses related to the PRMS Technology Transfer Plan for the PRMS Services shall constitute Allowable Expenses under the Purchase Agreement. Seller shall not be required to provide technology transfer support (i) outside the scope of the technology that Seller or its Affiliates or subcontractors Control, (ii) outside the scope of the PRMS Technology Transfer Plan, or (iii) after the Transition Period.

Section 1.10 Regulatory Audits. Each Party shall provide access to, and cooperate fully with, any Governmental Entity with respect to any matter involving the Services performed under this Agreement. Such access will occur upon reasonable advance written notice (provided by such Party to the other Party) during normal business hours unless otherwise required by a Governmental Entity. Each Party shall also require that its Subcontractors or Affiliates performing such Party's obligations hereunder provide such access and cooperation with any Governmental Entity. Following receipt of a written notice of inspection or audit observation of such Governmental Entity (a copy of which the audited Party will immediately provide to the other Party), the audited Party shall prepare the response to any such observations and shall provide a copy of such response to the other Party. To the extent allowed under the applicable Law, the audited Party shall permit a Representative of the other Party to observe such inspection or audit at such facility.

Section 1.11 Exclusions. Notwithstanding anything herein to the contrary, but without prejudice to Seller's obligations to perform the Services in accordance with Section 1.03 and Section 1.04, in no event will Seller or any of its Affiliates or Subcontractors be (a) obligated to provide (or cause the provision of) any Services that would be unlawful for Seller to provide or that would require Seller to violate applicable Law; (b) prevented from determining, in its sole discretion, the individual Personnel who will provide a Service; (c) obligated to hire any additional Personnel to perform a Service or maintain the employment of any specific Personnel; (d) obligated to hire replacements for Personnel who resign, retire or are terminated and are not necessary for the provision of Services to be performed in accordance with the performance standard set forth in Section 1.04(a); provided, that Purchaser shall bear all costs and expenses associated with hiring replacements for any Personnel who are necessary for the provision of Services to be performed in accordance with the performance standard set forth in Section 1.04(a) and resigned, retired or were terminated for cause, which costs and expenses shall constitute Allowable Expenses under the Purchase Agreement and be deemed to be period expenses and, accordingly, not costs which are capitalized as part of a Product cost; (e) obligated to enter into retention agreements with Personnel or otherwise provide any incentive beyond payment of regular salary and benefits; (f) prevented from transferring after the Effective Date any Personnel who were supporting the Acquired Assets immediately prior to the Effective Date to support other products for Seller or its Affiliates or Subcontractors or to assume other roles with Seller or its Affiliates or Affiliates to the extent such Personnel is not required to provide a Service; (g) obligated to purchase, lease or license any additional equipment or software the cost of which is not reimbursed by Purchaser; or (h) subject to Section 1.07, obligated to enter into new or additional written contracts or agreements with Third Parties or take any actions that would result in the breach of any Third Party contracts or agreements of Seller.

Section 1.12 Separation Planning. As soon as reasonably practicable after the Effective Date, the Parties shall reasonably and in good faith collaborate with respect to a plan for the separation of data, systems, and functions relating to the Services, and the associated details of the separation activities of the Parties (setting out all the milestones to be taken (and the corresponding timings thereof) of the separation) (the "**Separation Plan**"). Such Separation Plan will provide that any costs and expenses related to the integration of any data, systems, and functions relating to the Services shall be borne by Purchaser and any costs related to the separation of any data, systems, and functions relating to the Services shall be borne by Seller. The Parties shall discuss and determine what constitutes integration costs and separation costs in good faith. Each Party shall inform the other Party of any developments or changes (including as a result of the termination of any Service hereunder) that would reasonably be expected to impair such Party's ability to adhere to the Separation Plan, and in such event, shall update the Separation Plan. During and after the development of the Separation Plan, the Parties shall collaborate and negotiate in good faith to determine how to reduce and discontinue portions of Services that may no longer be necessary, and similarly to reduce and eliminate any Service Fees and Out-of-Pocket Costs regarding the same.

ARTICLE 2

COMPENSATION

Section 2.01 **Services Fees**. In consideration for the performance of the Services, Purchaser shall pay to Seller (a) for PRMS Services, the fixed cost per month and variable costs per PRMS Batch as set forth on Schedule 1; and (b) for all other Services, the fixed FTE Costs, fixed non-labor costs and other costs designated as "Service Fees" set forth on Schedule 1 (collectively, the "**Services Fees**").

Section 2.02 **Out-of-Pocket Costs**. In connection with Seller's performance of the Services and without duplication of any expenses included in the Services Fees and unless specified otherwise in Schedule 1, Purchaser shall reimburse Seller (upon receipt of applicable receipts and other reasonable supporting documentation if requested by Purchaser) for all reasonable Out-of-Pocket Costs (excluding the fixed non-labor costs set forth on Schedule 1 and any Out-of-Pocket Costs with respect to any Service indicated to be provided "at no cost" in Schedule 1) actually incurred by Seller or its Affiliates or Subcontractors in connection with performance of any such Service by Seller or its Affiliates or Subcontractors, including but not limited to the pass-through portion of the costs included as Estimated Pass Through costs on Schedule 1, which amounts are Seller's good-faith estimates as of the date hereof, provided, however, that, other than any such Out-of-Pocket Costs incurred at the direction of Purchaser, its Affiliate or their respective employees (including but not limited to Transferring Employees), Seller shall obtain the written approval of Purchaser (such approval not to be unreasonably withheld, conditioned or delayed) for any such Out-of-Pocket Costs not included in the Estimated Pass Through Costs for the applicable Service that exceeds [***] in any calendar month. Seller shall submit all such Out-of-Pocket Costs to Purchaser, together with reasonable documentation supporting such Out-of-Pocket Cost, with the invoice for the related Services. For clarity, such Out-of-Pocket Costs shall include: (a) any amounts paid to Third Parties and reasonably necessary for the provision of the Services (including costs incurred by Seller or its Affiliates or Subcontractors under Third Party contracts or agreements reasonably necessary to provide any such Service); (b) fees associated with securing any consents required from Third Party contractors, provided that such fees for securing any such consents required by Seller in connection with its performance of the Services shall be solely borne by Purchaser and constitute Allowable Expenses under the Purchase Agreement and payments shall be determined in accordance with Section 3.5 of the Purchase Agreement; (c) shipping and transportation costs (including the cost of any insurance related thereto), including duties and other related Indirect Taxes in accordance with Section 2.07(a); (d) out-of-pocket costs or expenses incurred with Third Parties by Seller, its Affiliates or Subcontractors for the extraction, conversion and transfer of data; (e) reasonable documented and pre-approved travel-related costs, provided that, if Purchaser does not pre-approve such travel-related costs, Seller shall not be required to provide the relevant part of the such Service for which such travel is required; and (f) any other out-of-pocket costs and expenses incurred with Third Parties and pre-approved by Purchaser as reimbursable.

Section 2.03 **Invoicing**. For the provision of the Accounts Payable Services, Seller shall notify Purchaser of any invoices for Accounts Payable Services ("**AP Invoices**"), upon processing of such invoices and selection for payment, for Purchaser's approval in accordance with Seller's normal business practices. Purchaser shall approve payments for such invoices, in writing (which can constitute an email), promptly. Seller shall provide a report to Purchaser of all AP Invoices paid by Seller, each week or every other week if Purchaser requests Seller to make vendor payments every other week. For the provision of all other Services and for any Out-of-Pocket Costs for all Services, Seller shall, on a calendar monthly basis, invoice Purchaser for the Services Fees payable pursuant to Section 2.01 and Out-of-Pocket Costs payable pursuant to Section 2.02 and incurred during the previous month (i.e., in arrears).

Section 2.04 **Due Date**. Purchaser shall pay any invoice for Services Fees and Out-of-Pocket Costs for Services incurred pursuant to Section 2.03 promptly but in no event later than thirty (30) days after the date of Purchaser's receipt of such invoice. Purchaser shall reimburse Seller via wire transfer for all AP Invoices within two (2) Business Days of Seller notifying Purchaser that Seller has paid such invoice, which have been previously approved by Purchaser in writing pursuant to Section 2.03.

Section 2.05 **Payments.** All payments shall be in United States Dollars. Each such payment shall be made by wire transfer of immediately available funds to such bank account as shall have been notified in writing to Purchaser by Seller. If any payment due to Seller under this Agreement is not paid when due, then Purchaser shall pay interest thereon at an annual rate (but with interest accruing on a daily basis) equal to two (2) percentage points above the U.S. prime interest rate, as reported by The Wall Street Journal (New York edition) for the first Business Day of such month, such interest shall be accrued daily and run from the date on which payment of such sum became due until payment thereof in full together with such interest. Except as permitted by Section 2.06, the Parties acknowledge that there is no right of offset regarding any payments owed or payable hereunder.

Section 2.06 **Right to Offset.** Each Party shall have the right to offset any amounts due and payable by such Party to the other Party under this Agreement, the Purchase Agreement or the other Ancillary Agreements, against any amounts owed by the other Party to such Party under this Agreement, the Purchase Agreement or the other Ancillary Agreements (other than any amounts disputed in good faith by the other Party).

Section 2.07 **Taxes**.

(a) General. Purchaser shall bear any and all sales, use, excise, value added and other similar Taxes (and any related interest and penalties) imposed on, or payable with respect to, any Services Fee or Out-of-Pocket Costs payable by Purchaser to Seller ("**Indirect Taxes**") pursuant to this Agreement, following the receipt of an invoice in the appropriate form from Seller in respect of such Services Fee or Out-of-Pocket Costs and separately itemizing the Indirect Taxes on each invoice where applicable. For the avoidance of doubt, Seller will not include Indirect Taxes on any such invoice to the extent that Purchaser provides Seller with a valid and timely exemption certificate or other information in a form reasonably acceptable to Seller, indicating that: (i) Purchaser is exempt from such Indirect Taxes, or (ii) such Indirect Taxes are inapplicable and the basis therefor. Purchaser shall pay to Seller or the applicable Governmental Entity, in accordance with applicable Tax Laws, any Indirect Tax no later than the due date of the payment of such Indirect Tax. Seller will issue invoices for all amounts due under this Agreement consistent with applicable Indirect Tax Laws.

(b) Withholding Tax. Purchaser shall be entitled to deduct and withhold from any payments made pursuant to this Agreement any withholding Taxes or other amounts required to be deducted or withheld under any applicable federal, state, local or foreign Tax law. To the extent that any such amounts are so deducted or withheld and paid over to the applicable Governmental Entity, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made. As soon as practicable after any deduction or withholding is made, Purchaser shall deliver to Seller the original or copy of the official receipt issued by the relevant Governmental Entity evidencing such payment, supporting calculations of such amounts and other evidence of such payment reasonably satisfactory to Seller. Purchaser shall provide, at least five (5) Business Days prior to the date of the applicable payment (or, in the case that Purchaser becomes aware of the requirement to so deduct and withhold fewer than five (5) Business Days prior to the date on which such deduction or withholding is required, promptly upon becoming so aware), written notice of any deduction or withholding it believes is applicable in connection with this Agreement to Seller. The Parties agree to reasonably cooperate to apply for any exemption from, or reduction in, any withholding amounts described in this Section 2.07(b).

(c) Cooperation. Seller and Purchaser shall take reasonable steps to cooperate to minimize the imposition of, and the amount of, taxes described in this Section 2.07, provided that nothing in this Section 2.07(c) will obligate a Party to cooperate with, or assist, the other Party in any arrangement proposed by the other Party that would, in the cooperating Party's reasonable discretion, have a detrimental effect on the cooperating Party or any of its Affiliates with respect to taxes.

Section 2.08 Amounts in Dispute. Each Party agrees that it will, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any amounts with respect to the Services Fees hereunder is being disputed in good faith. Any invoiced amounts which Purchaser does not dispute in good faith must be paid in accordance with the terms of Section 2.04. Purchaser may withhold any invoiced Services Fee or Out-of-Pocket Costs that it disputes in good faith until such time as such dispute is resolved in accordance with the terms of this Agreement, provided that in the event of resolution of such dispute, any amounts owed by Purchaser to Seller in accordance with the resolution of such dispute is due within thirty (30) days of the date of the resolution of such dispute, after which time interest will accrue in accordance with Section 2.04. If Purchaser disputes in good faith the validity of an invoiced Services Fee or Out-of-Pocket Costs, it will notify the Project Managers in writing no later than the date on which payment of an invoice therefor is due under Section 2.04 and the Project Managers will work together and negotiate in good faith to promptly resolve any such disputed Services Fee or Out-of-Pocket Costs, provided that if the Project Managers are unable to resolve such dispute within fourteen (14) calendar days after such written notice is provided to the Project Managers, they will escalate the dispute to the TSA Steering Committee for resolution.

Section 2.09 **Records**. Each Party shall keep and maintain, and shall cause its Affiliates to keep and maintain, complete and accurate records and books of account documenting all expenses and all other data necessary for the calculation of the amounts payable to the other Party under this Agreement consistent with its standard procedures and policies in the ordinary course of business for a period of two (2) years after such transactional data is submitted or such expenses are incurred, unless a longer retention period is required by applicable Law. All financial books and records kept by Seller hereunder shall be maintained in accordance with GAAP, consistently applied.

ARTICLE 3

OWNERSHIP OF INTELLECTUAL PROPERTY AND OTHER ASSETS

Section 3.01 **No Transfer of Ownership; Delivery**. Except as expressly set forth herein or in the Purchase Agreement or the Cross-License Agreement, this Agreement and the performance of the Services hereunder shall not affect the ownership of any Intellectual Property Rights or other assets of any Party to this Agreement. Except as expressly set forth herein or in the Purchase Agreement or the Cross-License Agreement, neither Party will obtain, by virtue of this Agreement or the Services hereunder, by implication or otherwise, any rights of ownership or use of any property or Intellectual Property Rights owned or otherwise Controlled by the other Party. In addition, except as expressly set forth herein, under no circumstances shall Seller be obligated to deliver or provide to Purchaser, or otherwise make available or provide Purchaser access to, any item (including any data, contract, report, diagram or other such information or writing) which Seller is not otherwise obligated to provide to Purchaser under the terms of the Purchase Agreement or the Cross-License Agreement.

Section 3.02 **Ownership of Background Know-How and Confidential Information**. As between the Parties and except for the licenses, rights and obligations granted in this Agreement, the Purchase Agreement and the Cross-License Agreement, each Party shall solely and exclusively own and retain all right, title and interest in and to (i) Know-How and Confidential Information that such Party owned or Controlled immediately prior to the Effective Date, (ii) Know-How and Confidential Information developed or acquired, and Controlled, by or on behalf of such Party outside the scope of this Agreement, and (iii) all Intellectual Property Rights in and to any of the foregoing (collectively, "**Background IP**"). To the extent there is any conflict between this Agreement and the Cross-License Agreement, the terms of the Cross-License Agreement shall control; and to the extent there is any conflict between this Agreement and the Purchase Agreement, the terms of the Purchase Agreement shall control.

Section 3.03 **Ownership of Know-How, Confidential Information and Services Inventions**. As between the Parties and except for the licenses granted in this Agreement and the Cross-License Agreement, Purchaser solely and exclusively owns and retains all right, title and interest in and to (a) Know-How, (b) Confidential Information, and (c) any inventions, in each case of (a), (b), and (c), arising out of performance of the Services, and all Intellectual Property Rights therein (such inventions and Intellectual Property Rights, "**Services Inventions**" and (a)-(c) together with Purchaser's Background IP collectively, "**Purchaser Owned Items**"). To the extent Seller has any right, title or interest in or to any Services Inventions, Seller shall irrevocably and unconditionally assign and transfer to Purchaser all such right, title and interest in and to such Services Inventions, without further consideration. Seller shall, at Purchaser's reasonable request and at Purchaser's sole cost and expense, execute and deliver such instruments and take such other reasonable actions as may be requested by Purchaser to perfect, prosecute, maintain or otherwise protect Purchaser's rights in Services Inventions. All copyrightable Purchaser Owned Items shall be considered "works made for hire" within the meaning of the United States Copyright Law, as applicable, owned by Purchaser. In the event any such Purchaser Owned Items is for any reason or in any jurisdiction determined not to be a "work made for hire" or title to any such Work Product may not vest in Purchaser or its Affiliates by operation of Applicable Law or otherwise, Seller shall provide, and require its Affiliates and Subcontractors to provide, to Purchaser reasonable cooperation and assistance to protect and perfect the rights, at Purchaser's reasonable request and at Purchaser's sole cost and expense, set forth in this Section 3.03.

Section 3.04 **Limited License to Seller**. Subject to the terms and conditions of this Agreement, during the term of this Agreement, Purchaser hereby grants to Seller (and solely to the extent necessary for Seller to provide the Services, to Seller's Affiliates and Subcontractors), a non-exclusive, worldwide, non-transferable, revocable, fully paid-up, royalty-free license to those Purchaser Owned Items that are necessary for Seller, and such of its Affiliates or Subcontractors necessary for Seller to provide the Services, (i) to provide the Services and (ii) to access and use Purchaser Owned Items, in each case of (i) and (ii), in accordance with this Agreement and solely during the Transition Period.

ARTICLE 4

CONFIDENTIALITY

Section 4.01 Each Party (the "**Receiving Party**") agrees that all materials, documents and information furnished or obtained in connection with or as a result of this Agreement or performance or receipt of Services hereunder that is the confidential, non-public or proprietary material, document or information of the other Party (the "**Disclosing Party**") or its Affiliates, regardless of the form or format of the information (whether written, verbal, electronic or otherwise) or the manner or media in or through which it is furnished or otherwise obtained, together with all derivative works of such materials, documents and information, is and shall be considered as confidential information of the Disclosing Party (collectively, the "**Confidential Information**") and the sole property of the Disclosing Party. Except as permitted by the Cross-License Agreement, the Purchase Agreement or this Agreement, the Receiving Party agrees to hold such Confidential Information in strict confidence and shall disclose the Confidential Information to the Receiving Party's Personnel or other Representatives only on a need-to-know basis and only if the Receiving Party's Personnel or other Representatives are bound and obligated by written obligations of confidentiality at least as restrictive as those in this Article 4; provided that the Receiving Party will have no obligations with respect to any Confidential Information that (a) is now or later becomes publicly available through no fault of the Receiving Party, (b) the Receiving Party obtains from a Third Party having no preexisting confidentiality obligation or commitment to the Disclosing Party with respect to such information and having the legal right to disclose same, or (c) the Receiving Party already has in its possession as indicated in its written records and was not acquired directly or indirectly from the Disclosing Party; provided further that (i) none of these exclusions shall apply to Personal Data, which shall remain Confidential Information (even if such exclusions would otherwise seem to apply to such Personal Data), (ii) if Seller is the Receiving Party and Purchaser is the Disclosing Party, then the foregoing clause (c) exclusion in this Section 4.01 shall not apply to information, data and materials primarily related to the Acquired Assets and such information is and shall remain Confidential Information of Purchaser, and (iii) if Seller or its Affiliate is the Disclosing Party, any Confidential Information contained in the Acquired Assets or the Assumed Liabilities that Seller provides to Purchaser under this Agreement is and shall be Confidential Information of Purchaser. The Receiving Party further agrees to take the same care with the Disclosing Party's Confidential Information as it does with its own confidential and proprietary information, but in no event less than a reasonable degree of care, including to protect the confidentiality, integrity, and security of the disclosing Party's Confidential Information from unauthorized use, access, intrusion, breach, loss, and alteration and in accordance with applicable data protection Laws. If the Receiving Party or any of its Personnel are required by any Law or pursuant to the applicable terms of a deposition, interrogatory, request for documents, subpoena, order, civil investigative demand or similar judicial process or otherwise or any securities exchange rule, to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall give the Disclosing Party sufficient advance written notice of such requirement to the extent permissible by applicable Law, together with a list of any confidential information intended to be disclosed, to permit the Disclosing Party to seek a protective order or other appropriate remedy with respect to such Confidential Information, and the Receiving Party shall provide, and, if applicable, instruct its Personnel or other Representatives to provide, at the cost of the Disclosing Party, reasonable assistance in seeking such remedy as may be reasonably requested by the Disclosing Party, and thereafter disclose only the minimum portion of such Confidential Information required to be disclosed upon advice of counsel in order to comply with applicable Law.

Section 4.02 Upon written request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party all of the written Confidential Information of the Disclosing Party, as well as all written material which incorporates any Confidential Information of the Disclosing Party, except that one (1) copy of the Confidential Information of the Disclosing Party may be retained by the Receiving Party for archival purposes.

Section 4.03 The Receiving Party acknowledges that the disclosure by the Receiving Party of Confidential Information of the Disclosing Party without the Disclosing Party's express written permission may cause the Disclosing Party irreparable harm and that the breach or threatened breach of this Section may entitle the Disclosing Party to injunctive relief, in addition to any other legal remedies that may be available to it.

Section 4.04 All obligations of confidentiality and non-disclosure set forth in this Article 4 will survive for five (5) years after the expiration of the Transition Period, except that (i) the obligations of confidentiality and non-disclosure shall continue to remain in force indefinitely and not expire as they relate to the trade secrets of either Party, and (ii) the obligations of confidentiality and non-disclosure with respect to any copy of the Confidential Information retained by the Receiving Party pursuant to Section 4.02 shall survive until such information is destroyed by the Receiving Party.

Section 4.05 System Security.

(a) In the event Purchaser is given access to Seller's or its Affiliates' computer systems, software or other information technology infrastructure (collectively, the "**Systems**") in connection with the Services, Purchaser shall comply with Seller's Acceptable Use Policy (the "**Acceptable Use Policy**"), and shall not tamper with, compromise or circumvent any security or audit measures employed by Seller or any of its Affiliates. Purchaser shall access and use only those Systems of Seller and its Affiliates for which it has been granted the right to access and use. Such access to the Systems shall be through secured controlled processes as determined by Seller.

(b) Purchaser shall ensure that only those of its personnel who are specifically authorized to have access to the Systems gain such access and shall prevent any unauthorized access, use, destruction, alternation or loss of or to information contained therein, including by notifying such personnel of the restrictions set forth in this Agreement and the Acceptable Use Policy. Those employees of Purchaser that require access to the Systems may be required by Seller to enter into customary non-disclosure agreements in connection with, and as a condition to, such access. Seller shall not transfer to Purchaser, and Purchaser shall have no rights in or access to, application software or systems source code associated with the Systems.

(c) If, at any time, Purchaser reasonably believes or otherwise determines that any such personnel has sought to circumvent, or has circumvented, the Acceptable Use Policy, that any unauthorized personnel has or has had access to the Systems, or that any such personnel has engaged in activities that may lead to the unauthorized access, use, destruction, alteration or loss of data, information or software of Seller or any of its Affiliates, Purchaser shall immediately terminate any such personnel's access to the Systems and immediately notify Seller. In addition, Seller shall have the right to deny personnel of Purchaser access to the Systems upon notice to Purchaser in the event that Seller reasonably believes that such personnel have engaged in any of the activities set forth above or otherwise pose a security concern. Purchaser shall cooperate with Seller in investigating any unauthorized access to the Systems.

ARTICLE 5

INDEMNIFICATION; LIMITATION OF LIABILITY

Section 5.01 Indemnification by Purchaser. Purchaser will indemnify, defend and hold harmless Seller, its Affiliates and Subcontractors and their respective directors, officers and employees, agents and representatives (collectively, the "**Seller Indemnified Parties**") from and against any and all Damages incurred by any such Seller Indemnified Party arising out of, relating to or resulting from (a) Purchaser's or any of its Affiliates' material breach of this Agreement, (b) Purchaser's or any of its Affiliates' gross negligence, fraud or willful misconduct and (c) Seller's or any of its Affiliates' or Subcontractors' provision of the Services pursuant to and in accordance with this Agreement, except with respect to each of clauses (a), (b) and (c), to the extent that Seller is obligated to indemnify Purchaser for such Damages.

Section 5.02 Indemnification by Seller. Subject to the Cap (as defined in Section 1.01(b), Seller will indemnify, defend and hold harmless Purchaser, its Affiliates and their respective directors, officers and employees, agents and representatives (collectively, the "**Purchaser Indemnified Parties**") from and against any and all Damages incurred by any such Purchaser Indemnified Party arising out of, relating to or resulting from (a) Seller's or any of its Affiliates' material breach of this Agreement (other than a failure to perform the PRMS Services in accordance with the PRMS Services Quality Standards, for which the liability of Seller shall be determined in accordance with (c)), (b) Seller's or its Affiliates' gross negligence, fraud or willful misconduct and (c) Seller's or its Affiliates' or Subcontractor's failure to perform the PRMS Services in accordance with the PRMS Services Quality Standards set forth in the Quality Agreement and performance standards set forth in Section 1.04(a) (except to the extent such failure arises from Purchaser's failure to perform its obligations under Section 1.06(b)), except with respect to each of clause (a), (b) and (c), to the extent that Purchaser is obligated to indemnify Seller for such Damages; provided, however, that Seller shall have no indemnification obligations under this Section 5.02 to any Purchaser Indemnified Party for the acts or omissions of any Transferring Employee that is no longer an employee of Seller as of the Effective Date, regardless of whether such Transferring Employee use Seller's payroll system after the Effective Date.

Section 5.03 Indemnification Procedure.

(a) If a claim for indemnification pursuant to Section 5.01 or Section 5.02 (a "**Claim**") is to be made by an Indemnified Party entitled to indemnification hereunder, the Indemnified Party claiming indemnification shall give written notice to the other Party (the "**Indemnifying Party**") reasonably promptly after the Indemnified Party becomes aware of any fact, condition or event that may give rise to Damages for which indemnification may be sought under Section 5.01 or Section 5.02, or receipt by the Indemnified Party of notice of a claim involving the assertion of a claim by a Third Party that may give rise to Damages for which indemnification may be sought under Section 5.01 or Section 5.02 (whether pursuant to a lawsuit, other legal action or otherwise, a "**Third Party Claim**"). The failure of any Indemnified Party to give timely notice hereunder shall not affect its rights to indemnification hereunder, except to the extent that the Indemnifying Party is actually prejudiced by such failure. The Indemnifying Party shall have thirty (30) days (or such lesser number of days set forth in the notice as may be required by court proceeding in the event of a litigated matter) after receipt of the notice to notify the Indemnified Party that it desires to defend the Indemnified Party against such Third Party Claim. Notwithstanding the foregoing, if such Third Party Claim (i) seeks injunctive, equitable or other relief or remedies that are not money damages against the Indemnified Party, or (ii) involves criminal allegations against the Indemnified Party, then the Indemnified Party shall have the right to control the defense, compromise or settlement of such Third Party Claim with counsel of its choice (and the costs thereof, for the avoidance of doubt, shall constitute Damages for which indemnification may be sought under Section 5.01 or Section 5.02).

(b) If the Indemnifying Party assumes the defense, compromise or settlement of such Third Party Claim, the Indemnified Party shall make available to the Indemnifying Party any documents and materials in its or its Affiliates' possession or control that may be necessary to the defense of such Third Party Claim (provided that the Indemnified Party shall not be required to furnish any such documents or materials which would (in the reasonable judgment of such party upon advice of counsel) be reasonably likely to (i) constitute a waiver of the attorney-client or other privilege held by such party or any of its Affiliates, (ii) violate any applicable Laws or (iii) breach any agreement of such party or any of its Affiliates with any Third Party; provided that such Indemnified Party shall use reasonable best efforts to obtain any required consents and take such other reasonable action (such as the entry into a joint defense agreement or other arrangement to avoid loss of attorney-client privilege) to permit such disclosure) and (b) the Indemnifying Party shall keep the Indemnified Party reasonably informed of all material developments and events relating to such Third Party Claim. The Indemnified Party, at its sole option, may participate in any defense and investigation of such Third Party Claim or settlement negotiations with respect to such Third Party Claim. The fees and disbursements of counsel retained by such Indemnified Party shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, there are legal defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party, or there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to such Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required (and the costs thereof, for the avoidance of doubt, shall constitute Damages for which indemnification may be sought under Section 5.01 or Section 5.02). Except with the written consent of the other Party (not to be unreasonably withheld, conditioned or delayed), neither the Indemnifying Party nor the Indemnified Party shall, in the defense of a Third Party Claim, consent to the entry of any judgment or enter into any compromise or settlement (A) which does not include as an unconditional term thereof the giving to the other Party and its Affiliates by the Third Party of a release from all liability with respect to such suit, claim, action or proceeding, (B) if such judgment, compromise or settlement involves a finding or admission of (x) any violation of Law by the other Party (or any Affiliate thereof) or (y) any liability on the part of the Indemnified Party (or any Affiliate thereof) not indemnified hereunder, or (C) which involves injunctive, equitable or other relief or remedies that are not money damages against the other Party. With respect to Claims other than Third Party Claims, after the giving of any notice of a Claim pursuant to this Section 5.03, the amount of indemnification to which an Indemnified Party shall be entitled under this Article 5 shall be determined (1) by the written agreement between the Indemnified Party and the Indemnifying Party, (2) in accordance with Section 8.05 or (3) by any other means to which the Indemnified Party and the Indemnifying Party shall agree.

Section 5.04 Limitations on Liability.

(a) Neither Party nor any of its respective Affiliates shall be liable to the other Party or any of its Affiliates for any consequential, special, incidental or indirect damages, lost profits, diminution in value, exemplary or punitive damages arising from or in connection with providing or failing to provide a Service, whether such claim is based on contract, tort or warranty (including negligence or strict liability) or otherwise, even if an authorized Representative of such Party is advised of the possibility or likelihood of the same, provided that, for clarity, any such damages arising from or in connection with the indemnification obligations set forth in Section 5.01 or Section 5.02 with respect to Third Party Claims shall be considered direct damages.

(b) Except for any damages arising from or in connection with Seller's reckless or willful misconduct or fraud or breach of Article 4 (Confidentiality), including Exhibit B, the maximum amount for which Seller shall be liable for claims made by Purchaser for Damages with respect to this Agreement (including under Section 5.02), the Services or the transactions contemplated by this Agreement shall not exceed the aggregate amount of Services Fees paid prior to such claim by Purchaser to Seller hereunder (the "**Cap**").

ARTICLE 6

TERM AND TERMINATION

Section 6.01 Term.

(a) This Agreement shall commence on the Effective Date and shall continue in full force and effect until the earlier of (a) the date on which this Agreement is terminated in accordance with this Article 6, (b) the expiration of the last Service Period during which Seller is obligated to provide any Service to Purchaser pursuant to this Agreement, and (c) June 30, 2026 (or, if Seller agrees in writing to continue to provide any Service after such date, the last date through which Seller has agreed to provide any Service) (such period, the "**Transition Period**").[2] Notwithstanding the foregoing and subject to Section 6.01(b): (a) the Service Period for the PRMS Services shall expire on December 31, 2025; and (b) the Service Period for all other Services shall expire as specified in Schedule 1.

(b) For any Service except PRMS Services, upon notice from Purchaser to Seller at least sixty (60) days prior to the expiration of the Service Period for the applicable Service (an "**Extension Notice**"), Purchaser shall have the right to request an extension of such Service Period for up to three (3) additional months; provided that if an Extension Notice relates to a Service that is interdependent with other Services, Purchaser must also extend such interdependent Services, to the extent necessary. Upon receipt of such notice from Purchaser to Seller, Seller shall create and deliver a quote to Purchaser for the estimated amount of Services Fees and estimated Out-of-Pocket Costs for the extended Service; provided that the estimated amount of Service Fees shall not exceed [***] of the past Services Fees for the Service. Thereafter, the Parties will negotiate in good faith the terms of the requested Service Period extension. For the avoidance of doubt, no Service will be extended without the mutual consent of the Parties, such consent not to be unreasonably withheld, conditioned or delayed. If the extension of a Service Period would cause such Service Period to continue after the end of the Transition Period, the Transition Period shall automatically be extended until the end of such Service Period (as extended).

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[2] **Note to Draft**: The Service Periods set forth in Schedule 1 are based on an assumed Closing Date on or around September 30. To the extent the Closing is delayed, the end dates of the Service Periods may be adjusted to reflect such delay.

(c) With respect to the PRMS Services, upon notice from Purchaser to Seller no later than June 30, 2025, Purchaser shall have the right to extend the Service Period for the PRMS Services for up to six (6) additional months solely to ensure the facility that is manufacturing PRMS is in a state of compliance with the BLA for the Vowst Product and readiness for potential regulatory inspection; provided that if any other Service is interdependent with the PRMS Services, Purchaser must also extend such interdependent Services, to the extent necessary pursuant to Section 6.02(c). For the avoidance of doubt, such extension of PRMS Services will not include the manufacture of Additional PRMS Batches.

Section 6.02 Termination.

(a) For Convenience. Subject to Section 6.01 and Section 6.02(c), Purchaser may, at any time prior to the end of the Transition Period, terminate this Agreement in respect of any Service that is not a PRMS Service, in whole or (subject to Section 6.02(c)) in part for convenience, upon forty-five (45) days prior written notice to Seller and subject to Purchaser's obligation to pay Early Termination Charges (if any), as provided for under Section 6.04(a). Subject to Purchaser's obligations with respect to the Minimum Requirement as set forth in Section 1.08(e), Purchaser may terminate the PRMS Services only with Seller's consent, such consent not to be unreasonably withheld, conditioned or delayed; provided that (i) Purchaser shall not terminate the PRMS Services prior to the delivery of the Minimum Requirement of PRMS batches and, if requested by Purchaser pursuant to Section 1.08(c), the Additional PRMS Batches prior to the delivery of such PRMS batches, and (ii) Purchaser shall provide three (3) months' prior written notice of the termination of PRMS Services to Seller, and Purchaser shall pay to Seller the monthly fixed costs for PRMS Services for the next three (3) months after delivering such notice.

(b) For Cause. Either Party may terminate this Agreement or a Service immediately upon written notice in the event of any material breach by the other Party of any of the other Party's obligations under this Agreement that has not been cured within thirty (30) days following receipt by the other Party of written notice of such breach; provided, however, that a fifteen (15) Business Day cure period (rather than a thirty (30) day period) shall apply to any breach of a payment obligation of Purchaser hereunder that is not being disputed in good faith.

(c) Interdependent Services. In the event that Purchaser desires to terminate this Agreement in respect of a Service, then to the extent that (i) Seller's ability to provide (or cause to be provided) a Service is dependent on the continuation by Purchaser of another Service (including continuation of access to the facility), to the extent either expressly provided in Schedule 1 by way of reference to bundling of related Services, or such interdependence is reasonably likely given the nature of the Service to be terminated, as reasonably substantiated by Seller, then Purchaser shall not be entitled to terminate or reduce part of the scope or amount of, any such Service unless, concurrently therewith, Purchaser also terminates or reduces all such other interdependent Services or Purchaser agrees in writing to pay the cost for all such interdependent Services (including the Service that Purchaser seeks to terminate), and (ii) Seller informs Purchaser that Seller's actual cost of providing any other Service would be increased by such termination or reduction, then Purchaser shall not be entitled to terminate or reduce part of the scope or amount of, any such Services unless, concurrently therewith, Purchaser agrees to such increased costs and expenses for such other Services.

(d) Termination by Insolvency. This Agreement shall terminate upon not less than thirty (30) days' prior written notice by a Party, if the other Party (i) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency Law; (ii) makes or seeks to make a general assignment for the benefit of its creditors or applies for or consents to the appointment of a trustee, receiver or custodian for it or a substantial part of its property; (iii) admits in writing its inability to pay its debts generally as they become due; or (iv) has issued or levied against its property any judgment, writ, warrant of attachment or execution or similar process that represents a substantial portion of its property.

Section 6.03 Purchaser's Step-in Rights. In the event of Seller's failure to deliver a quantity of PRMS in accordance with the PRMS Services Quality Standards that is equivalent to at least **[***]** of the total quantity of PRMS required pursuant to the Demand Plan in a calendar quarter that has not been cured within sixty (60) days following receipt by Seller of written notice of such failure from Purchaser, Purchaser shall be entitled to either (i) negotiate with the landlord of the Sidney Street Facility to enter into a direct lease therefor with respect to the portion of such facility used for the PRMS Services, and Seller shall reasonably assist Purchaser in connection with such negotiations, and/or (ii) cause such PRMS Services to be performed with any reasonable out-of-pocket costs and expenses incurred by Purchaser in connection therewith reimbursed by Seller.

Section 6.04 Effect of Termination or Reduction in Scope or Volume. Upon termination or reduction in scope or volume of any Service pursuant to this Agreement:

(a) In the case of a termination by Purchaser pursuant to Section 6.02(a) or by Seller pursuant to Section 6.02(b) or Section 6.02(d), Purchaser shall pay (or cause its Affiliate to pay) to Seller (or any Affiliate designated by it) all applicable Early Termination Charges, which shall be invoiced and paid as provided in Section 2.03. "**Early Termination Charges**" means any and all non-cancelable or incremental and documented out-of-pocket fees or expenses actually incurred and payable to any Subcontractor as a result of any early termination or reduction in scope or volume of a Service (which fees and expenses may include breakage fees, or early termination fees or charges);

(b) the relevant Schedule shall be updated to reflect any terminated or reduced Service;

(c) Seller shall have no further obligation to provide the terminated Service or the portion of the scope or volume that was reduced; and

(d) Purchaser shall have no obligation to pay any future Services Fee or Out-of-Pocket Costs relating to any such Service or the portion of the scope or volume that was terminated or reduced, provided that Purchaser shall remain obligated to Seller for the (i) Services Fees and Out-of-Pocket Costs owed and payable (or, in respect of Out-of-Pocket Costs, incurred) in respect of the terminated Service or reduced portion of the scope or volume provided prior to the effective date of termination or reduction, including Services Fees that are billed in arrears, and (ii) in the case of a termination by Purchaser pursuant to Section 6.02(a) or by Seller pursuant to Section 6.02(b) or Section 6.02(d), Early Termination Charges as invoiced by Seller to Purchaser; provided that such termination or reduction in scope or volume of any Service is pursuant to Section 6.02(a).

Section 6.05 Accrued Rights; Surviving Obligations.

(a) Accrued Rights. Termination or expiration of this Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of a Party prior to such termination or expiration. Such termination or expiration shall not relieve a Party from obligations that are expressly indicated to survive the termination or expiration of this Agreement.

(b) Surviving Obligations. Without limiting the foregoing, Article 2, Article 3, Article 4, Article 5, Section 6.04, this Section 6.05, Article 8, and Exhibit A shall survive the termination or expiration of this Agreement for any reason.

ARTICLE 7

DATA PRIVACY AND SECURITY

Section 7.01 Data Privacy and Security. Each Party agrees to comply with the Data Protection Addendum set forth in Exhibit B with respect to the provision of Services that involve the processing of Personal Information (as such term is defined in Exhibit B).

ARTICLE 8

MISCELLANEOUS

Section 8.01 Notice.

Unless otherwise specified herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered personally, sent by a nationally recognized overnight courier service, or transmitted by email (receipt verified), and shall be deemed to be effective upon receipt. Any such notices shall be addressed to the receiving Party at such Party's address or email address set forth below, or at such other address or email address as may from time to time be furnished by similar notice by Seller or Purchaser:

If to Seller:

Seres Therapeutics, Inc.
101 Cambridge Park Drive, Cambridge, MA 02140
Attention: Chief Financial Officer; Chief Legal Officer/General Counsel
Email: [***]; [***]

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

Latham & Watkins LLP
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Peter Handrinos; Scott Shean
Email: peter.handrinos@lw.com
scott.shean@lw.com

If to Purchaser:

Société des Produits Nestlé S.A.
Avenue Nestlé 55
1800 Vevey, Switzerland
Attention: Martin Hendrix and Claudio Kuoni
Email: [***]
[***]

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

Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: David A. Carpenter
Email: dacarpenter@mayerbrown.com

Section 8.02 Entire Agreement; Modification. This Agreement (including all Schedules, hereto), together with the other documents referred to herein, including the Purchase Agreement and the Cross-License Agreement contain the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede all previous agreements, negotiations, commitments and writings between the Parties with respect to the subject matter hereof and thereof. In the event of any inconsistency between this Agreement and any Schedules hereto or any certificate delivered in connection herewith, the terms of this Agreement shall govern. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by both Parties.

Section 8.03 Severability. If any provision of this Agreement, or any other document delivered under this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable nor the remaining provisions hereof, nor render unenforceable such provision in any other jurisdiction, unless the effect of rendering such provision ineffective would be to substantially deviate from the expectations and intent of the Parties in entering into this Agreement. In the event any provisions of this Agreement, shall be held to be invalid, illegal or unenforceable, the Parties shall use reasonable best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes hereof.

Section 8.04 No Waiver; Cumulative Remedies. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no failure or delay on the part of a Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the Party giving such waiver. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable Law except as expressly set forth herein.

Section 8.05 Governing Law. This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Delaware, without giving effect to any laws, rules or provisions of the State of Delaware that would cause the application of the laws rules or provisions of any jurisdiction other than the State of Delaware. Each of the Parties hereto further agrees to waive and hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now have or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such action in any such court.

Section 8.06 Jurisdiction, Services and Venue. Each Party agrees: (a) to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware) (the "**Specified Courts**") for any Actions arising out of or relating to this Agreement; (b) to commence any Action arising out of or relating to this Agreement only in the Specified Courts; (c) that service of any process, summons, notice, or document by U.S. registered mail to the address of such Party set forth in Section 8.01 will be effective service of process for any Action brought against such Party in any of the Specified Courts (provided that, in the case of Purchaser, service of process must be delivered to the registered agent in Delaware of Nestlé USA, Inc.); (d) to waive any objection to the laying of venue of any Action arising out of or relating to this Agreement in the Specified Courts; and (e) to waive and not to plead or claim that any such Action brought in any of the Specified Courts has been brought in an inconvenient forum; provided, however, that such submission to the jurisdiction of the Specified Courts is solely for the purpose referred to in this Section 8.06 and shall not be deemed to be a general submission to the jurisdiction of such courts or any other courts other than for such purpose.

Section 8.07 **WAIVER OF TRIAL BY JURY**. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, DEMAND, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.07.

Section 8.08 **Counterparts**. This Agreement and any amendment or supplement hereto may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become binding when any number of counterparts, individually or taken together, shall bear the signatures of both Parties. This Agreement may be executed and delivered by facsimile or any other electronic means, including ".pdf" or ".tiff" files, and any facsimile or electronic signature shall constitute an original for all purposes.

Section 8.09 **Assignments**. Neither Party shall be permitted to assign this Agreement or any of its rights or obligations under this Agreement, directly or by operation of law or otherwise, without Seller's (in the case of Purchaser) or Purchaser's (in the case of Seller) express, prior written consent, except that each Party may assign this Agreement or any of its rights hereunder, in whole or in part, to one or more Affiliates or an acquirer of all or substantially all of the business or assets of such Party through a sale, merger, consolidation, reorganization or similar transaction without the other Party's consent; provided that no such assignment shall relieve such Party of any of its obligations under this Agreement, such assignment shall only be valid for so long as such entity remains an Affiliate and any new or increased obligations for Taxes under Section 2.07 arising as a result of such assignment shall be borne by the assigning Party or its Affiliate (including any gross-up necessary to put the other Party in the same position it would have been in had no such assignment been made). Any such purported assignment or sublicense in violation of this Agreement shall be null and void *ab initio*.

Section 8.10 **Force Majeure**. Except for the obligation to pay monies due and owing and each Party's confidentiality obligations under Article 4, neither Party shall be liable for any failure to perform or any delays in performance, and no such Party shall be deemed to be in breach or default of its obligations set forth in this Agreement, if, to the extent and for so long as, such failure or delay is due to any causes that are beyond its reasonable control and without its fault or negligence, including actions of or interference by Governmental Entity; acts of God (including flood, fire, earthquake); disease, epidemic, pandemic, other public health crisis and the responses of Governmental Entity in response thereto; acts of terrorism; labor disturbance; wars (whether or not declared), acts; riots or other civil disturbances; power failure or other similar causes ("**Force Majeure Event**"). In the event of a Force Majeure Event, the Party prevented from or delayed in performing shall promptly give notice to the other Party and shall use commercially reasonable efforts to avoid or minimize the delay. In the event that the delay continues for a period of at least thirty (30) days, the Party affected by the other Party's delay may elect to suspend performance and extend the time for performance for the duration of the Force Majeure Event.

Section 8.11 Prevailing Party Attorneys' Fees. In the event of any Action between the Parties or their Affiliates arising as a result of a breach of this Agreement or the failure to perform hereunder, or the breach or inaccuracy of any representation or warranty contained in this Agreement, the prevailing Party in such Action shall be entitled to collect the costs and expenses of bringing or defending such Action, including reasonable attorneys' fees, court costs and other out-of-pocket fees and expenses reasonably incurred by the prevailing Party, from the non-prevailing Party.

Section 8.12 Reservation of Rights; No Implied Licenses. All rights in or to Intellectual Property not expressly assigned, licensed, covenanted or otherwise conveyed to Purchaser or one of its Affiliates under this Agreement, the Purchase Agreement or the Cross-License Agreement are reserved by Seller and its Affiliates. Nothing contained in this Agreement shall be construed as conferring any rights, by implication, estoppel or otherwise, under any Intellectual Property, other than the rights expressly granted under this Agreement, the Purchase Agreement or the Cross-License Agreement.

Section 8.13 No Third Party Beneficiaries. Except as otherwise expressly provided in Section 5.01 or Section 5.02, this Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, shall give or be construed to give to any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

Section 8.14 Relationship of the Parties. The relationship between the Parties is solely that of vendor and vendee and they are independent contracting parties. Neither Party is the agent, representative or partner of the other and neither Party has any authority or power to bind or contract in the name of or to create any liability against the other in any way or for any purpose pursuant to this Agreement. Nothing contained in this Agreement shall be construed to give either Party the power to direct and control the day-to-day activities of the other, constitute the Parties as partners, joint venturers, principal and agent, employer and employee, co-owners, or otherwise as participants in a joint undertaking, or allow either Party to create or assume any obligation on behalf of the other Party for any purpose.

Section 8.16 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the execution of this Agreement, each of the Parties, at its own expense, shall execute and deliver such instruments of transfer, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

Section 8.17 Conflicts; Privilege. Recognizing that Latham & Watkins LLP has acted as legal counsel to Seller and its Affiliates, and that Latham & Watkins LLP intends to act as legal counsel to Seller and its Affiliates after the Closing, Purchaser hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with Latham & Watkins LLP representing Seller and its Affiliates prior to the Closing or after the Closing as such representation may relate to Seller and its Affiliates or the transactions contemplated hereby. In addition, all communications involving attorney-client confidences between Seller and its Affiliates prior to the Closing, on the one hand, and Latham & Watkins LLP, on the other hand, in the course of the negotiation, documentation and consummation of the transactions contemplated hereby shall be deemed to be attorney-client confidences that belong solely to Seller and its Affiliates. Accordingly, Purchaser and its Affiliates shall not control the privilege with respect to any such communications or their access to the files of Latham & Watkins LLP relating to such engagement from and after the Closing.

Section 8.18 Anti-Bribery and Corruption. The Parties shall (a) comply with all applicable laws, statutes, regulations, relating to anti-bribery and anti-corruption ("**Relevant Requirements**") and (b) have and maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and enforce them where appropriate.

Section 8.19 Interpretation. The headings preceding the text of Articles and Sections included in this Agreement and the headings to Exhibits and Schedules attached to this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement. The use of the masculine, feminine, or neuter gender or the singular or plural form of words in this Agreement shall not limit any provision of this Agreement. The meaning assigned to each term defined in this Agreement shall be equally applicable to both the singular and the plural forms of such term. The use of "including" or "include" will in all cases mean "including, without limitation" or "include, without limitation," respectively. The use of "or" is not intended to be exclusive unless expressly indicated otherwise. Reference to any Person includes such Person's successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable Contract, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually. Reference to any Contract (including this Agreement), document, or instrument shall mean such Contract, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement. Reference to any statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. Underlined references to Articles, Sections, clauses, or Schedules shall refer to those portions of this Agreement. The use of the terms "hereunder," "hereof," "hereto," and words of similar import shall refer to this Agreement as a whole and not to any particular Article, Section, paragraph, or clause of, or Schedule to, this Agreement. All terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant to this Agreement, unless otherwise defined in such certificate or other document. References to "$" or "dollars" are references to United States dollars.

[*Signature page follows*]

IN WITNESS WHEREOF, each Party has duly executed this Agreement as of the Effective Date.

SERES THERAPEUTICS, INC.

By: _____
Name:
Title:

[SOCIÉTÉ DES PRODUITS NESTLÉ S.A.]

By: _____
Name:
Title:

Exhibit A

Definitions

"**Acceptable Use Policy**" has the meaning set forth in Section 4.051.1(a)(a).

"**Accounts Payable Services**" shall mean Seller's payment of any amounts to Third Parties pursuant to any invoices received by Seller, including but not limited to any portion of a Shared Contract, or Delayed Assignment Contracts that is attributable to Purchaser in connection with Seller performing Fin.02 Service listed on Schedule 1.

"**Additional PRMS Batches**" has the meaning set forth in Section 1.08(c).

"**Additional Service**" has the meaning set forth in Section 1.01(c).

"**Background IP**" has the meaning set forth in Section 3.02.

"**Calendar Quarter**" means each of the three (3) month periods ending March 31, June 30, September 30, and December 31; provided, that (a) the first Calendar Quarter of the Transition Period shall extend from the Effective Date to the end of the first complete such three (3)-month period thereafter and (b) the final Calendar Quarter of the Transition Period shall end on the last day of the Transition Period.

"**Change**" has the meaning set forth in Section 1.01(d).

"**Change Request**" has the meaning set forth in Section 1.01(d).

"**Claim**" has the meaning set forth in Section 5.03(a).

"**Confidential Information**" has the meaning set forth in Section 4.01.

"**Demand Plan**" shall mean the demand plan set forth in Schedule 1 setting forth Purchaser's forecast for the supply of PRMS by or on behalf of Seller.

"**Disclosing Party**" has the meaning set forth in Section 4.01.

"**Dispute**" has the meaning set forth in Section 1.05(c).

"**Early Termination Charges**" has the meaning set forth in Section 6.04(a).

"**Extension Notice**" has the meaning set forth in Section 6.01(b).

"**Firm Order**" has the meaning set forth in Section 1.08(b).

"**Force Majeure Event**" has the meaning set forth in Section 8.10.

"**FTE**" means a commitment of time and effort to constitute a full-time equivalent person, consisting of 1880 hours per year (i.e., one fully committed person or multiple partially committed persons aggregating to one (1) full time person) with appropriate or relevant capabilities and seniority employed by Seller or its Affiliates assigned to directly perform specified activities with respect to the Services, pursuant to this Agreement.

"**FTE Costs**" means (a) for the Services listed on Schedule 1, the fixed labor costs as set forth in Schedule 1; or (2) for all other services added to this Agreement after the Effective Date (including but not limited to Omitted Services), Sellers' actual labor costs for providing such services, including base salary, bonus target, fringe benefits, employer taxes and other costs but excluding equity and equity-based compensation expense. For clarity, FTE Costs do not include items included in the determination of the Out-of-Pocket Costs.

"**Indemnified Party**" shall mean a Party entitled to be indemnified under Article 5.

"**Indemnifying Party**" has the meaning set forth in Section 5.03(a).

"**Indirect Taxes**" has the meaning set forth in Section 2.07(a).

"**Know-How**" shall mean data, results, information, processes, methods, techniques, test results, assays, materials, products, reports, deliverables, work product, technologies, compounds, or other know-how, whether or not patentable.

"**Omitted Service**" has the meaning set forth in Section 1.01(b).

"**Order**" has the meaning set forth in Section 1.08(b).

"**Out-of-Pocket Costs**" shall mean amounts actually paid to Third Party vendors, consultants, suppliers or contractors, for services or materials, as applicable, provided by each such Third Party and other amounts actually paid to Third Parties that are, in each case, directly related to the performance of the Services or any other activities specified under this Agreement in accordance with the terms hereof, as applicable. For clarity, Out-of-Pocket Costs do not include (a) payments for Purchaser's internal salaries or benefits for its employees, general office or facility supplies, insurance, general information technology, utilities, or capital expenditures, or (b) FTE Costs.

"**Personal Information"** has the meaning set forth in Exhibit B.

"**Personnel**" shall mean, with respect to a Party, such Party's and its Affiliates' employees, Subcontractors and agents, and the employees and agents of such Party's Subcontractors, in each case, that are performing any of such Party's obligations under this Agreement.

"**PRMS**" means preserved raw material suspension.

"**PRMS Services**" shall mean services to prepare the PRMS for use in manufacturing the drug substance and drug product for VOWST Product, as set forth in Schedule 1.

"**PRMS Services Quality Standards**" shall mean the PRMS Services quality requirements which are set forth in the Quality Agreement.

"**PRMS Technology Transfer Plan**" has the meaning set forth in Section 1.09.

"**Project Manager**" has the meaning set forth in Section 1.05(b).

"**Purchaser Indemnified Parties**" has the meaning set forth in Section 5.02.

"**Purchaser Owned Items**" has the meaning set forth in Section 3.03.

"**Quality Agreement**" shall mean the Quality Agreement, by and between Seller and Aimmune Therapeutics, Inc. (on behalf of Nestlé Enterprises S.A.), dated March 14, 2023, as may be amended from time to time, which shall be amended and restated to include the PRMS Services Quality Standards.

"**Raw Materials**" shall mean all raw materials and consumables included in PRMS Services other than SRM.

"**Receiving Party**" has the meaning set forth in Section 4.01.

"**Relevant Requirements**" has the meaning set forth in Section 8.18.

"**Required Consent**" has the meaning set forth in Section 1.07(a).

"**Schedule**" shall mean schedules attached hereto, as amended, modified or supplemented from time to time in accordance with the terms hereof.

"**Seller Indemnified Parties**" has the meaning set forth in Section 5.01.

"**Senior Officers**" has the meaning set forth in Section 1.05(b).

"**Separation Plan**" has the meaning set forth in Section 1.12.

"**Service Modification**" has the meaning set forth in Section 1.01(c).

"**Service Period**" has the meaning set forth in Section 1.02.

"**Services**" has the meaning set forth in Section 1.01(a).

"**Services Inventions**" has the meaning set forth in Section 3.03.

"**Services Standard**" has the meaning set forth in Section 1.04(a).

"**Sidney Street Facility**" shall mean a manufacturing facility leased by Seller immediately prior to the Effective Date that is located at 200 Sidney Street, Cambridge, MA 02139, which is comprised of the Exclusive Use Areas and the Common Use Areas.

"**Specified Courts**" has the meaning set forth in Section 8.06.

"**SRM**" shall mean donated material (or starting raw material) which has been released for further manufacturing by the Purchaser's quality team.

"**Subcontractor**" shall mean a Third Party service provider, contractor or consultant engaged to perform Seller's obligations under this Agreement.

"**Systems**" has the meaning set forth in Section 4.05(a).

"**Third Party Claim**" has the meaning set forth in Section 5.03(a).

"**Transition Period**" has the meaning set forth in Section 6.01.

"**TSA Steering Committee**" has the meaning set forth in Section 1.05(b).

"**VOWST Business**" shall mean the development, manufacturing, commercialization, use, marketing, sale, distribution and other exploitation of the VOWST Product as of the Effective Date, excluding, for clarity, any billing, order entry, fulfillment, accounting, collections or other corporate centralized function.

"**VOWST Product**" shall mean the product as marketed pursuant to the BLA 125757.

Exhibit B

Data Protection Addendum

This Data Protection Addendum ("Addendum") is entered into by and between Purchaser and Seller. This Addendum forms part of the Agreement. Except as modified below, the terms of the Agreement shall remain in full force and effect to the extent they are not inconsistent with this Addendum. The terms of the Addendum shall otherwise supersede any such inconsistent terms under the Agreement. In consideration of the mutual obligations set out herein, the Parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Agreement.

1. Definitions. In this Addendum, the following terms shall have the meanings set out below and similar terms shall be construed accordingly: (A) **"Applicable Data Protection Laws**" means all applicable data privacy and security laws, legislation, and regulations, each as updated or replaced from time to time. (B) **"Personal Information"** means any information that Seller processes on behalf of Purchaser to provide the Services that identifies, or could reasonably identify, an identified or identifiable individual, including "personal information," "personally identifiable information," "personal data" or other like terms as defined under Applicable Data Protection Laws. (C) **"Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, or unauthorized disclosure of, or access to, Personal Information transmitted, stored or otherwise processed, and also includes like terms as defined under Applicable Data Protection Laws. (D) **"Data Subject"** means a natural person or consumer whose Personal Information is processed by Seller in connection with the Services and who receives rights and protections under Applicable Data Protection Laws. All other terms used in this Addendum and not defined herein have the respective meanings ascribed to such terms and related terms under Applicable Data Protection Laws.

2. Instructions and Details of Processing. With regard to the processing of Purchaser's Personal Information by Seller, Purchaser shall be the business, organization or controller and Seller shall be the service provider, contractor, or processor of the Personal Information acting on behalf of the business, organization or controller, as those terms and like terms are defined under Applicable Data Protection Laws. Seller shall process Purchaser's Personal Information only at Purchaser's instruction and for the limited and specified purposes set forth in the Agreement and in Appendix A of this Addendum ("**Data Services**"). The details of the processing covered by this Addendum can be found in Appendix A.

3. Compliance with Applicable Data Protection Laws. The Parties shall comply with all Applicable Data Protection Laws under the Agreement and this Addendum. Seller shall promptly notify Purchaser after it makes a determination that it can no longer meet its obligations under Applicable Data Protection Laws and this Addendum. Purchaser may take reasonable and appropriate steps to ensure Seller uses Purchaser's Personal Information in a manner consistent with Purchaser's obligations under Applicable Data Protection Laws. Purchaser may take reasonable and appropriate steps, upon reasonable notice, to stop and remediate Seller's unauthorized use of Purchaser's Personal Information.

4. Duty of Confidentiality. Seller shall ensure that persons authorized to process Purchaser's Personal Information are subject to an appropriate duty of confidentiality.

5. Security of Processing and Notification of Data Breach. Seller shall use, implement, and maintain commercially reasonable safeguards to protect Purchaser's Personal Information, including those required by Applicable Data Protection Laws. Seller shall investigate (with Purchaser's participation if so desired by Purchaser) all potential Data Breaches involving Purchaser's Personal Information and provide, within seventy-two (72) hours, a detailed description of the event to Purchaser in writing, together with a list of all corrective or protective measures that have been taken or that will be taken by Seller. Seller shall promptly provide Purchaser with updated and additional information as it continues its investigation or as otherwise becomes available. Seller shall, subject to Purchaser's reasonable request, engage and involve external forensic firms in the investigation of a Data Breach impacting Purchaser's Personal Information processed by Seller and provide Purchaser with the results of such an investigation into the incident. Notwithstanding the foregoing, unless required by law, in no event shall Seller be required to give Purchaser access to any information or systems to the extent doing so would cause Seller to be in violation of confidentiality obligations owed to other customers or its legal obligations.

Upon written request, Seller shall also provide commercially reasonable assistance to Purchaser to meet Purchaser's obligations under Applicable Data Protection Laws in relation to the Data Breach.

Unless required by Applicable Data Protection Laws, Seller shall not inform any third party of any Data Breach without first obtaining Purchaser's prior written consent. Purchaser shall have the sole right to determine (A) whether and how notice of a Data Breach is to be provided to any Data Subjects, supervisory and regulatory authorities, law enforcement agencies, consumer reporting agencies, or others as may be required by Applicable Data Protection Laws or in Purchaser's discretion, and (B) the contents of such notice.

To the extent any Data Breach involving Purchaser's Personal Information arises out of a breach by Seller of its obligations under the Agreement, in addition to any other damages for which Seller may be liable for under the Agreement, Seller shall be responsible and for the following costs incurred by the Purchaser to the extent reasonable and required to respond to such Data Breach, to the extent applicable: (A) the reasonable cost of providing notice to affected individuals; (B) the reasonable cost of providing notice to government agencies, credit bureaus, authorities, other required entities and/or other affected third parties; (C) the reasonable cost of providing affected individuals with credit monitoring services for the minimum time period required by Applicable Data Protection Laws; (D) call center support for such affected individuals for a specific period not to exceed ninety (90) days to the extent required by Applicable Data Protection Laws; (E) the cost of any other measures required under Applicable Data Protection Laws; and (F) reasonable costs related to compliance with audits that are required under Applicable Data Protection Laws.

6. Monitoring Compliance. Upon reasonable written request of Purchaser, Seller shall make available to Purchaser all information necessary to demonstrate compliance with the Addendum and Applicable Data Protection Laws.

7. Seller Assistance to Purchaser. Seller shall promptly provide assistance reasonably requested by Purchaser in writing to enable Purchaser to comply with its obligations under Applicable Data Protection Laws, including in relation to Data Subject requests, data protection impact assessments, and responding to any regulator or state attorneys' general request, investigation, or legal action. Purchaser shall inform Seller in writing of any Data Subject requests made pursuant to Applicable Data Protection Laws that Seller must comply with, and provide the information necessary for Seller to comply with the Data Subject requests, where required by Applicable Data Protection Laws. Seller's assistance shall not be unreasonably withheld.

8. Use of Data Services Subcontractors. Seller shall provide prior written notice to Purchaser of the intention to engage with any third party for Data Services that include direct or indirect access to, storage or processing of, or other contact with Purchaser's Personal Information (each, a "**Data Service Subcontractor**"). Such notice must (i) identify the Data Service Subcontractor, and (ii) the Data Services for which the Data Service Subcontractor is proposed to be engaged. Purchaser will be deemed to have consented to the engagement of any Data Service Subcontractor unless Purchaser has notified Seller in writing of any reasonable objection to the engagement within ten (10) business days of receipt of notice of such proposed engagement. If Purchaser provides a reasonable objection to the engagement of any Data Service Subcontractor, the Parties agree to negotiate in good faith a mutually agreeable resolution, including engagement of an alternate Data Service Subcontractor to provide such Data Services. Seller shall ensure that each of its Data Service Subcontractors are bound by contractual obligations with respect to Personal Information that are substantially the same as, or no less than, those contained in this Addendum, including ensuring that such agreements comply with Applicable Data Protection Laws. Seller is responsible for the performance of the Data Service Subcontractor's obligations in compliance with the terms of this Addendum and Applicable Data Protection Laws.

9. Restrictions on Processing of Personal Information. Seller is subject to all restrictions on processing of Personal Information as applicable to service providers, contractors and processors under Applicable Data Protection Laws. Seller is prohibited from selling or sharing Purchaser's Personal Information. Seller is prohibited from retaining, using, or disclosing Purchaser's Personal Information: (A) for any purpose other than for the Data Services, as permitted by the Agreement, or as otherwise expressly permitted by Applicable Data Protection Laws; (B) for any commercial purpose other than the Data Services or as otherwise expressly permitted by the Agreement or Applicable Data Protection Laws; and (C) outside of the direct business relationship between Seller and Purchaser, unless expressly permitted by Applicable Data Protection Laws. Seller is prohibited from combining or updating the Personal Information that it collected under the Agreement and this Addendum with Personal Information that it received from another source or collected from its own interaction with the Data Subject, unless expressly permitted under Applicable Data Protection Laws.

10. Return or Delete Personal Information. At the Purchaser's written direction, Seller shall delete or return all Personal Information to Purchaser after the end of the provision of Data Services under the Agreement, and delete existing copies unless retention of the Personal Information is required by applicable law. If Seller is unable to delete or return Purchaser's Personal Information, Seller shall inform Purchaser of that obligation and comply with the requirements of Applicable Data Protection Laws until the Personal Information is securely deleted or returned to Purchaser.

11. Cross-Border Data Transfers. If required by Applicable Data Protection Laws, the Parties may negotiate in good faith to enter into further agreements necessary for cross-border transfer of Personal Information, including, but not limited to, relevant modules of approved model clauses for cross-border data transfers. This Addendum and Appendix A shall be used to complete such further agreements where such details are required by Applicable Data Protection Laws.

APPENDIX A

Categories of Data Subjects whose Personal Information is processed

The Data Subjects whose Personal Information Purchaser discloses or makes available to Seller, which may be specified in the Agreement, supplemental documents and other written communications during the course of the Agreement. This includes Purchaser's employees/contractors, business partners, suppliers/vendors, and donors.

Categories of Personal Information processed

Purchaser may disclose categories of Personal Information to Seller as necessary to receive the Services under the Agreement, which may be specified in the Agreement, supplemental documents and other written communications during the course of the Agreement. This includes professional/employment related information, contact information/other identifiers, and clinical trial information.

Nature and purpose(s) of the processing

The nature and purpose of processing is for Purchaser to receive the Services from Seller under the Agreement.

Duration of the processing

The processing will continue until the duration of the Agreement and/or until Seller is in possession of Purchaser's Personal Information under the Agreement.

Business purpose(s) of the processing

Seller will process the Personal Information for the following business purposes:

- Helping to ensure security and integrity to the extent the use of the Personal Information processed in this Agreement is reasonably necessary and proportionate for these purposes.
- Debugging to identify and repair errors that impair existing intended functionality.
- Performing services on behalf of Purchaser, as listed in Schedule 1 and otherwise described in this Agreement.
- Undertaking internal research for technological development and demonstration.

Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by Purchaser, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by Purchaser.

SCHEDULE 1

Services, Service Periods and Services Fees

Kintsugi - Transition Service Agreement (TSA)[1]

Service Schedule

[1] The parties shall (i) discuss changes to the TSA schedules in good faith between signing and closing and (ii) make such changes thereto to the extent necessary or appropriate for the continued operation of the VOWST Business following Closing.

Table Of Contents

Finance & Tax

Service Owner[2]	**Nestlé Health Science** ● **Fin.01, Fin.04, Fin.05, Fin.07: [***]** ● **Fin.02, Fin.03, Fin.08: [***]Fin.06: [***]** **Seres** ● **Fin.01, Fin.03, Fin.06: [***]** ● **Fin.02, Fin.08: [***]** ● **Fin.04: [***]** ● **Fin.05, Fin.07: [***]**
Service Fees (Monthly)	**Service Fees applicable to all TSA services described below Fin.01-Fin.08:** ● **FTE Count: [***]** ● **Fixed FTE Cost: [***]** ● **Fixed Non-Labor Cost: [***]**

Finance Transition Service

ID	Name	Description of Service	Dependencies	Estimated Pass Through Cost (Monthly)	Allowable Expense?	Duration[3]
Fin.01	Finance: General Accounting, Fixed Asset Accounting, Project Accounting	Seller will provide General Accounting support including: ● Maintain existing chart of accounts in Oracle ● Provide access to Oracle source and historical data for 2022 through present ● Period-end Close (PEC) general accounting ad hoc support in the review of account reconciliations and review of GL journal entries related to VOWST PDQS General Accounting prepared by Nestlé	IT.02 IT: Financial and Operations Systems Maintenance HR.01 HR: Payroll-Payroll Processing/Compliance/Time Management	N/A	[***]	March 31, 2025

[2] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.
[3] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Finance Transition Service						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[3]**
		• Prepare and provide details for all VOWST-related accruals (AP subledger and GL), including Genibet monthly				
Fin.02	Finance: Accounts Payable	Seller will support the following processes consistent with current Seres business practices: • Register invoices and provide support to the business for proper coding of such invoices • Pay invoices according to purchase order terms and policies and help resolve discrepancies as necessary • Generate and distribute checks or initiate wire transfers, as approved by the Buyer • Provide invoices for review and payment weekly (or frequency that parties agree to based on volume) • Maintain vendor master file with applicable current data • Review and verify invoice, invoice documentation, and invoice approvals of invoices that don't have an existing purchase order and have therefore not been received against a PO for completeness and accuracy • Seller shall provide a monthly accounting of all payments made on behalf of Buyer File required Tax and governmental reports for 2024 related to the invoices/payments paid by the Seller (including US 1099 reporting, escheatment, etc.)	Fin.08 Procurement, IT.02 IT: Financial and Operations Systems Maintenance	N/A	[***]	March 31, 2025

Finance Transition Service						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[3]**
		• At 3/31/2025, Seres to provide FY24 and Q1 2025 historical PO, GR, invoice and payment data for potential vendor dispute management Hypercare period to discuss open PO report and open PO status after the Procurement cutover in Fin.08				
Fin.03	Finance: Audit Support	Seller will support the following processes upon request by the Buyer: • Informative responses to audit questions and supporting documentation in response to audit data requests as part of the Nestlé 2024 annual audit	IT.02 IT: Financial and Operations Systems Maintenance	N/A	[***]	March 31, 2025
Fin.04	Finance: FP&A	Provide FP&A knowledge transfer support to include: • VOWST related FY 24 annual budget / forecast drivers, mechanics, factors, and assumptions	N/A	N/A	[***]	March 31, 2025
Fin.05	Finance: Inventory Accounting & Costing (Non-PRMS)	Seller will provide the following (consistent with Seller's current practices): • Support services for Inventory accounting and reconciliations	IT.01 IT: Donor and Lab Systems Maintenance, IT.02 IT: Financial	N/A	[***]	March 31, 2025

Finance Transition Service						
ID	Name	Description of Service	Dependencies	Estimated Pass Through Cost (Monthly)	Allowable Expense?	Duration[3]
		• Provide Oracle GLTD detail of VOWST related transactions with appropriate granularity to enable monthly product costing calculations • Oracle costing module process steps to populate transactions • Inform Nestlé of any issues or changes in Oracle with documentation • Performs regular costing process steps to updated Oracle flow and provide monthly output reports to Nestlé • Performs month end closing activities and provide Oracle reports to Nestlé • Maintains Oracle periods in costing module and provide Oracle reports to Nestlé • Be able to trouble shoot errors in costing module • Perform periodic cycle counts and send count sheets and results to Nestlé • Perform year-end physical inventory report (at sites under the control of the Seller) and send count sheets and results to Nestlé • Run Seres Lot and On-hand report at the end of the last workday of the month • Review journal entries prior to approval/posting[• Assist with review of activity in monthly inventory balance sheet accounts	and Operations Systems Maintenance, HR.01 HR: Payroll-Payroll Processing/Compliance/Time Management, Ops.02 Storage and Warehousing / Logistics			

Finance Transition Service						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[3]**
		• Provide Oracle GLTD data of invoices processed during the quarter • Assist with preparation of quarterly Facilities schedule including all facilities-related invoices processed by Seres on Nestlé's behalf				
Fin.06	Finance: Tax	Seller will support the following processes: • Provide supporting documentation in response to 2024 US tax provision or US tax return requirements. • Historical filings information up through date of transfer, as available		N/A	[***]	To extend through January 1, 2026

Finance Transition Service						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[3]**
		Property Tax[4]: ● Provide supporting documentation on an as-needed basis to support annual property tax filing requirements for calendar 2024 filings. This includes the acquisition date and original cost of fixed assets ● Provide 2024 year-end inventory balances by location for inventory in Seres-managed systems Provide monthly (through March 2025) inventory balances by location for inventory in Seres managed systems upon request only.				
Fin.07	Finance: Inventory Accounting & Costing (PRMS)	Seller will provide the following (consistent with Seller's current practices): ● Support services for PRMS Inventory accounting (including estimates if actuals are not available) and reconciliations on a monthly basis by business workday minus 1.	IT.01 IT: Donor and Lab Systems Maintenance, IT.02 IT: Financial and Operations Systems	N/A	[***]	December 31, 2025

[4] Note to Seres: Property tax requirements to be further discussed

Finance Transition Service						
ID	Name	Description of Service	Dependencies	Estimated Pass Through Cost (Monthly)	Allowable Expense?	Duration[3]
		• Oracle costing module process steps to populate transactions • Inform Nestlé of any issues or changes in Oracle with documentation • Performs regular costing process steps to updated Oracle flow and provide monthly output reports to Nestlé • Performs month end closing activities and provide Oracle reports to Nestlé • Maintains Oracle periods in costing module and provide Oracle reports to Nestlé • Be able to trouble shoot errors in costing module • Perform periodic cycle counts and send count sheets and results to Nestlé • Perform year-end physical inventory report and send count sheets and results to Nestlé • Run Seres Lot and On-hand report at the end of the last workday of the month • Review journal entries prior to approval/posting	Maintenance, HR.01 HR: Payroll-Payroll Processing/Compliance/Time Management, PRMS.01 PRMS Services, PRMS.02 Support for PRMS Technology Transfer, Ops.02 Storage and Warehousing / Logistics			

Finance Transition Service						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[3]**
Fin.08	Procurement	Seller will support the following processes consistent with current Seres business practices: ● Enter VOWST-related purchase requisitions on behalf of business partners (subject to Nestlé review and approval specified by approval authority hierarchies) following Seres' Grants of Authority in accordance with executed agreements and/or other supporting documentation (P2P team) ● Review purchase requisitions > $10K for appropriate authorization (Legal) ● Review purchase requisitions > $10K for spend in accordance with budget and appropriate GL coding (focused on VOWST/non-VOWST designation) (Finance) ● Provide copy of approved PO to Nestlé BP and supplier (P2P team) ● Maintain valid contracts with suppliers for direct materials and indirects including but not limited to: manufacturing raw materials and components, donor raw materials and components, lab reagents and consumables, logistics providers, storage facilities, etc. to support operations at DCFs, DSL, 9FA, 200SS, 101CPD	Fin.02 Accounts Payable, IT.02 IT: Financial and Operations Systems Maintenance	N/A	[***]	January 31, 2025

Finance Transition Service						
ID	Name	Description of Service	Dependencies	Estimated Pass Through Cost (Monthly)	Allowable Expense?	Duration[3]
		• Support resolution of operational issues, supplier performance reviews, change controls, and price negotiation. • Transition contracts to Buyer according to mutually agreed schedule • Upon delivery of ordered goods, Nestlé to provide copies of packing slips to Seres and Seres to process receipts for invoice matching (Warehouse/P2P Team) • Data file export of Seres Oracle Supplier / Vendor Master file with all data fields to be used for the conversion for Nestlé SAP Vendor Master file preparation • Seres to pay on Nestlé's behalf invoices charged against existing Seres POs from deal close until vendor cutover to Nestlé systems. If the PO funds are exhausted prior to vendor cutover and a change order or new PO is required, Nestlé to first evaluate if the new PO can be created by Nestlé before requesting Seres to create a new PO • Seres to provide a cutover list of POs that were created but not received (goods and services) so they can be created within SAP and received after the TSA end				

Information Technology

Service Owner[5]	**Nestlé Health Science** ● **IT.01-IT.15:** [***] **Seres** ● **IT.01-IT.15:** [***]
Service Fees (Monthly)	**Service fees applicable to all TSA services described below IT.01 – IT.15:** ● **FTE Count:** [***] ● **Fixed FTE Cost:** [***] **IT.02 - Variable Laptop Cost for PRMS Access through the end of TSA PRMS.01:** [***]

[5] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
IT.01	IT: Donor and Lab Systems Maintenance	Provide continued support and operation for applications outlined in [Appendix A], and any additional subsequently discovered Applications, if currently supported by Seller's IT organization, in a manner consistent with historical practice. Service will include: ● Perform routine scheduled system and application maintenance to support confirmed business operation ● Provide application incident and problem management support, inclusive of required troubleshooting and resolution. ● Provide mutually agreed upon application configuration and database services in support of critical break/fix incidents directly impacting daily operations. ● Provide access to system functionality, reporting and data required by Buyer's employees, new hires, and contractors ● Perform routine system backup in line with current practices for the applicable systems ● Perform basic configuration changes to support routine new product introductions or changes (consistent with the scope of historical practice for ongoing new product introduction). Instances where major code changes may be required will fall into Governance process		$[***]	[***]	March 31, 2025 (Option to extend Labware TSA services with 30-day notice)

[6] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Information Technology Transition Services						
ID	Name	Description of Service	Dependencies	Estimated Pass Through Cost (Monthly)	Allowable Expense?	Duration[6]
		• Provide break-fix and maintenance of all applicable systems in line with current practices • Notifications on system changes will continue to be provided as they occur today				

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
IT.02	IT: Financial and Operations Systems Maintenance	Provide continued support and operation for applications outlined in [Appendix A], and any additional subsequently discovered Applications, if currently supported by Seller's IT organization, in a manner consistent with historical practice. Service will include: ● Perform routine scheduled system and application maintenance to support confirmed business operation ● Provide application incident and problem management support, inclusive of required troubleshooting and resolution. ● Provide mutually agreed upon application configuration and database services in support of critical break/fix incidents directly impacting daily operations. ● Provide access to system functionality, reporting and data required by Buyers employees, new hires, and contractors ● Perform routine system backup in line with current practices for the applicable systems ● Perform basic configuration changes to support routine new product introductions or changes (consistent with the scope of historical practice for ongoing new product introduction). Instances where major code changes may be required will fall into Governance process		$[***]	[***]	March 31, 2025 (PRMS related IT services to continue through the end of TSA PRMS.01)

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
		• Provide break-fix and maintenance of all applicable systems in line with current practices • Notifications on system changes will continue to be provided as they occur today Provide continued support and operation for Oracle Fusion for the full duration of the PRMS TSA through the provision of laptops accessible to conveying employees through the TSA transition period				

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
IT.03	IT: HR Systems Maintenance	Provide continued support and operation for applications outlined in [Appendix A], and any additional subsequently discovered Applications, if currently supported by Seller's IT organization, in a manner consistent with historical practice. Service will include: ● Perform routine scheduled system and application maintenance to support confirmed business operation ● Provide application incident and problem management support, inclusive of required troubleshooting and resolution. ● Provide mutually agreed upon application configuration and database services in support of critical break/fix incidents directly impacting daily operations. ● Provide access to system functionality, reporting and data required by Buyers employees, new hires, and contractors ● Perform routine system backup in line with current practices for the applicable systems ● Perform basic configuration changes to support routine new product introductions or changes (consistent with the scope of historical practice for ongoing new product introduction). Instances where major code changes may be required will fall into Governance process		N/A	[***]	2 months

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
		• Provide break-fix and maintenance of all applicable systems in line with current practices • Notifications on system changes will continue to be provided as they occur today				
IT.04	IT: IT QA	Seller will support the following processes: • Provide continued support to maintain GMP and GxP compliance across all relevant hardware and software incl. management of IT Change controls, preparation of validation deliverables and their necessary approvals in controlled eDMS • Support any GxP audits as needed for the duration of this TSA, including providing necessary requested documentation • Sharing schedule of GxP systems, associated risk assessment documentation, GxP-classification, and validation packages on as needed basis		N/A	[***]	March 31, 2025
IT.05	IT: Enterprise Security	Continued provision of enterprise information security for all information technology services, including, but not limited to network security, security strategy & management, security operations, identity and access management, endpoint protection, and cyber assurance		N/A	[***]	March 31, 2025

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
		• Conveying employees and new hires continue to operate consistently with existing IT security policies				
IT.06	IT: System Enhancement	Seller will support the following processes for projects listed in [Appendix B]: • Provide ongoing enhancements of existing systems based on mutually agreed upon scope and rates as developed through a defined governance process. • Administer a governance process for requested enhancements to IT systems, which are defined as changes to the functionality or logic of a system. Seller will evaluate enhancement requests on a case-by-case basis for feasibility		$[***][7]	[***]	March 31, 2025
IT.07	IT: End User Support	Seller will support the following processes: • Provide End User support consistent with historical practices for applications listed in [Appendix A]. • Provide technical support related to Sellers Systems, network access (e.g., IT, firewall, all Wi-Fi, VPN, RSA, etc.) and existing computing equipment (laptops, PCs, Mobile Phones, Tablets, etc.).		N/A	[***]	March 31, 2025

[7] Reflects cost for [***] under the assumption that his contract will be a Delayed Assignment Contract and then transfer to Nestlé after expiration of this service. Adjustment to this cost may be required..

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
		● Provide break-fix support for the Buyers computers consistent with standard Seller procedures and provision personal (company) computers for new Buyer employees with the standard Seller image, as requested by Buyer. ● Provide access to the internet, printer and copier equipment and telephone services to Buyer employees located at Seller facilities				
IT.08	IT: Infrastructure Support	Seller will support the following processes: ● Support and maintain the physical network (WAN and LAN) and internet connectivity, including coordination with local vendors for performance issues and troubleshooting for both conveying and non-conveying locations. ● Continue to provide physical and logical security to the Buyer's network; consistent with historical practices for both conveying and non-conveying locations. ● Support the transition of mobile phones and phone numbers to Buyer's replacement vendor plan(s), as requested ● Seller to provision new assets for replacement of current equipment at the end of the useful life for conveying facilities and conveying employees during the transition period.		$[***]	[***]	March 31, 2025

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
IT.09	IT: Email and Collaboration Tools	Support the Buyer's messaging and collaboration services via the Buyer's email environment, including provisioning, management, support, and maintenance. Provide an email transition solution that includes parallel access to both email inboxes (Seller and Buyer) for a defined period and then auto-forward all internal and external email from legacy mailboxes to the Buyers email domain ● 120 - day access to historical emails (including contacts and calendars) ● 180 days of email forwarding (external) ● 120 days of email forwarding ● 180 days of access to allow employees to migrate home drives and shared drives		N/A	[***]	March 31, 2025

Information Technology Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[6]**
IT.10	IT: End User Laptop / Cellular Devices	Seller will support the following processes: ● Desktops / Laptops - Continued provision of managed desktops / laptops with a core image and applications during the TSA transition period ● Mobile / Cellular Devices - The continued provision of managed mobile devices, and/or the continued provision of mobile device management platform for the management of Buyer personnel owned device (“Bring Your Own Device” or “BYOD”) during the TSA transition period		N/A	[***]	March 31, 2025
IT.11	IT: Data Migration	Seller will support the following processes: ● Seller will allow Buyer to access data for migration purposes from Seller’s system to Buyer’s system, including customer data and price book data. ● Seller will evaluate additional data requests for feasibility on a case-by-case basis ● Support tools for current and historical data extracts related to the business as required to support transition		N/A	[***]	March 31, 2025
IT.12	IT: Physical Records	Buyer shall request any Books and Records held in hard copy by the Seller or providers at offsite facilities. Seller to respond to any such request with the identified documents within 10 days of the request		At no cost	[***]	March 31, 2025

Information Technology Transition Services						
ID	Name	Description of Service	Dependencies	Estimated Pass Through Cost (Monthly)	Allowable Expense?	Duration[6]
IT.13	IT: Licensing	Until systems within Seller and services commissioned by Seller are used and until data is extracted from it, Seller continues providing TSA for all related licenses		N/A	[***]	March 31, 2025
IT.14	IT: Identity and Access Management	Provide user management and user administrative service and support for active directory and core services maintaining current network and device access for transferring employees, new hires, and contractors.		N/A	[***]	March 31, 2025
IT.15	IT: Support during intermediate TSA exits	During staggered exit of different functions and IT support for those function, the seller will provide support in designing and support intermediate set-up		N/A	[***]	March 31, 2025

Human Resources

Service Owner[8]	**Nestlé Health Science** ● **HR.01-HR.04:** [***] **Seres** ● **HR.01-HR.04:** [***]

[8] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.

Service Fees (Monthly)	**Service fees applicable to all TSA services described below HR.01-HR.04:** ● **FTE Count:** [***] ● **Fixed FTE Cost:** [***] ● **Fixed Non-Labor Cost:** [***]

Human Resources Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Costs (Monthly)**	**Allowable Expense?**	**Duration[9]**
HR.01	HR: Payroll-Payroll Processing/Compliance/Time Management	Provide payroll processing of time and earnings amounts for hourly and salaried payroll for all employees. This includes the following: ● Processing time and earnings data for payroll payments ● Remitting checks and/or direct deposits after payroll processing ● Withholding necessary amounts as required by law or election, including payroll taxes, union dues, benefit amounts, and garnishment amounts ● Provide payroll cost related information including standardized reporting ● Provide information required to transfer to Buyer payroll system	IT.03 HR Systems Maintenance	N/A	[***]	2 months

[9] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Human Resources Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Costs (Monthly)**	**Allowable Expense?**	**Duration[9]**
		Provide tax remittance and tax compliance services based on payroll process results, including: ● Remitting federal, state, and local tax withholdings and liabilities ● Filing compliance forms required by the taxing authority ● Filing summary and detailed transmittal data for year-end compliance ● Providing employees with year-end tax summary statements Seller will support the following Time Management processes: ● Continued use of time and attendance tools ● Provide standardized reporting that is compiled in a manner, format and organizing structure that is generated in the ordinary course of operations, without customization or increased frequency				

Human Resources Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Costs (Monthly)**	**Allowable Expense?**	**Duration[9]**
HR.02	HR: HR Admin	Provide all administration currently provided at the corporate level including but not limited to: ● Processing employee documentation and correspondence ● Running system reports that are compiled in a manner, format, and organizing structure that are generated in the ordinary course of operations, without customization or increased frequency ● Entering information into databases ● Inclusion of new hire training to cover any training required in addition to Quality compliance training between close and employee transfer	IT.03 HR Systems Maintenance	N/A	[***]	2 months
HR.03	HR: HR Operations-HR Services HR call center/shared service center access	Provide the following services for existing employees: ● Provide HR leadership ● Talent Management ● Payroll Management ● Employee Relations ● Employee Administration Management ● Employment verification and unemployment administration ● Leave Administration Management	IT.03 HR Systems Maintenance	N/A	[***]	2 months

Human Resources Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Costs (Monthly)**	**Allowable Expense?**	**Duration[9]**
		Provide process & technology support for administering existing life / job event changes including: ● Promotion ● Change in pay ● Transfer ● Rate schedule increases ● Suspension ● Leave of absence ● Return to active status ● Termination ● Retirement ● Birth of a child ● Marriage ● Divorce ● Death Payment Processing				
HR.04	HR: Benefits-Vendor Management	Seller will support the following processes: ● Manage vendor relationship and contract, system and process support ● Provide continued access to Seller's benefits plans ● Plan administration, Access to Benefits Help Desk, Continuation in RemainCo's plans (if applicable), 5500 fillings ● Plan administration, Access to Benefits Help Desk, Continuation in RemainCo's plans (if applicable) of FSA/ Dependent care, Tuition Reimbursement, Allowances and other perks	IT.03 HR Systems Maintenance	N/A	[***]	2 months

Human Resources Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Costs (Monthly)**	**Allowable Expense?**	**Duration[9]**
		● Administration of existing contracts and liabilities, Continuation in RemainCo's plans (if applicable) ● Administration of incentive plans ● Communicate and approve any benefit changes with the buyer Provide benefits administration support for Buyer's employees including but not limited to: ● Enroll employees in benefits plans and terminate enrollments ● Monitor continuing eligibility for plans ● Monitor provision of evidence of insurability ● View information about current benefit enrollments ● Print enrollment and confirmation forms ● Transfer data electronically to plan providers ● Handle all benefit determinations, claims and appeals ● Continued access to seller's 401K contribution ● Handle all payroll deductions and corresponding contributions				

PRMS

Service Owner[10]	**Nestlé Health Science** • **PRMS.01-PRMS.02:** [***] **Seres** • **PRMS.01-PRMS.02:** [***]

PRMS Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Service Fees (Monthly)**	**Allowable Expense?**	**Duration**[11]
PRMS.01	PRMS Services	The manufacturing of PRMS batches is performed by Seller as a service during a defined period at the Sidney Street Facility (the facility). The Seller will maintain the facility, personnel, quality systems and technology to manufacture batches according to a defined and mutually agreed upon Demand Plan. The Seller will ensure the compliance and inspection readiness of the facility. The VOWST product QC testing will be performed by the Purchaser according to the provisions defined in the Quality section of the TSA. Purchaser will be responsible for overall product quality oversight for VOWST, including ultimate responsibility for PRMS. Seller's QA responsibility will be specifically for PRMS operations performed by the Seller at 200SS only. Seller will support PRMS QA as defined below, while Purchaser will have responsibility for Donor (DSM, SRM), DS, DP and Finished Goods. Further details of Quality roles and responsibilities will be defined in a Quality Agreement to be agreed upon between the Purchaser and Seller prior to the Closing.		**Q4 2024** Fixed Cost: $[***] per month Variable Cost: $[***] per batch **Q1-Q4 2025** Fixed Cost: $[***] per month Variable Cost: $[***] per batch **Q1-Q2 2026** Fixed Cost: $[***] per month Variable Cost:	[***]	December 31, 2025 Option to extend Inspection Readiness for SS facility up to 6 months

[10] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.
[11] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

PRMS Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Service Fees (Monthly)**	**Allowable Expense?**	**Duration[11]**
		The following activities will be performed by Seller: ● Receipt of SRM at the facility from Purchaser's Donor Collection Facilities. SRM to be fully released by Purchaser prior to shipment to the Sidney Street Facility. ● Maintain a Quality Management System with validated document control functions to issue, maintain, and revise controlled documents such as manufacturing procedures, batch records, and forms used for the manufacturing of PRMS. ● Procurement, receipt and storage of Raw Materials and Consumables required for the PRMS manufacturing. Purchaser will be responsible for providing supplemental staff required for the sampling of Raw Materials stored at the Franklin, MA warehouse and all costs associated with testing of Raw Materials for release. Seller to release PRMS materials for use. ● Transfer of materials (SRM, Raw Materials) from warehouses to manufacturing areas		To be discussed in good faith if required A response to the requests for additional batches, including proposed revisions, will be provided by Seller within 10 business days from receipt of the request. Additional PRMS batches (above what is requested in the Demand Plan) produced within 2025 will be delivered at the same cost per batch as those produced in the core batches of the Demand Plan $[***] per batch).		

PRMS Transition Services						
ID	Name	Description of Service	Dependencies	Service Fees (Monthly)	Allowable Expense?	Duration[11]
		• Manufacture of PRMS per existing procedures • Maintenance of equipment and facility per existing procedures • Transfer of PRMS from manufacturing area to warehouse freezers • Prepare and ship samples required for QC testing • Prepare and ship PRMS lots to CDMO for DS manufacturing upon release by Purchaser's Quality personnel • Participate in any investigation resulting from completion of the above work • Compile data on above work as needed for reporting, including to support investigations, process validation, technology transfer, or annual reports • Training on existing procedures and policies as needed to complete the PRMS manufacturing • Perform release of PRMS based on CofT provided by Purchaser who is responsible for VOWST product testing. • Support Purchaser's personnel on site when needed • Support of on-site FDA inspection for completed work per above, including receiving unannounced FDA investigators, and preparation activities in support of FDA inspections. Provide SME(s) to answer any questions on the Seller's quality systems used for PRMS manufacturing and release.		For additional PRMS batches requested during an idle production period, per batch cost will be discussed in good faith between the parties.		

PRMS Transition Services						
ID	Name	Description of Service	Dependencies	Service Fees (Monthly)	Allowable Expense?	Duration[11]
		The following will be the responsibility of the Purchaser: ● Maintains liability for inventory held at 200 Sidney St, 2nd floor freezer farm ● Training and credentials within Seller's EMS and CMMS systems required for Purchaser personnel during a defined TSA period. ● Release of SRM prior to shipment to Sidney Street Facility. ● Technical support of PRMS process deviation investigations. Seller will support such investigations as required. ● Trending and data analysis program for tracking performance of the PRMS manufacturing process. ● Provision of supplemental staffing if required and mutually agreed upon (could be Purchaser employees as part time support for Seller and/or contract employees) to be trained on the Seller's quality systems for: ○ QA Operations support during active PRMS manufacturing, ○ QC Environmental Monitoring activities and EM testing during the PRMS Services period				

PRMS Transition Services						
ID	Name	Description of Service	Dependencies	Service Fees (Monthly)	Allowable Expense?	Duration[11]
		○ Equipment Validation\requalification of the PRMS manufacturing and warehouse equipment ○ *These activities performed by supplemental staff from the Purchaser will occur within Seller's quality systems, including the tracking of training required to conduct these activities.* ● Final acceptance of PRMS batches internally released by the Seller and in accordance with the Quality Agreement between Seller and Purchaser. ● Inspection-readiness program, including any consultant staff required for preparations. Seller staff will support any on-site regulatory inspections related to PRMS at 200SS as required. Buyer reserves the option to request facility access for FDA inspections beyond the term of this TSA for up to [***]. Buyer will notify at least [***] in advance if this option to extend will be exercised. Request for extensions for facility availability must be received no later than [***]. The maximum allowed extension period is an additional [***]. The scope of this extension is only to ensure the facility is in a state of compliance with the BLA and readiness for potential regulatory inspection. Extensions which require the production of additional PRMS requires negotiation of an applicable fee schedule for costs to restart manufacturing and variable costs per batch made.				

PRMS Transition Services						
ID	Name	Description of Service	Dependencies	Service Fees (Monthly)	Allowable Expense?	Duration[11]
		Removal of any remaining SRM and PRMS from the Sidney Street Facility before the end of the PRMS services period. The initial Demand Plan is included below: ● Production of [***] batches ([***]) provided by Seller no later than end of [***] ● Production of an additional [***]batches ([***]) provided by Seller no later than end of [***] ● Production of an additional [***]batches ([***]) provided by Seller no later than end of [***] <u>Additional Batches</u> ● Purchaser may order up to [***]additional PRMS batches with no less than [***] notice. The terms of the production and delivery of these additional PRMS batches shall be governed by Section 1.08(c) of the TSA.				

PRMS Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Service Fees (Monthly)**	**Allowable Expense?**	**Duration[11]**
PRMS.02	Support for PRMS Technology Transfer	Provide consultative subject matter specialist support during PRMS technology transfer: ● Investigations and troubleshooting ● Preparation of manufacturing data ● Preparation of information for regulatory submissions		[***]	[***]	March 31, 2025

Operations

Service Owner[12]	**Nestlé Health Science** ● **Ops.01-Ops.03:** [***] **Seres** ● **Ops.01-Ops.03:** [***]
Service Fees (Monthly)	**Service Fees applicable to all TSA services described below Ops.01-Ops.03:** ● **FTE Count:** [***] ● **Fixed FTE Cost:** [***]

[12] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.

Operations Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[13]**
Ops.01	Storage and Warehousing / Logistics	Seller will support the following processes ● Storage of DSM, SRM, DS, DP including stability samples and R&D material at external storage facilities until contract conveyance ● In coordination with Buyer, enable shipping of donor collections, DSM, SRM, DS, and DP including samples between existing shipping lanes among DCFs, DSL, 9FA, 200SS, 101CPD, GenIbet, Bacthera, and external storage locations until contract conveyance of transportation providers ● Support for overseeing shipping associated with new shipping validations (e.g. between DCFs and GenIbet or Bacthera) (Note: Buyer to perform shipping validations)	Vendor contract conveyance IT.01: Donor and Lab Systems Maintenance DP.01: Tempe Freezer Farm	[***]	[***]	March 31, 2025

[13] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Operations Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[13]**
Ops.02	Engineering Support, Maintenance, and Site Operations	Support Purchaser to maintain and transfer engineering support which is currently performed by Seller and not related to the Sidney Street Facility Specifically, Seller will support the following processes: ● Site operations and utilities support for DCFs, DSL, 9FA ● Site operations and utilities support for 101CPD until assay is transferred ● Oversight of cleaners for DCFs, DSL, 9FA, 101CPD ● Maintain Global Pest Control Program and provide global engineering support for pest management ● Real Estate and liaisons with landlords ● GMP calibration and Preventative Maintenance program ● Perform validation requalifications	IT.01: Donor and Lab Systems Maintenance	**$**[***]	[***]	March 31, 2025
Ops.03	Knowledge Transfer	Support Purchaser during the transfer of documents and manufacturing records to Purchaser in relation to manufacturing process, regulatory and intellectual property		At no cost	[***]	March 31, 2025

Quality

Service Owner[14]	**Nestlé Health Science** ● **Q.01-Q.05:** [***] **Seres** ● **Q.01-Q.05**: [***]
Service Fees (Monthly)	**Services Fees applicable to all TSA services described below Q.01 – Q.05:** ● **FTE Count:** [***] ● **Fixed FTE Cost:** [***]

Quality Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration**[15]
Q.01	Operations: Quality-Quality Assurance	Provide QA support for routine QC & monitoring activities of products until successful transition to Buyer. Includes but not limited to ● Product management (CMO Oversight, change control, complaints, deviations, CAPAs, artwork, APQR, audits, KPI monitoring, pharmacovigilance oversight, quality agreements) ● Overall Quality leadership ● Consultative subject matter specialist support		$[***]	[***]	March 31, 2025

[14] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.
[15] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Quality Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[15]**
		Provide support for VOWST Release to Market including: ● CoT, CoA, and LRP approval ● Quality disposition for further manufacturing (PRMS), raw material release, final quality disposition (DS, DP, FG) ● LRP submission to FDA ● Provide information reasonably required by Buyer to confirm interim product release				
Q.02	Quality Training	Seller will support the following processes: ● Provide a download of all VOWST PDQS training material and historic training records from Seller's learning management system for upload to Buyer's learning management system ● Provide continued access and administration to current GxP learning management services (including ComplianceWire and pharmacovigilance training delivery vendors)	PRMS.01 (PRMS Services)	N/A	[***]	December 31, 2025

Quality Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[15]**
Q.03	Quality Control: Stability Sample Storage[16]	Seller will support the following processes: ● Oversee and maintain stability sample storage until contracts are conveyed		$[***]	[***]	March 31, 2025, or with contract conveyance
Q.04	Quality Control: Method Transfer: Product Testing	Seller will provide the following: ● Review of method transfer protocols, data analysis packages, reports, and/or regulatory submissions for analytical assay transfers (DS: Appearance, DP: Appearance, Disintegration, Container Closure Identity Testing, and Water Activity) from the Sidney Street Facility to the Waltham Facility or other receiving lab of Purchaser's choosing ● Provide consultative subject matter specialist support for investigations and troubleshooting during the analytical assay transfers Out of Scope: ● Purchaser will perform and oversee analytical assay transfers		N/A	[***]d	March 31, 2025, or earlier exit as analytical assays are transferred

[16] Note to Seres: Confirm vendors involved in stability sample storage and timing for conveying contracts to Nestlé

Quality Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[15]**
Q.05	Quality Control: donor material, DS, and DP testing	Oversee donor material testing, DS and DP release and stability testing for current analytical methods at external labs until contracts are conveyed and 101CPD	SCFU method transfer out of 101CPD Contract conveyance of external labs	N/A	[***]	March 31, 2025, or with contract conveyance

Donor Program

Service Owner[17]	**Nestlé Health Science** ● **DP.01, DP.03**: [***] ● **DP.02:** [***] **Seres** ● **DP.01-DP.03:** [***]
Service Fees (Monthly)	**Service Fees applicable to all TSA services described below DP.01-DP.02:** ● **FTE Count:** [***] ● **Fixed FTE Cost:** [***] **DP.03 - One Time Cost (Microsporidia study):** [***]

[17] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.

Donor Program Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[18]**
DP.01	Tempe Freezer Farm	Seller will support the following processes: Completion of installation and qualification of freezers, including Hanwell monitoring system[19]	IT.01: Donor and Lab Systems Maintenance	N/A	[***]	3 months
DP.02	License Transfers	Seller will support the following processes: ● Support to transfer license for DCF/DSL sites (license to operate as is) ● Maintain valid license to operate as-is until license is transferred to Purchaser. ● Support to transfer the following licenses including but not limited to: o Storage and Use of Flammable Liquid / Gas / Solid Permit, City of Waltham, Massachusetts, Permit Number FS 24-85 o Compressed Gases Permit, City of Waltham, Massachusetts, Permit Number C 24-10 o Environmental Protection Agency ("EPA") Registration, EPA / California Department of Toxic Substances Control, EPA ID# CAR000329441 o EPA Registration, EPA / Massachusetts Department of Environmental Protection, EPA ID# MAR000553685	License transfer to Buyer	At no cost	[***]	March 31, 2025 (CLIA Transfer 1-2 months)

[18] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Donor Program Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[18]**
		o EPA Registration, EPA / Pennsylvania Department of Environmental Protection, EPA ID# PAR000573147 o Clinical Laboratory Improvement Amendments Accreditation, Centers for Medicare & Medicaid Services, CLIA ID Number 39D2278717 o Clinical Laboratory Permit, Pennsylvania Department of Health, Laboratory Identification Number 40245 o Certificate of Accreditation, College of American Pathologists, CAP# 9244780				
DP.03	Quality Control: Method Transfer: Donor Analytical Screening Assays	Seller will provide the following: ● Review of method transfer protocols, data analysis packages, reports, and/or regulatory submissions for analytical assay transfers (C. difficile donor assay from Sidney Street Facility to the Donor Screening Lab; Event 2 and Event 4 Donor SCFU testing from CPD to the Donor Screening Lab; and Nextgen donor titer assay) ● Provide consultative subject matter specialist support for investigations and troubleshooting during the analytical assay transfers ● Protocols and expertise to re-establish 16S sequencing pipeline to support identifying species name during Bioburden analyses		$[***]	[***]	March 31, 2025, or earlier exit as analytical assays are transferred

Donor Program Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[18]**
		• Technical support and laboratory access to perform microsporidia inactivation studies Out of Scope: Purchaser will perform and oversee analytical assay transfers				

Regulatory

Service Owner[20]	**Nestlé Health Science** **Reg.01-Reg.03:** [***]**Seres** • **Reg.01-Reg.03:** [***]
Service Fees (Monthly)	**Service Fees applicable to all TSA services described below Reg.01-Reg.03:** • **FTE Count:** [***] • **Fixed FTE Cost:** [***]

[20] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.

Regulatory Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[21]**
Reg.01	Regulatory: Regulatory SME Support	Seller will support the following processes: ● Provide comprehensive list of ongoing and new supplements anticipated in the next 90 days post-close, including actions and dates ● Provide subject matter expert services (Seres SME and consultive services) to include reviewing documents and answering questions) for ongoing health authority reviews of supplements and variations submitted prior to contract signing until health authority action on the supplement/variations (including but not limited to HAV NAT) ● Provide subject matter expert services (Seres SME and consultive services) to include documents and answering questions for supplement and variation submissions to be submitted within 90 days of deal closure. Prepare potential list of questions/queries anticipated by FDA and help back up scenario planning.		$[***]	[***]	March 31, 2025
Reg.02	Regulatory: Regulatory Affairs	● Regulatory operations to transfer electronic ECTD source files for BLA, IND, and orphan files.		N/A	[***]	3 months

[21] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Regulatory Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[21]**
Reg.03	Regulatory: Consultive Services	• Transfer all files related to OUS SER-109 regulatory strategy and provide subject matter expert services (Seres SME and consultive services) to include answering questions regarding historical interactions and plan modifications to OUS development plans (i.e., scientific advice, PIP negotiation) within 90 days of deal closure.		N/A	[***]	3 months

Clinical

Service Owner[22]	**Nestlé Health Science** • **Clin.01:** [***]**Clin.02**: [***] **Seres** • **Clin.01-Clin.02:** [***]
Service Fees (Monthly)	**Service Fees applicable to all TSA services described below Clin.01-Clin.02:** • **FTE Count:** [***] • **Fixed FTE Cost:** [***]

[22] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.

Clinical Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration[23]**
Clin.01	Clinical: Data Transfer	Provide support for: ● Transfer of electronic clinical trial master file (TMF) from Seres SharePoint/Veeva archives to Nestlé. ● Provide support for transfer of clinical databases for historic studies from Seres server. ● Review any migration plan or documentation authored by Nestlé.		N/A	[***]	3 months
Clin.02	Clinical: Specimen Transfer	Provide support for: ● Transfer of stool sample and collections from SER-109 studies 012 and 013; connect Nestlé with long term storage vendor, Azenta, so that Nestlé may initiate contract for scope of work. Seller will provide FBMR trackers only. Purchaser will be responsible for ensuring FBMR consents for sample inventory are in place prior to use ● [Buyer retains the rights to negotiate utilization of C. difficile and serum and blood samples for future research][24]		$[***]	[***]	March 31, 2025

[23] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.
[24] Note to Seres: To be discussed by both parties during the sign and close period

PV

Service Owner[25]	**Nestlé Health Science** ● **PV.01:** [***] **Seres** ● **PV.01:** [***]
Service Fees (Monthly)	**Service Fees applicable to all TSA services described below PV.01:** ● **FTE Count:** N/A ● **Fixed FTE Cost:** N/A

PV Transition Services						
ID	**Name**	**Description of Service**	**Dependencies**	**Estimated Pass Through Cost (Monthly)**	**Allowable Expense?**	**Duration**[26]
PV.01	PASS Safety Surveillance Study	Provide Subject Matter Expert (SME) support related to Nestlé questions on the PASS and the transfer of the Cytel contract; support governance and enforcement of existing vendor until the contract transfers and the BLA transfer submission is complete		$[***]	[***]	2 months

[25] Seller and Purchaser may designate a different Service Owner with similar skills and capabilities at any time by written notice to the other party.
[26] Note to Seres: The durations indicated herein are predicated upon a Closing date of September 30th. In the event that the Closing transpires subsequent to the aforementioned September 30th, the TSA duration dates shall be appropriately modified.

Appendix A (Business Application List)[27]

Appendix A represents the list of known applications currently in use by VOWST and supported by Seres during the transition period (as referred to in TSA IT.01- IT.02- IT.03)

Table 1.0 - Business Application List[28]
A. Donor and Lab Systems

[27]Note to Seres: Nestlé reserves the rights to refine the list until close
[28]Applications still under review – [***]

Table 1.0 - Business Application List[28]			
1. [***] 2. [***] 3. [***] 4. [***] 5. [***] 6. [***] 7. [***] 8. [***] 9. [***] 10. [***] 11. [***] 12. [***]	13. [***] 14. [***] 15. [***] 16. [***] 17. [***] 18. [***] 19. [***]	20. [***] 21. [***] 22. [***] 23. [***] 24. [***] 25. [***] 26. [***] 27. [***] 28. [***] 29. [***]	30. [***] 31. [***] 32. [***] 33. [***] 34. [***] 35. [***] 36. [***] 37. [***] 38. [***] 39. [***] 40. [***] 41. [***]
B. Financial and Operations Systems			
1. [***] 2. [***] 3. [***]			

Table 1.0 - Business Application List[28]			
C. HR Systems			
1. [***] 2. [***] 3. [***] 4. [***] 5. [***]	6. [***] 7. [***] 8. [***] 9. [***]	10. [***] 11. [***] 12. [***]	13. [***] 14. [***] 15. [***] 16. [***] 17. [***] 18. [***]
D. Other In-Scope Business Applications for IT.01 – IT.15			
1. [***] 2. [***] 3. [***] 4. [***] 5. [***] 6. [***]	7. [***] 8. [***] 9. [***] 10. [***] 11. [***] 12. [***] 13. [***] 14. [***]	17. [***] 18. [***] 19. [***] 20. [***] 21. [***] 22. [***] 23. [***] 24. [***] 25. [***]	26. [***] 27. [***] 28. [***] 29. [***] 30. [***] 31. [***] 32. [***] 33. [***]

Appendix B (QAV/CSV Project List – Including Donor)

System	Project Name	Budgeted Cost	Cost Assumptions	Allowable Expense?	Priority
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]

Appendix C (Optional Projects)

The table below represents optional projects that are incremental to the TSA services and the costs below are estimates. Upon written request by Nestlé, Seres and Nestle will meet and in good faith to discuss the nature and scope of projects and agree upon a budget at that time. The costs to be charged will be the actual costs of the project and the parties will work together to manage within the budget.

Project Name	Description	Estimated Cost	Allowable Expense?
[***]	[***]	$[***]	[***]
[***]	• [***]	$[***]	[***]
[***]	[***]	$[***]	[***]
[***]	[***]	$[***]	[***]
[***]	[***]	$[***]	[***]
[***]	[***]	$[***]	[***]
[***]	[***]	$[***]	[***]

Exhibit 10.3

FORM OF
CROSS-LICENSE AGREEMENT[1]

This **Cross-License Agreement** (this "**Agreement**"), effective as of [●], 2024 (the "**Effective Date**"), is made by and between Seres Therapeutics, Inc., a Delaware corporation ("**Seller**"), and Société des Produits Nestlé S.A., a *société anonyme* organized under the laws of Switzerland ("**Purchaser**").

WHEREAS, Seller and Purchaser have entered into an Asset Purchase Agreement, dated as of August 5, 2024 (the "**APA**"), pursuant to which Purchaser has purchased, and Seller has assigned, certain assets related to the Vowst Business (as defined below), and Purchaser has assumed certain liabilities of the Vowst Business, subject to the terms and conditions set forth in the APA.

WHEREAS, pursuant to the APA, the Parties have agreed to enter into this Agreement as of the Effective Date in order for Seller to license to Purchaser certain Intellectual Property Rights (as defined below) owned and retained by Seller that are used or reasonably useful in connection with the Vowst Business and for Purchaser to license to Seller certain Intellectual Property Rights which Purchaser has purchased from Seller pursuant to the APA that are currently used in connection with the conduct of the Retained Business by Seller, in each case subject to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions**. Capitalized terms used but not otherwise defined in this Agreement have the following meanings:

"**Action**" shall mean any action, claim, suit, litigation, proceeding, arbitration, mediation, audit, hearing, investigation or dispute.

"**Affiliate**" shall mean, as to any specified Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, "control," "controls," "controlled by" or "under common control with" means the possession of the power to direct or cause the direction of management and policies of such Person, whether through direct or indirect ownership of voting securities or otherwise.

"**Acquired Assets**" has the meaning set forth in the APA.

"API" has the meaning set forth in the APA.

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[1] **Note to Draft**: Parties (i) to discuss changes to the Exhibits hereto in good faith between signing and closing and (ii) to make such changes thereto to the extent reasonably necessary or appropriate for the continued operation of the Vowst Business following closing.

"**Assumed Liabilities**" has the meaning set forth in the APA.

"**BLA**" shall mean in the United States, a Biologics License Application, as defined in the United States Public Health Service Act (42 U.S.C. § 262), and applicable regulations promulgated thereunder by the FDA, or any equivalent application that replaces such application, or any corresponding foreign application.

"**Business Day**" shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in New York, New York.

"**CDI**" has the meaning set forth in the definition of rCDI.

"**CDI Field**" shall mean the treatment of CDI and rCDI and associated complications.

"**Co-Exclusive**" shall mean, as between Seller (and its Affiliates) and Purchaser (and its Affiliates), a license that is exclusive to Purchaser and its Affiliates, provided that Seller also reserves all rights for itself and its Affiliates and Third Party subcontractors to Exploit the Seller Licensed Patents and Seller Licensed Know-How.

"**Commercialization**" shall mean any and all activities directed to the preparation for sale of, offering for sale of, or sale of a product, including activities related to registering, launching, marketing, promoting, distributing, detailing, booking of sales, importing, pricing, reimbursement, Market Access, HEOR Activities, and advertising such product, and interacting with Regulatory Authorities regarding any of the foregoing, but excluding any activities relating to Development or Manufacturing. When used as a verb, "**to Commercialize**" and "**Commercializing**" means to engage in Commercialization, and "**Commercialized**" has a corresponding meaning.

"**Confidential Information**" shall mean any and all technical, business or other information or data of a Party or its Affiliates provided orally, visually, in writing, graphically, electronically, or in another form by or on behalf of a Party (or an Affiliate or representative of such Party) to the other Party (or to an Affiliate or representative of such Party) in connection with this Agreement, whether prior to, on or after the Effective Date, including the terms of this Agreement, or the Exploitation of a Seller Product or Purchaser Product, any Know-How with respect thereto, or the scientific, regulatory, financial or business affairs or other activities of either Party; provided that, all such information or data contained in the Acquired Assets or the Assumed Liabilities, whether provided by Seller or Purchaser, shall constitute the Confidential Information of Purchaser.

"**Control**" (including any variations such as "**Controlled**" and "**Controlling**") shall mean, with respect to any Intellectual Property Rights, material or document, the legal authority or right (whether by ownership, license or otherwise) of a Party to transfer such Intellectual Property Rights, or grant a license or a sublicense of or under such Intellectual Property Rights, or to provide or provide access to such material or document, to the other Party without breaching the terms of any agreement with a Third Party existing at the time such Party would be required hereunder to grant the other Party such license, sublicense, or access.

"**Cover**" shall mean that, with respect to a particular product or process and a particular Valid Claim in a Patent, but for applicable rights granted to a Party under Section 2.1, the making, using, selling or importing of such product or practicing such process would infringe a Valid Claim of such Patent in the country or jurisdiction in which such activity occurs.

"**Data**" shall mean any and all research data, pharmacology data, preclinical data, clinical data, including raw data, as well as marketing, Market Access, pharmacovigilance, and other data directly related to the Product, in each case to the extent that such data are Controlled by a Party or its Affiliates.

"**Development**" or "**Develop**" shall mean non-clinical and clinical drug development activities reasonably related to the development and submission of information to a Regulatory Authority or otherwise related to the research, identification, testing and validation of a therapeutic agent, including, without limitation, toxicology, pharmacology and other discovery and pre-clinical efforts, test method development and stability testing, manufacturing process and chemistry, manufacturing and controls development and scale-up, life cycle management, formulation development, delivery system development, quality assurance and quality control development, statistical analysis, clinical trials (including, without limitation, pre- and post-approval studies), and all other activities necessary or reasonably useful for or otherwise requested or required by a Regulatory Authority as a condition to or in support of obtaining or maintaining a Regulatory Approval.

"**Exclusivity Period**" shall mean the period beginning on the Effective Date and ending on the fifth (5th) anniversary of the Effective Date.

"**Exploit**", and related terms such as "**Exploitation**", shall mean to make, have made, import, export, use, sell or offer for sale, including to Develop, Commercialize, Manufacture and have Manufactured.

"**FDA**" shall mean the United States Food and Drug Administration, or any successor entity thereto.

"**Good Clinical Practices**" or "**GCP**" shall mean the requirements for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials, protection of human subjects, financial disclosure by clinical investigators, and institutional review boards, including as promulgated by the FDA at 21 C.F.R. Parts 50, 54, 56 and 312, or any other equivalent Laws.

"**Good Laboratory Practices**" or "**GLP**" shall mean the then-current good laboratory practice standards promulgated by the FDA and codified at 21 C.F.R. Part 58, or any other equivalent Laws.

"**Good Manufacturing Practices**" or "**GMP**" shall mean the regulations governing the manufacturing of fine chemicals, API, intermediates, bulk products or finished pharmaceutical products set forth in 21 U.S.C. 351(a)(2)(B) and in FDA regulations at 21 C.F.R. Parts 210, 211 and 600, or any other equivalent Laws.

"**Governmental Entity**" shall mean any national, supranational, international, federal, state, local, provincial or other governmental, regulatory or administrative authority, agency or commission or any court, tribunal, commission, board or judicial or arbitral body of competent jurisdiction.

"**HEOR Activities**" shall mean evidence generation and dissemination in support of pricing and reimbursement or establishment of the value proposition of a product or other activities applying the results of health economics and outcomes research ("**HEOR**") (e.g., clinical outcome assessment development and validation or use of HEOR-related endpoints in clinical studies or real world evidence generation).

"**IND**" shall mean an investigational new drug application submitted to the FDA pursuant to 21 C.F.R. Part 312, clinical trial exemption, or similar application or submission for allowance or approval to conduct human clinical investigations that is filed with or submitted to a Regulatory Authority in conformance with the requirements of such Regulatory Authority.

"**Intellectual Property Rights**" shall mean all Patents, Trade Secrets, Know-How, moral rights and any and all other intellectual property or proprietary rights now known or hereafter recognized in any jurisdiction.

"**Know-How**" shall mean any inventions, discoveries, data, information, processes, methods, techniques, materials (including any chemical or biological materials), technologies, results, cell lines, compounds, probes, sequences or other know-how or other confidential information, whether or not patentable.

"**Laws**" shall mean any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, court order, regulation, ruling, notice, treaty or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

"**Manufacture**" (including any variations such as "**Manufactured"** and "**Manufacturing**") shall mean all activities related to the collection, purification, production, manufacture, processing, filling, finishing, packaging, labeling, and shipping of a product or any intermediate thereof, including process qualification and validation, pre-clinical, clinical and commercial manufacture, product characterization, stability testing, and quality assurance and quality control.

"**Market Access**" shall mean any and all processes and activities conducted to establish, seek and maintain pricing and reimbursement for a product, as well as country level, state, regional and local payor processes and activities to obtain and maintain local and regional patient access for a product, including price setting, national mandatory rebate negotiations with applicable Governmental Entities, preparing reimbursement and economic dossiers, and policy-related activities associated with any of the foregoing.

"**Party**" shall mean Seller or Purchaser, individually; and "**Parties**" shall mean Seller and Purchaser, collectively.

"**Patents**" shall mean any and all national, regional and international (a) issued patents and pending patent applications (including provisional patent applications), (b) patent applications claiming priority to the foregoing, including all provisional applications, converted provisionals, substitutions, continuations, continuations-in-part, divisions, renewals and continued prosecution applications, and all patents granted thereon, (c) patents-of-addition, revalidations, reissues, reexaminations and extensions or restorations by existing or future extension or restoration mechanisms, including patent term adjustments, pediatric exclusivity, patent term extensions, supplementary protection certificates or the equivalent thereof, (d) inventor's certificates, utility models, petty patents, innovation patents and design patents, (e) other forms of government-issued rights substantially similar to any of the foregoing, including so-called pipeline protection or any importation, revalidation, confirmation or introduction patent or registration patent or patent of additions to any of such foregoing and (f) United States and foreign counterparts of any of the foregoing.

"**Person**" shall mean any person or entity, whether an individual, trustee, corporation, limited liability company, general partnership, limited partnership, trust, unincorporated organization, business association, firm, joint venture or Governmental Entity.

"**Purchaser Licensed Know-How**" shall mean (i) all Know-How within the Acquired Assets that is used in connection with Seller's operation of the Retained Business immediately prior to the Effective Date, and (ii) all Know-How conceived or otherwise developed in the course of the performance of the Services (as defined in the TSA) in accordance with the TSA. For clarity, the Purchaser Licensed Know-How shall include the Vowst Data.

"**Purchaser Licensed Patents**" shall mean (i) all Patents that Cover Services Inventions (as defined in the TSA) owned in whole by Purchaser or jointly with Seller and that arise out of the performance of the Services (as defined in the TSA) in accordance with the TSA and (ii) all Patents set forth on Exhibit A hereto.

"**Purchaser Product**" shall mean, collectively, Vowst and any improvements and modifications thereto Developed after the Effective Date.

"**Recurrent *C. difficile* Infection**" or "**rCDI**" shall mean an episode of a *C. difficile* infection ("**CDI**") in a patient who has had one or more episodes of CDI within the immediately preceding twelve (12) month period.

"**Regulatory Approval**" shall mean, with respect to any product in any country or regulatory jurisdiction, any and all approvals and licensures from the applicable Regulatory Authority sufficient for the import, distribution, marketing, use, offering for sale, and sale of such product in such country or jurisdiction in accordance with applicable Laws, including orphan drug designation, but excluding any applicable pricing and reimbursement approvals.

"**Regulatory Authority**" shall mean any national or supranational Governmental Entity (including the FDA) which has regulatory responsibility and authority in one or more countries for review and approval of Development, Manufacture and Commercialization of a product.

"**Regulatory Filings**" shall mean any and all regulatory applications and/or related documentation submitted on or before the date hereof, to a Regulatory Authority with respect to a product in connection with the initiation or conduct of clinical studies, and/or to seek Regulatory Approval for a product, including, without limitation, any INDs, drug master files, manufacturing master files, BLAs, or any supplements thereto.

"**Retained Business**" shall mean any Development, Manufacturing, Commercialization, use, marketing, sale and distribution of a product or other business as carried on or planned to be carried on and conducted by or planned to be conducted by Seller and its Affiliates that does not include the Vowst Business (a) in fields of use other than the CDI Field and (b) solely with respect to products containing designed, cultivated bacterial consortia not manufactured using human stool (excluding SER-262) after the Exclusivity Period, in the CDI Field.

"**Seller Licensed Know-How**" shall mean all Know-How within the Retained Business as conducted immediately prior to the Effective Date that is used or reasonably useful in the Exploitation of the Purchaser Product.

"**Seller Licensed Patents**" shall mean (i) all Patents set forth on Exhibit B hereto, and (ii) any issued Patent owned or Controlled by Seller or any Affiliate of Seller that Covers a Purchaser Product or its Exploitation, including any such issued Patent that is granted from any patent application listed on Exhibit C hereto to the extent any claims in such issued Patent Cover a Purchaser Product or its Exploitation.

"**Seller Products**" shall mean those products Developed, Manufactured, Commercialized, used, sold, distributed or otherwise Exploited by or on behalf of Seller or its Affiliates, alone or with a Sublicensee, in the conduct of the Retained Business and any improvements and modifications thereto.

"**SER-262**" has the meaning set forth in the APA.

"**Sublicensee**" shall mean, with respect to a Party, a Third Party to whom such Party (or its Affiliate) has granted a sublicense under Intellectual Property Rights Controlled by the other Party and licensed to such Party pursuant to this Agreement.

"**Third Party**" shall mean any Person other than the Parties or their respective Affiliates.

"**Trade Secrets**" shall mean confidential information meeting the definition of a trade secret under the Uniform Trade Secrets Act or the Defend Trade Secrets Act of 2016.

"**TSA**" shall mean that certain Transition Services Agreement to be entered into by and between Seller or its Affiliate and Purchaser or its designated Affiliates, substantially in the form set forth on Exhibit H of the APA.

"**Valid Claim**" shall mean (a) a claim of an issued patent that has not expired, lapsed, been cancelled or abandoned, or been dedicated to the public, disclaimed, or held unenforceable, invalid, or cancelled by a court or administrative agency of competent jurisdiction in an order or decision from which no appeal has been or can be taken, including through opposition, reexamination, reissue or disclaimer or (b) a claim of a pending patent application that is filed and being prosecuted in good faith, has not been pending in substantially the same scope for more than five (5) years without allowance, and that has not been finally abandoned. For clarity, a claim of an issued patent that ceased to be a Valid Claim before it issued because it had been pending for more than five (5) years in substantially the same scope, but subsequently issued and is otherwise described by clause (a) of the foregoing sentence, shall be considered to be a Valid Claim once it issues.

"Vowst" shall mean Vowst, as marketed pursuant to the Vowst BLA 125757.

"**Vowst Business**" shall mean the Development, Manufacturing, Commercialization, use, marketing, sale, distribution and other Exploitation of Vowst, excluding, for clarity, any billing, order entry, fulfillment, accounting, collections or other corporate centralized functions.

"**Vowst Data**" shall mean any Data, results or information concerning the Purchaser Product within the Acquired Assets.

1.2 **Interpretation Provisions**

(a) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement and Article, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(b) The terms "include" and "including," and variations thereof, are not limiting but rather shall be deemed to be followed by the words "without limitation."

(c) References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statutes or regulations.

(d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(e) Whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include all other genders.

(f) The Parties participated jointly in the negotiation and drafting of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. If an ambiguity or question of intent or interpretation arises, then this Agreement will accordingly be construed as drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party to this Agreement by virtue of the authorship of any of the provisions of this Agreement.

(g) The Schedules and Exhibits to this Agreement are a material part hereof and shall be treated as if fully incorporated into the body of this Agreement.

(h) References to "written" or "in writing" include in electronic form.

(i) References to "or" shall be deemed to be "and/or."

2. **LICENSE GRANTS; OWNERSHIP**

2.1 **Licenses**

(a) Subject to the terms and conditions of this Agreement, Seller hereby grants to Purchaser a perpetual, worldwide, non-exclusive (except as set forth in Section 2.1(c)), sublicensable (in accordance with Section 2.2), non-transferable (except as set forth in Section 8.1), fully paid-up license under the Seller Licensed Patents and Seller Licensed Know-How to make, have made, use, sell, offer for sale, import, and otherwise Exploit the Purchaser Product in all fields of use.

(b) Subject to the terms and conditions of this Agreement, Seller further grants to Purchaser an exclusive (even as to Seller and its Affiliates), perpetual, worldwide, sublicensable (in accordance with Section 2.2), non-transferable (except as set forth in Section 8.1), fully paid-up license under the Seller Licensed Patents and Seller Licensed Know-How to make, have made, use, sell, offer for sale, import, and otherwise Exploit SER-262 in the CDI Field.

(c) The license granted in Section 2.1(a) shall be (i) exclusive (even as to Seller and its Affiliates) in the CDI Field during the Exclusivity Period, and (ii) Co-Exclusive with Seller and its Affiliates in the CDI Field after the Exclusivity Period.

(d) Subject to the terms and conditions of this Agreement, Purchaser hereby grants to Seller a perpetual, worldwide, non-exclusive, sublicensable (in accordance with Section 2.2), non-transferable (except as set forth in Section 8.1), fully paid-up license under the Purchaser Licensed Patents and Purchaser Licensed Know-How to make, have made, use, sell, offer for sale, import, and otherwise Exploit (i) the Seller Products in all fields of use other than the CDI Field during and after the Exclusivity Period and (ii) subject to Section 2.1(b), products containing designed, cultivated, bacterial consortia not manufactured using human stool (excluding SER-262) in the CDI Field after the Exclusivity Period. For clarity, the license under this Section 2.1(d) shall not include the Purchaser Product.

2.2 **Sublicenses**. In the event a Party sublicenses any of its rights under Section 2.1 to a Sublicensee, such Party shall enter into written agreement(s) with such Sublicensee containing terms no less protective of the other Party's rights than those set forth herein. The sublicensing Party shall be fully responsible to the non-sublicensing Party for any breach of the terms of this Agreement by a Sublicensee.

2.3 **Ownership**. As between the Parties, Purchaser owns and shall retain ownership of all Purchaser Licensed Patents and Purchaser Licensed Know-How, and Seller owns and shall retain ownership of all Seller Licensed Patents and Seller Licensed Know-How. Each Party as the licensee under Section 2.1 will practice the Patents and Know-How licensed to it thereunder only within the scope of the license granted to it pursuant to this Agreement.

2.4 **Right of Reference**. Each Party hereby grants to the other Party a right of reference with respect to (i) Regulatory Filings and Regulatory Approvals of the Purchaser Product (in the case of the right of reference granted to Seller) or a Seller Product (in the case of the right of reference granted to Purchaser), (ii) all Data relating to the Purchaser Product (in the case of the right of reference granted to Seller) or a Seller Product (in the case of the right of reference granted to Purchaser), contained or referenced in such Regulatory Filings and Regulatory Approvals, and (iii) in the case of the right of the reference granted to Seller, Vowst Data, in each of (i), (ii), and (iii), to Develop, Manufacture, Commercialize, use, sell, distribute or otherwise Exploit the Seller Products (in the case of the right of reference granted to Seller) or the Purchaser Product (in the case of the right of reference granted to Purchaser).

2.5 **No Implied Licenses**. Nothing contained in this Agreement shall be construed as conferring any rights by implication, estoppel or otherwise, under any Intellectual Property Rights of either Party, other than the rights expressly granted in this Agreement.

3. **PATENTS**

3.1 **Prosecution and Maintenance**. Each Party shall be responsible for prosecuting and maintaining its own Patents during the term of this Agreement, at its own expense. For clarity, other than as set forth in Section 3.3, neither Party is obligated under this Agreement to file any patent application, secure any patent rights or maintain any Patent in force in any jurisdiction throughout the world.

3.2 **Enforcement**. Neither Party shall have any obligation under this Agreement to institute or maintain any Action against Third Parties for infringement or misappropriation of any Intellectual Property Right, or to defend any Action brought by a Third Party which challenges or concerns the validity of any of such Intellectual Property Rights. Each Party shall have the obligation to inform other Party within ten (10) business days of any Third Party written allegation that the manufacturing, use, sale or importation of any Purchaser Product (in the case of Seller) or any Seller Product (in the case of Purchaser) infringes or misappropriates any Third Party Intellectual Property Right.

3.3 **Option for Seller Licensed Patents Exclusively Covering Vowst**. At any time after the Effective Date, if Seller owns any issued Patent that exclusively Covers Vowst and any improvements and modifications thereto and does not Cover any Seller Product, including any such Patent granted from any patent application listed on Exhibit C hereto, upon the written request of Purchaser and at Purchaser's sole cost and expense, Seller shall promptly assign such Patent to Purchaser and cooperate with Purchaser to effect transfer of title to such Patent. Prior to the perfection of any such assignment to Purchaser, Seller shall provide Purchaser with all correspondence necessary to acquire such Patent with the patent office in the applicable jurisdiction, and Seller shall cooperate with Purchaser in undertaking any and all activities reasonably necessary to maintain such Patent as a pending or in-force Patent, at Purchaser's sole cost and expense.

3.4 **Update of Seller Licensed Patents**. After the Effective Date, upon the issuance of a Patent owned or Controlled by Seller or any Affiliate of Seller that Covers a Purchaser Product or its Exploitation, the Parties shall amend Exhibit B to reflect such additional Seller Licensed Patents.

4. **CONFIDENTIALITY**

4.1 **Duty of Confidence**. All Confidential Information disclosed by or on behalf of a Party (the "**Disclosing Party**") and its Affiliates shall be maintained in confidence by the other Party (the "**Receiving Party**") and its Affiliates, and shall not be published or otherwise disclosed by the Receiving Party or its Affiliates to a Third Party except as expressly permitted by the terms of this Agreement, the TSA or the APA or is necessary for the performance of the Receiving Party's obligations or exercise of its rights under this Agreement, the TSA, or the APA. The terms of this Agreement shall be deemed to be the Confidential Information of both Parties (and both Parties shall be deemed to be the Receiving Party and the Disclosing Party with respect thereto). The Receiving Party may only use Confidential Information of the Disclosing Party for the purposes of performing its obligations or exercising its rights under this Agreement, the TSA, or the APA. The Receiving Party agrees to use at least the same standard of care as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care, to ensure that the Confidential Information of the Disclosing Party is not disclosed or used without authorization for any other purpose. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Confidential Information.

4.2 **Exceptions**. The obligations under Section 4.1 shall not apply to the extent that the Receiving Party can demonstrate that any information: (a) is known by the Receiving Party at the time of its receipt as indicated in its written records without an obligation of confidentiality with respect to such information or any restriction on it use, and not through a prior disclosure directly or indirectly by the Disclosing Party; (b) is in the public domain before its receipt from the Disclosing Party, or thereafter enters the public domain through no fault of the Receiving Party; (c) is subsequently disclosed to the Receiving Party or any of its Affiliates by a Third Party who may lawfully do so and is not under an obligation of confidentiality with respect to such information; or (d) is developed by the Receiving Party or any of its Affiliates independently and without the use of, or reference to, any Confidential Information received from the Disclosing Party, and such independent development can be properly documented by the Receiving Party; provided that, if the Seller is the Receiving Party, then the foregoing clauses (a) and (d) shall not apply to materials, data and any other information related to the Vowst Business. Any combination of features or disclosures shall not be deemed to fall within the foregoing exclusions merely because individual features are published or available to the general public or in the rightful possession of the Receiving Party unless the combination itself and principle of operation are published or available to the general public or in the rightful possession of the Receiving Party. Additionally, specific aspects or details of Confidential Information shall not be deemed to be within the public domain or in the possession of the Receiving Party merely because the Confidential Information is embraced by more general information in the public domain or in the possession of the Receiving Party.

4.3 **Permitted Disclosures**. Notwithstanding the obligations set forth in Section 4.1, a Party may disclose the other Party's Confidential Information (including this Agreement and the terms herein) to the extent:

(a) such disclosure: (1) is to a patent authority and is reasonably necessary for the filing, prosecuting, defending or enforcing Patents as contemplated by, and in accordance with, the terms of Section 3; provided that such Party shall provide notice of the proposed filing or other disclosure and the Confidential Information to be included therein to the other Party at least thirty (30) days prior to filing or submission along with, to the extent permitted and practical, a copy of the proposed filing or other disclosure for review, and, if the other Party reasonably asserts trade secret claims to its Confidential Information contained in such proposed filing or other disclosure, such filing or disclosure shall require the prior written consent of the other Party; (2) is to a Regulatory Authority and is necessary in connection with the Development, Commercialization or Manufacture of a product that is Covered by Seller Licensed Patents or by Purchaser Licensed Patents; or (3) is permitted by the APA, in each case (1), (2) and (3), provided that reasonable measures shall be taken to assure confidential treatment of such Confidential Information to the extent practicable and consistent with applicable Law;

(b) such disclosure is reasonably necessary: (1) to its and its Affiliates' employees, contractors, consultants, advisors, clinicians, vendors, service providers and existing or prospective Sublicensees and licensees in connection with the exercise of its rights or the performance of its obligations under this Agreement; (2) to such Party's directors, officers, attorneys, independent accountants or financial advisors for the sole purpose of enabling such directors, attorneys, independent accountants or financial advisors to provide advice to such Party relating to this Agreement; or (3) to actual or potential investors or acquirers of such Party solely for the purpose of evaluating or carrying out a bona fide investment in or acquisition of such Party; provided that, in each case (1), (2) and (3), such Person(s) to whom disclosure is made under this Section 4.3(b) shall be bound in writing prior to such disclosure by confidentiality and non-use obligations substantially consistent with those contained in the Agreement (other than investors, who must be bound in writing prior to disclosure by commercially reasonable obligations of confidentiality and non-use); provided further that the Receiving Party shall remain responsible for any failure by any Person who receives Confidential Information pursuant to this Section 4.3(b) to treat such Confidential Information as required under this Section 4;

(c) such disclosure is required by applicable Law, rules of a securities exchange or judicial or administrative process, if in the reasonable opinion of the Receiving Party's counsel, such disclosure is so required; provided that in such event such Party (to the extent legally permissible) shall promptly inform the other Party of such required disclosure and use reasonable efforts to provide the other Party an opportunity to challenge or limit the disclosure obligations; provided further that Confidential Information disclosed shall be limited to that information which is required under the relevant applicable Law, rule, judicial or administrative process or court or governmental order and the Party disclosing Confidential Information in such situation shall use reasonable efforts, including seeking confidential treatment or a protective order, to seek and obtain continued confidential treatment of such Confidential Information. Confidential Information that is so disclosed shall remain otherwise subject to the confidentiality and non-use provisions of this Section 4; or

(d) is reasonably necessary for prosecuting or defending litigation or in establishing rights (whether through declaratory actions or other legal proceedings) or enforcing obligations under this Agreement.

4.4 **Use of Name**. Neither Party shall use the name, trademark, trade name or logo of the other Party, its Affiliates or their respective employees in any publicity, promotion, news release or disclosure relating to this Agreement or its subject matter, except as may be required by applicable Law, as provided in this Agreement or with the prior express written permission of the other Party.

5. **REPRESENTATIONS AND WARRANTIES**

5.1 **Representations and Warranties**. Each Party represents and warrants to the other Party that, as of the Effective Date:

(a) it is a corporation duly organized, validly existing and is in good standing under its Laws of incorporation or formation, is duly qualified to do business and is in good standing in each jurisdiction where the operations of its business require such qualification except where the failure to be so qualified or in such good standing would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of such Party from performing its obligations under this Agreement;

(b) it has duly executed and delivered this Agreement and, assuming this Agreement has been duly executed and delivered by the other Party, this Agreement constitutes a valid and binding obligation upon such Party and enforceable against it in accordance with its terms, in each case subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar Laws relating to or affecting the enforcement of creditors' rights, and (ii) general equitable principles (whether considered in a proceeding in equity or at Law);

(c) the execution and delivery of this Agreement by such Party do not, and the performance by such Party or its obligations hereunder will not (i) contravene or conflict with any provision of the Organizational Documents of such Party; (ii) contravene, conflict with, constitute a material breach or result in a material default under, or give to any Third Party any rights of termination, amendment, acceleration or cancellation under, any contract or agreement to which such Party is a party or is otherwise bound; or (iii) or violate in any respect any provision of any Law to which such Party is subject;

(d) no consents, approvals, authorizations of, or declarations or filings with, any Governmental Entities on the part of such Party is required in connection with the execution or delivery of this Agreement; and

(e) it has the right and authority to grant the rights and licenses it grants or purports to grant to the other Party herein, and except pursuant to the Existing Agreements, MSK Agreement, the TSA or the APA, it has not previously granted any right, license or interest in or to the Seller Licensed Patents and Seller Licensed Know-How (in the case of Seller) or the Purchaser Licensed Patents and Purchaser Licensed Know-How (in the case of Purchaser) that would conflict with or limit the scope of any of the rights or licenses granted to the other Party under this Agreement.

6. **LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES**

6.1 **LIMITATION OF LIABILITY**. IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL NOT, HOWEVER, LIMIT THE AMOUNT OR TYPES OF DAMAGES AVAILABLE TO EITHER PARTY FOR INFRINGEMENT OR MISAPPROPRIATION OF ITS INTELLECTUAL PROPERTY RIGHTS BY THE OTHER PARTY, OR FOR ANY VIOLATION OF SECTION 4.

6.2 **DISCLAIMER OF WARRANTIES**. EXCEPT AS MAY EXPRESSLY BE SET FORTH IN THE APA (PROVIDED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, RECOVERY FOR ANY BREACH OF ANY SUCH PROVISION OF THE APA SHALL BE SOLELY TO THE EXTENT PROVIDED IN THE APA) OR THIS AGREEMENT, INCLUDING SECTION 5, THE INTELLECTUAL PROPERTY RIGHTS LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN THE APA (PROVIDED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, RECOVERY FOR ANY BREACH OF ANY SUCH PROVISION OF THE APA SHALL BE SOLELY TO THE EXTENT PROVIDED IN THE APA) OR THIS AGREEMENT, INCLUDING SECTION 5, EACH LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND REGARDING THE INTELLECTUAL PROPERTY RIGHTS LICENSED UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, QUALITY OR ACCURACY.

7. TERM AND TERMINATION

7.1 **Term**. This Agreement shall be effective as of the Effective Date and shall continue in effect unless terminated by mutual written agreement of the Parties.

7.2 **Survival**. All of the obligations of the Parties that expressly or by their nature survive the termination of this Agreement will continue in full force and effect notwithstanding such termination until they are satisfied in full or by their nature expire, including the following Sections 1.1, 1.2, the first sentence of 2.3, 4, 6, 7.2, and 8.

8. GENERAL PROVISIONS

8.1 **Assignment**. Neither Party shall be permitted to assign this Agreement or any of its rights or obligations under this Agreement, directly or by operation of law or otherwise, without Seller's (in the case of Purchaser) or Purchaser's (in the case of Seller) express, prior written consent, except that (a) each Party may assign this Agreement or any of its rights and obligations hereunder, in whole or in part, to one or more Affiliates, without the other Party's consent; provided that no such assignment shall relieve such Party of any of its obligations under this Agreement, such assignment shall only be valid for so long as such entity remains an Affiliate and (b) Purchaser may assign this Agreement or any of its rights and obligations hereunder, in whole or in part, to any Person to whom it sells substantially all of the Acquired Assets. Any such purported assignment or sublicense in violation of this Agreement shall be null and void *ab initio*.

8.2 **No Agency or Partnership.** The Parties intend that nothing in this Agreement shall be construed to create a partnership or deemed partnership, joint venture or other business entity for any tax purposes.

8.4 **No Third-Party Beneficiaries**. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, shall give or be construed to give to any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

8.5 **Notices**. Unless otherwise specified herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered personally, sent by a nationally recognized overnight courier service, or transmitted by email (receipt verified), and shall be deemed to be effective upon receipt. Any such notices shall be addressed to the receiving Party at such Party's address or email address set forth below, or at such other address or email address as may from time to time be furnished by similar notice by Seller or Purchaser:

if to Purchaser, to:

Société des Produits Nestlé S.A.
Avenue Nestlé 55
1800 Vevey, Switzerland
Attn: Martin Hendrix and Claudio Kuoni
Email: [***]
[***]

with a copy to (which shall not constitute notice):

Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: David A. Carpenter
Email: dacarpenter@mayerbrown.com

if to Seller, to:

Seres Therapeutics, Inc.
101 Cambridge Park Drive, Cambridge, MA 02140
Attention: Chief Financial Officer; Chief Legal Officer/General Counsel
Email: [***]
[***]

with a copy to (which shall not constitute notice):

Latham & Watkins LLP
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Peter Handrinos; Scott Shean
Email: peter.handrinos@lw.com
scott.shean@lw.com

or to such other address as such Party may hereafter specify by notice to the other Party.

8.6 **Governing Law**. This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Delaware, without giving effect to any laws, rules or provisions of the State of Delaware that would cause the application of the laws rules or provisions of any jurisdiction other than the State of Delaware. Each of the Parties hereto further agrees to waive and hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now have or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such action in any such court.

8.7 **Jurisdiction; Services and Venue**. Each Party agrees: (a) to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware) (the "**Specified Courts**") for any Actions arising out of or relating to this Agreement; (b) to commence any Action arising out of or relating to this Agreement only in the Specified Courts; (c) that service of any process, summons, notice, or document by U.S. registered mail to the address of such Party set forth in Section 8.4 will be effective service of process for any Action brought against such Party in any of the Specified Courts (provided that, in the case of Purchaser, service of process must be delivered to the registered agent in Delaware of Nestlé USA, Inc.); (d) to waive any objection to the laying of venue of any Action arising out of or relating to this Agreement in the Specified Courts; and (e) to waive and not to plead or claim that any such Action brought in any of the Specified Courts has been brought in an inconvenient forum; provided, however, that such submission to the jurisdiction of the Specified Courts is solely for the purpose referred to in this Section 8.6 and shall not be deemed to be a general submission to the jurisdiction of such courts or any other courts other than for such purpose.

8.8 **WAIVER OF TRIAL BY JURY**. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, DEMAND, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.7.

8.9 **No Waivers; Cumulative Remedies**. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no failure or delay on the part of a Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the Party giving such waiver. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable Law except as expressly set forth herein.

8.10 **Severability**. If any provision of this Agreement or any other document delivered under this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable nor the remaining provisions hereof, nor render unenforceable such provision in any other jurisdiction, unless the effect of rendering such provision ineffective would be to substantially deviate from the expectations and intent of the Parties in entering into this Agreement. In the event any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the Parties shall use reasonable best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes hereof.

8.11 **Entire Agreement; Modification**. This Agreement (including all Exhibits and attachments hereto), together with the APA and the TSA, contain the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede all previous agreements, negotiations, commitments and writings between the Parties with respect to the subject matter hereof and thereof. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by both Parties.

8.12 **Further Assurances**. Subject to the terms and conditions of this Agreement, at any time or from time to time after the execution of this Agreement, each of the Parties, at its own expense, shall execute and deliver such instruments of transfer, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

8.13 **Specific Performance**. The Parties agree that irreparable damage, for which monetary damages (even if available) would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that each Party shall be entitled to, in addition to any other remedy to which such Party is entitled in Law or in equity, an injunction or injunctions against the other Party to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement (without posting of bond or other security).

8.14 **Conflicts; Privilege**. Recognizing that Latham & Watkins LLP has acted as legal counsel to Seller and its Affiliates, and that Latham & Watkins LLP intends to act as legal counsel to Seller and its Affiliates after the Effective Date, Purchaser hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with Latham & Watkins LLP representing Seller and its Affiliates prior to the Effective Date or after the Effective Date as such representation may relate to Seller and its Affiliates or the transactions contemplated hereby. In addition, all communications involving attorney-client confidences between Seller and its Affiliates prior to the Effective Date, on the one hand, and Latham & Watkins LLP, on the other hand, in the course of the negotiation, documentation and consummation of the transactions contemplated hereby shall be deemed to be attorney-client confidences that belong solely to Seller and its Affiliates. Accordingly, Purchaser and its Affiliates shall not control the privilege with respect to any such communications or their access to the files of Latham & Watkins LLP relating to such engagement from and after the Effective Date.

8.15 **Counterparts**. This Agreement and any amendment or supplement hereto may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become binding when any number of counterparts, individually or taken together, shall bear the signatures of both Parties. This Agreement may be executed and delivered by facsimile or any other electronic means, including ".pdf" or ".tiff" files, and any facsimile or electronic signature shall constitute an original for all purposes.

(*Signature Page Follows*)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the date first written above.

Seres Therapeutics, Inc.	**Société des Produits Nestlé S.A**
By: _____	By: _____
Name:	Name:
Title:	Title:

[Signature Page to Cross-License Agreement]

FORM OF
EMPLOYEE SUPPORT AGREEMENT

This **EMPLOYEE SUPPORT AGREEMENT** (this "Agreement"), is made and entered into as of [●], 2024 (the "Effective Date") by and between Société des Produits Nestlé S.A. ("Purchaser") and Seres Therapeutics, Inc. ("Seller" and, together with Purchaser, the "Parties" and each, individually, a "Party"). Capitalized terms not defined herein shall have the meanings set forth in the Asset Purchase Agreement, dated as of August 5, 2024 by and between Purchaser and Seller (the "Purchase Agreement").

A. Effective as of the Effective Date, the transactions contemplated by the Purchase Agreement, pursuant to which, among other things, Purchaser agreed to acquire certain assets from Seller, were consummated.

B. Purchaser and Seller desire, in connection with the consummation of transactions contemplated by the Purchase Agreement, to have an orderly and proper transfer of the services of Employees and therefore to defer such transfer until the Employee Transfer Date.

C. Purchaser shall comply with its obligations under the Purchase Agreement relating to the offer of employment to the Employees, and the terms and conditions of their employment thereafter are intended to be effective as of the Employee Transfer Date.

In consideration of the mutual covenants contained herein and in the Purchase Agreement, and other good and valuable consideration, the Parties agree as follows:

ARTICLE I
EMPLOYEE SERVICES

1.1 Provision of Support Employees. Subject to the terms and conditions of this Agreement, effective as of the date of this Agreement and throughout the Employee TSA Period (defined below), Purchaser shall receive from Seller the services of the Transferring Employees (each a "Support Employee" and collectively the "Support Employees"). The period during which the Support Employees shall perform the Employee Services (as defined below) shall commence on the date hereof and end at 11:59 p.m. on [October 13], 2024 unless an earlier date is mutually agreed in writing by the Parties (the "Employee TSA Period"). The last day of the Employee TSA Period shall be hereinafter referred to as the "Employee Transfer Date".

1.2 Services of the Support Employees. During the Employee TSA Period, Seller shall use reasonable efforts to cause the Support Employees to devote their full time and energy to perform (a) those functions and services as were performed by the Support Employees for the benefit of the Seller immediately prior to the date hereof, and (b) such other functions and services as Purchaser may reasonably request, and subject to the supervision of Purchaser and/or its Affiliates (as applicable) at all times during the Employee TSA Period (the "Employee Services"). Seller shall not relocate any Support Employee (other than due to an unforeseen catastrophe or emergency) during the Employee TSA Period except with the consent of Purchaser and the affected Support Employee. Notwithstanding anything to the contrary stated in this Agreement, subject to the terms of the Purchase Agreement, the Parties acknowledge and agree that Seller makes no representation that any employee will remain employed during the term of this Agreement or for any period with Purchaser thereafter.

1.3 Compensation and Benefits.

(a) Salary, Wages, Commissions, Overtime and Other Compensation. For the Employee TSA Period, Seller shall pay the applicable salary, wages, commissions, overtime and other compensation due to Support Employees during or with respect to the Employee TSA Period, including any payroll period beginning before and ending after the date hereof and for the portion of any payroll period that begins before and ends after the Employee TSA Period. Except as otherwise expressly agreed in writing by the Parties, the Support Employees shall be paid at the same rates and the same times that such Support Employees were paid as of the date of this Agreement (and, for the avoidance of doubt, Seller shall make such payments for the Employee TSA Period even if due and payable on or after the Employee Transfer Date). All Support Employees' payroll withholding elections (including those related to income taxes, qualified retirement plans, and group health and welfare plans) shall remain the same during the Employee TSA Period as such elections were as of the date of this Agreement, except to the extent a Support Employee properly elects (in the manner permitted for employees and plan participants generally) to change any such election. In addition, pay slip and W2 reporting for the Employee TSA Period will be provided by Seller.

(b) Bonuses and Incentive Compensation. For the Employee TSA Period, unless otherwise agreed in writing by the Parties, Support Employees shall continue to participate in any bonus and incentive compensation arrangements, as amended from time to time, in effect as of the date hereof.

(c) Benefit Plans. During the Employee TSA Period, each Support Employee shall continue to be eligible to participate in all Seller Benefit Plans, as amended from time to time, that such Support Employee was eligible to participate in as of the date of this Agreement. Seller shall be responsible for receiving and administering all claims submitted or incurred by Support Employees during the Employee TSA Period pursuant to the terms and conditions of the applicable the Seller Benefit Plans, including any requirement generally applicable to the submission of claims. Support Employees will be entitled to the same benefit administration and management support services, customer service, communication, as are provided for other employees under the Seller Benefit Plans. This includes, to the extent applicable, administration of Seller Benefit Plans' annual benefits enrollment period, employee benefits onboarding and offboarding, and transfer of relevant eligibility and election data to/from third party vendors as necessary.

(d) Offboarding. Purchaser may request the offboarding of a Support Employee. If Purchaser and Seller agree to offboard a Support Employee, or if a Support Employee voluntarily terminates employment with Seller, Seller shall initiate and manage offboarding processes for voluntary and involuntary terminations.

1.4 Compliance with Law – Payroll and Benefit Plan Matters. Seller shall be responsible for compliance with all legal obligations in respect of the Support Employees relating to payroll and Seller Benefit Plan matters covered under this Agreement. Seller shall be responsible for making any contributions on behalf of the Support Employees for, among other things, workers' compensation insurance, employer health taxes, employment insurance, and other similar taxes, levies, source deductions and contributions that an employer is required to pay with respect to its employees pursuant to the applicable Laws. Seller shall also be responsible during the Employee TSA Period for responding to any questions and inquiries from federal, state, local and foreign agencies and other Persons regarding payroll, Seller Benefit Plan matters, and employment data and history relating to the Support Employees and concerning the Employee TSA Period or any prior period. In the event Purchaser or any of its Affiliates becomes aware of any compliance-related issues or any questions or inquiries from such agencies, Purchaser shall promptly notify Seller of such matters and Seller shall have the sole right and responsibility to respond thereto.

1.5 Compliance with Law – Purchaser. Purchaser shall be responsible for supervising and managing the Support Employees during the Employee TSA Period in a reasonable manner and in compliance with the applicable Laws. If Support Employees perform Employee Services on any premises owned, leased or otherwise controlled by Purchaser or any of its Affiliates, Purchaser and its Affiliates shall be solely responsible for all obligations and other liabilities arising from or relating to such premises, including workplace safety and security. Except as contemplated by this Agreement, the Support Employees shall have no authority or apparent authority to act on behalf of Seller or its Affiliates during the Employee TSA Period.

1.6 Transition of Support Employees. Within a reasonable period of time prior to the Employee Transfer Date, Seller and Purchaser shall, and each shall cause its respective Affiliates to, take reasonable steps to effect an orderly transition of the applicable Support Employees to Purchaser, effective as of the Employee Transfer Date, such transition to be governed by and in accordance with the terms and conditions of the Purchase Agreement. In connection with such transition, the Parties shall fulfill all obligations under the Purchase Agreement and this Agreement.

ARTICLE II
PAYMENTS BY PURCHASER FOR SERVICES

2.1 Fees. In consideration for the Employee Services, Purchaser shall reimburse Seller for the reasonable documented out-of-pocket costs incurred by Seller and/or its Affiliates associated with the Employee Services during the Employee TSA Period (collectively, the "Fees"), which shall include the salary, wages, commissions, employer contributions to Seller's 401(k) plan, vacation, holiday pay, bonuses, overtime, other compensation, employer-side taxes, workers compensation, benefits premiums, severance benefits required under Seller's applicable severance plan with respect to any Support Employee resulting from Purchaser's revocation of an offer or Purchaser's requesting a Support Employee's termination other than for cause (but excluding costs of Seller equity compensation awards and annual cash bonuses) paid to or with respect to the Support Employees for the Employee TSA Period. Notwithstanding the foregoing, if any amount paid during the Employee TSA Period is attributable in part to services provided during the Employee TSA Period and in part to services provided prior to the Employee TSA Period, Purchaser shall only be responsible for the pro rata portion of such payment that is attributable to the services provided during Employee TSA Period (for example, if an annual bonus is paid during the Employee TSA Period relating to a twelve (12)-month period, eleven (11) months of which were prior to the Employee TSA Period and one (1) month of which was during the Employee TSA Period, Seller and/or its Affiliates shall be responsible for 11/12 of the bonus and related employer-side taxes, and Purchaser shall be responsible for 1/12 of the bonus and related employer-side taxes).

2.2 Invoices.

(a) For the provision of the Employee Services, Seller shall, on a semi-monthly basis, invoice Purchaser for the Fees incurred in accordance with Section 2.1 with respect to the applicable Employee Services performed during the semi-monthly period then ending (i.e., in arrears), with a reasonably detailed breakdown of such Fees accompanied by the relevant portion of the payroll register and supporting documentation for that portion of the Fees (such as medical benefits) which are not paid via the payroll process for the Support Employees (each, a "TSA Invoice"). Purchaser shall pay via wire transfer the undisputed portion of each TSA Invoice within two (2) Business Days of the date of Seller's actual payment of such Fees. Notwithstanding anything to the contrary stated herein, each TSA Invoice under this Agreement must be delivered together with the semi-monthly invoices for Accounts Payable Services (as defined in the Transition Services Agreement) as required under and pursuant to the Transition Services Agreement.

(b) If any portion of a TSA Invoice is disputed by Purchaser in good faith, then (i) Purchaser must notify Seller in writing within fifteen (15) days from Purchaser's receipt of such disputed TSA Invoice, and (ii) Purchaser shall pay the undisputed amounts set forth in the preceding sentence in accordance with Section 2.2(a) and the Parties shall use good faith efforts to reconcile the disputed amount as soon as possible, and Purchaser will not be obligated to pay such disputed portion unless and until such dispute is resolved in favor of Seller. If Purchaser does not notify Seller in writing within such fifteen (15) day-period that Purchaser disputes all or a portion of a TSA Invoice, then such TSA Invoice is deemed accepted by Purchaser and will be payable to Seller pursuant to Section 2.2(a).

(c) Subject to the foregoing, (A) in the event of any overpayment by Purchaser, Seller shall either promptly credit the amount of such overpayment or remit to Purchaser the amount of such overpayment within two (2) Business Days of discovery of such overpayment, and (B) in the event of any underpayment by Purchaser, Purchaser shall promptly make a payment equal to the amount of such underpayment within two (2) Business Days of discovery of such underpayment.

2.3 Payment. The Fees for Employee Services rendered pursuant to this Agreement shall be billed and paid in U.S. Dollars. Subject to Section 2.2, unless otherwise specifically agreed by Seller and Purchaser in writing, all payments due shall be paid by wire transfer (or inter-company billing) of immediately available funds, without any set off, deduction or counterclaim whatsoever, to one or more accounts designated by Seller.

2.4 Failure to Remit Payment. Subject to Section 2.2, Seller reserves the right to discontinue any Employee Service provided under this Agreement in the event the Purchaser fails to remit payment of any Fee as required under Section 2.2 and such failure to remit payment remains uncured for more than ten (10) Business Days following Purchaser's receipt of notice thereof from Seller.

2.5 Inactive Support Employees. For the avoidance of doubt, the terms of this Agreement (including the obligations of Purchaser pursuant to this ARTICLE II) shall apply to any Support Employee who becomes an inactive employee due to a short-term or long-term disability or parental leave or other absence from work during the Employee TSA Period (an "Inactive Support Employee"). Until the later of (a) the earlier of the date on which an Inactive Support Employee returns to active work or the date that is three (3) months after the Employee Transfer Date (or twenty (20) weeks, solely for purposes of parental leave), and (b) the Employee Transfer Date, the Seller and/or its Affiliates, as the case may be, shall (i) provide to such Inactive Support Employee (and each beneficiary or eligible dependent thereof) coverage or eligibility for coverage under the applicable Seller Benefit Plans in accordance with the terms thereof, and (ii) be solely responsible for all claims relating to employee benefit obligations with respect to such Inactive Support Employee (and each beneficiary or eligible dependent thereof) with respect to the Employee TSA Period; provided, however, that Purchaser shall reimburse Seller for all costs and expenses associated with all such Inactive Support Employees in accordance with Section 2.1 of this Agreement to the extent Seller and/or its Affiliates are required to make any payments during the Employee TSA Period or thereafter under benefit programs in effect as of the date hereof.

ARTICLE III
MISCELLANEOUS

3.1 Termination. All Support Employees who do not voluntarily terminate employment with Seller shall temporarily, during the Employee TSA Period, remain employees of Seller; provided, however, that Purchaser shall have the right to request that Seller remove any Support Employee from performing the Employee Services due to performance issues, failure to comply with work rules or any other legally permissible reason (at which time each such employee shall cease to be a Support Employee) and nothing in this Agreement shall limit Seller's ability to terminate a Support Employee's employment for "cause" (as reasonably determined by Seller) or after termination of the Employee Services provided by such Support Employee under Section 2.4 or otherwise. While Seller shall have the ultimate authority to make all employment termination decisions, Seller will (a) consult with Purchaser prior to removing any Support Employee from performing Employee Services pursuant to this Agreement and accommodate Purchaser's needs and desires regarding such removal, and (b) will provide notice to Purchaser of any intent to terminate the employment of any Support Employee; provided, however, that Seller shall not be obligated to consult with or provide prior notice to Purchaser in connection with the Seller's termination of a Support Employee's employment for "cause" (as reasonably determined by Seller) if the Seller determines immediate dismissal is reasonably necessary or appropriate. In no event, however, shall the Employee Services or the obligations of either Party to this Agreement or any Support Employee pursuant to this Agreement continue beyond the Employee Transfer Date, except as provided in Section 2.1 and Section 3.2 of this Agreement.

3.2 Indemnification. Purchaser agrees to indemnify and hold harmless each Seller Indemnified Party from and against any Damages (excluding compensation and benefits of Support Employees except as provided in Section 2.1) arising out of or resulting from the transactions contemplated hereby, including any Damages arising out of or resulting from (a) employment actions taken by any Seller Indemnified Party at the request of Purchaser or its Affiliates and any action taken or not taken by any Support Employee in connection with the provision of the Employee Services or otherwise, except for such action taken or not taken by any Support Employee pursuant to the sole direction of or by Seller or any of its Affiliates in contravention of any request or direction of Purchaser or its Affiliates and (b) any breach of or failure by Purchaser or its Affiliate to satisfy any obligations or other requirements under this Agreement; provided, however, that Purchaser and its Affiliates shall not be required to indemnify the Seller Indemnified Party from and against any Damages arising out or resulting from any breach of this Agreement, Fraud, gross negligence or willful misconduct of such Seller Indemnified Party (excluding, for the purposes of this proviso, actions taken or not taken by the Support Employees during the Employee TSA Period). Seller agrees to indemnify and hold harmless each Purchaser Indemnified Party from and against any Damages arising out of or resulting from (i) failure to pay salaries, wages, commissions, overtime and cash bonus or other cash incentive compensation due and payable during or with respect to the Employee TSA Period, (ii) the Seller Benefit Plans, in each case pursuant to the terms of this Agreement, except (A) to the extent such obligations are assumed by Purchaser as of the applicable Employee Transfer Date and (B) the Fees payable by Purchaser pursuant to Section 2.1 and Section 2.2, (iii) any breach of or failure by Seller or its Affiliates to satisfy any obligations or other requirements under this Agreement, and (iv) any failure to satisfy any obligations or other requirements as the legal employer of the Support Employee for periods prior to the Employee Transfer Date.

3.3 Other Obligations.

(a) Access. In order to enable the provision of the Employee Services, Purchaser shall provide, and shall cause its Affiliates to provide, to Seller and the Support Employees, at no cost to Seller, its Affiliates or the Support Employees, reasonable access throughout the Employee TSA Period to the books and records of Purchaser and its Affiliates as reasonably requested by Seller of its Affiliates and to the extent reasonably necessary for the Support Employees to provide the Employee Services. Seller will (i) use such relevant books and records solely for the purpose of providing the Employee Services and not to provide goods or services to or for the benefit of any third party or for any unlawful purposes, and (ii) comply in all material respects with all policies and procedures provided by Purchaser to Seller in writing in advance governing access to and use of such books and records.

(b) Seller shall, in its capacity as an employer: (i) have the sole right to discharge any or all of the Support Employees, (ii) pay the applicable salary, wages, bonus, commissions, overtime or other compensation due and payable during or with respect to the Employee TSA Period, and (iii) provide coverage under or pay contributions to the applicable employee benefit plans or programs, including governmental programs, during the Employee TSA Period.

(c) Purchaser shall observe and perform all obligations applicable to an employer under the applicable Laws with respect to the business premises owned or leased by (or leased for the benefit of) Purchaser or its Affiliates at which the Support Employees perform their services, including workplace safety and security. Purchaser shall also observe and perform all obligations applicable to an employer in regards to its supervision of Support Employees pursuant to the applicable Laws.

(d) Seller and/or their Affiliates, as the case may be, acknowledge that for the Employee TSA Period, Purchaser and/or its Affiliates shall have no responsibility for the provision of compensation or benefits to any Support Employee, and that Purchaser's sole responsibility for such compensation and benefits shall be to pay the Fees set forth in ARTICLE II hereof in consideration of the Employee Services. Each Party agrees that the employees, agents and representatives of one Party shall not be considered, and shall not hold themselves out as, employees, agents, representatives or partners of the other Party. Except as otherwise specifically provided herein, neither Party shall have, nor shall hold itself out as having, any right, power or authority to create any obligation, express or implied, on behalf of the other Party. Without in any way limiting the generality of the foregoing, during the Employee TSA Period, the Support Employees are not and shall not be construed as employees of Purchaser or its Affiliates and are not and shall not be eligible to participate in Purchaser's benefit plans (unless and until they commence employment with Purchaser as Transferred Employees) and, subject to Section 2.1, Purchaser shall not be required under this Agreement to make any contributions on behalf of the Support Employees for, among other things, workers' compensation insurance, employer health taxes, employment insurance, and other similar taxes, levies, source deductions and contributions that an employer is required to pay with respect to its employees pursuant to the applicable Laws.

3.4 Governing Law. This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Delaware, without giving effect to any laws, rules or provisions of the State of Delaware that would cause the application of the laws rules or provisions of any jurisdiction other than the State of Delaware. Each of the Parties hereto further agrees to waive and hereby irrevocably waives, to the fullest extent permitted by Law, any objection which it may now have or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such action in any such court.

3.5 Jurisdiction, Services and Venue. Each Party agrees: (a) to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware) (the "Specified Courts") for any Actions arising out of or relating to this Agreement; (b) to commence any Action arising out of or relating to this Agreement only in the Specified Courts; (c) that service of any process, summons, notice, or document by U.S. registered mail to the address of such Party set forth in Section 3.8 will be effective service of process for any Action brought against such Party in any of the Specified Courts (provided that, in the case of Purchaser, service of process must be delivered to the registered agent in Delaware of Nestlé USA, Inc.); (d) to waive any objection to the laying of venue of any Action arising out of or relating to this Agreement in the Specified Courts; and (e) to waive and not to plead or claim that any such Action brought in any of the Specified Courts has been brought in an inconvenient forum; provided, however, that such submission to the jurisdiction of the Specified Courts is solely for the purpose referred to in this Section 3.5 and shall not be deemed to be a general submission to the jurisdiction of such courts or any other courts other than for such purpose.

3.6 WAIVER OF TRIAL BY JURY. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY CLAIM, DEMAND, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.6.

3.7 Prevailing Party Attorneys' Fees. In the event of any Action between the Parties or their Affiliates arising as a result of a breach of this Agreement or the failure to perform hereunder, or the breach or inaccuracy of any representation or warranty contained in this Agreement, the prevailing Party in such Action shall be entitled to collect the costs and expenses of bringing or defending such Action, including reasonable attorneys' fees, court costs and other out-of-pocket fees and expenses reasonably incurred by the prevailing Party, from the non-prevailing Party.

3.8 Notices. all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered personally, sent by a nationally recognized overnight courier service, or transmitted by email (receipt verified), and shall be deemed to be effective upon receipt. Any such notices shall be addressed to the receiving Party at such Party's address or email address set forth below, or at such other address or email address as may from time to time be furnished by similar notice by Seller or Purchaser:

If to Seller:

Seres Therapeutics, Inc.
101 Cambridge Park Drive, Cambridge, MA 02140
Attention: Chief Financial Officer; Chief Legal Officer/General Counsel
Email: [***]; [***]

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

Latham & Watkins LLP
John Hancock Tower
200 Clarendon Street
Boston, MA 02116
Attention: Peter Handrinos; Scott Shean
Email: peter.handrinos@lw.com
scott.shean@lw.com

If to Purchaser:

Société des Produits Nestlé S.A.
Avenue Nestlé 55
1800 Vevey, Switzerland
Attention: Martin Hendrix and Claudio Kuoni
Email: [***]
[***]

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

Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: David A. Carpenter
Email: dacarpenter@mayerbrown.com

3.9 Severability. If any provision of this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable nor the remaining provisions hereof, nor render unenforceable such provision in any other jurisdiction, unless the effect of rendering such provision ineffective would be to substantially deviate from the expectations and intent of the Parties in entering into this Agreement. In the event any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the Parties shall use reasonable best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes hereof.

3.10 Entire Agreement; Conflict of Terms. This Agreement and the Purchase Agreement contain the entire agreement between the Parties and supersede all prior agreements, arrangements, and understandings, written or oral, between the Parties relating to the subject matter of this Agreement and the Purchase Agreement. In the event of a conflict between any term of this Agreement and the Purchase Agreement, the terms of this Agreement shall prevail with respect to any matters of the Employee transition arrangements, and the terms of the Purchase Agreement shall prevail for all other matters.

3.11 No Strict Construction. The Parties have each participated in the negotiation and drafting of the terms of this Agreement. The Parties agree that any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party shall not apply in interpreting this Agreement.

3.12 Assignment. Neither Party shall be permitted to assign this Agreement or any of its rights or obligations under this Agreement, directly or by operation of law or otherwise, without Seller's (in the case of Purchaser) or Purchaser's (in the case of Seller) express, prior written consent, except that each Party may assign this Agreement or any of its rights hereunder, in whole or in part, to one or more Affiliates or acquirer of all or substantially all of the Acquired Assets without the other Party's consent; provided that no such assignment shall relieve such Party of any of its obligations under this Agreement, such assignment shall only be valid for so long as such entity remains an Affiliate and any new or increased obligations for Taxes arising as a result of such assignment shall be borne by the assigning Party or its Affiliate (including any gross up necessary to put the other Party in the same position it would have been in had no such assignment been made). Any such purported assignment or sublicense in violation of this Agreement shall be null and void *ab initio*.

3.13 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and, to the extent provided herein, their respective Affiliates, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Nothing contained in this Agreement shall (a) be treated as an amendment of any benefit plan, policy or program, or (b) give any third party, including any Support Employees or any representative thereof, any right to enforce the provisions of this Agreement.

3.14 No Partnership. The Parties intend that nothing in this Agreement shall be construed to create a partnership or deemed partnership, joint venture or other business entity for any Tax purposes.

3.15 No Waiver; Cumulative Remedies. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no failure or delay on the part of a Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the Party giving such waiver. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable Law except as expressly set forth herein.

3.16 Amendments. Any provision of this Agreement may be modified, supplemented or waived only by an instrument in writing duly executed by both Parties. Any such modification, supplement or waiver shall be for such period and subject to such conditions as shall be specified in the instrument effecting the same and shall be binding upon each Party, and any such waiver shall be effective only in the specific instance and for the purposes for which give.

3.17 Other Definitional Provisions and Interpretation. The headings preceding the text of Articles and Sections included in this Agreement and the headings to Exhibits and Schedules (if any) attached to this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement. The use of the masculine, feminine or neuter gender or the singular or plural form of words herein shall not limit any provision of this Agreement. The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. The use of “including” or “include” will in all cases herein mean “including, without limitation” or “include, without limitation,” respectively. The use of “or” is not intended to be exclusive unless expressly indicated otherwise. Reference to any Person includes such Person’s successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable Contract. Reference to any Contract (including this Agreement or the Purchase Agreement), document or instrument shall mean such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof. Underscored references to Articles, Sections, clauses, Exhibits or Schedules shall refer to those portions of this Agreement. The use of the terms “hereunder,” “hereof,” “hereto” and words of similar import shall refer to this Agreement as a whole and not to any particular Article, Section, paragraph or clause of, or Exhibit or Schedule to, this Agreement.

3.18 Counterparts. This Agreement and any amendment or supplement hereto may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become binding when any number of counterparts, individually or taken together, shall bear the signatures of both Parties. This Agreement may be executed and delivered by facsimile or any other electronic means, including ".pdf" or ".tiff" files, and any facsimile or electronic signature shall constitute an original for all purposes.

3.19 Compliance with Law. Each Party agrees that it shall, and shall cause its respective Affiliates to, perform its or their obligations (as applicable) under this Agreement in compliance with all applicable Laws, including civil and common law, statute, subordinate legislation, treaty, binding regulations, directive, decision, by law, ordinance, code, order, decree, injunction or judgement of any regulator or government entity or court which relates to data privacy or data protection and are in force from time to time.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first written above.

PURCHASER:
SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

By: _____
Name:
Title:

[Signature Page to the Employee Support Agreement]

SELLER:

SERES THERAPEUTICS, INC.

By: _____
Name:
Title:

[Signature Page to the Employee Support Agreement]

Form of Support Agreement

This **SUPPORT AGREEMENT** (this "Agreement") is made as of August 5, 2024, by and among Seres Therapeutics, Inc., a corporation organized and existing under the laws of Delaware (the "Company"), Société des Produits Nestlé S.A., a *société anonyme* organized under the laws of Switzerland ("Purchaser"), and the Person set forth on Schedule A hereto ("Stockholder").

WHEREAS, as of the date hereof, Stockholder is a Beneficial Owner (defined below) of, and has sole or shared voting power with respect to, the number of shares of capital stock ("Company Shares") of the Company, set forth opposite Stockholder's name on Schedule A (all Company Shares owned by Stockholder, or hereafter issued to or otherwise acquired, whether beneficially or of record, or with respect to which Stockholder otherwise acquires sole or shared voting power (including by proxy), whether by the exercise of the Company's options or otherwise including, without limitation, by gift, succession, in the event of a stock split or as a dividend or distribution of any Company Shares, and including the Company Shares set forth on Schedule A, being referred to herein as the "Subject Shares");

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company and Purchaser have entered into an Asset Purchase Agreement, dated as of the date hereof (as the same may be amended from time to time in accordance with the terms thereof, the "Asset Purchase Agreement"), which provides, among other things, for the purchase of certain assets of the Company by Purchaser (the "Asset Sale"), upon the terms and subject to the conditions set forth in the Asset Purchase Agreement (capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Asset Purchase Agreement); and

WHEREAS, as a condition to its willingness to enter into the Asset Purchase Agreement, Purchaser has required that Stockholder, and as an inducement and in consideration therefor, Stockholder (in Stockholder's capacity as a holder of the Subject Shares) has agreed to, enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I

SUPPORT AGREEMENT; GRANT OF PROXY

Stockholder hereby covenants and agrees that:

1.1 Voting of Subject Shares; Asset Sale Approval. From and after the date hereof until this Agreement is terminated pursuant to Section 4.2, at every meeting of the stockholders of the Company (including the Stockholders Meeting), however called, and at every adjournment or postponement thereof (or pursuant to a written consent if the stockholders of the Company act by written consent in lieu of a meeting), Stockholder shall, or shall cause the holder of record on any applicable record date to, be present (in person or by proxy) or to otherwise cause the Subject Shares to be counted as present thereat for purposes of calculating a quorum and to vote the Subject Shares (i) in favor of adopting and approving the Asset Purchase Agreement and approving the Asset Sale, and any other transactions contemplated by the Asset Purchase Agreement and any and all other agreements entered into in connection with the Asset Sale (the Asset Sale and all other transactions contemplated by this clause (i), collectively, the "Contemplated Transactions"), (ii) against any proposal made in opposition to, or in competition with, or would otherwise be reasonably be expected to impede, interfere with, delay, postpone, discourage or adversely affect the Contemplated Transactions, (iii) against any Acquisition Proposal and (iv) in favor of approving any proposal to adjourn or postpone the Stockholder Meeting to a later date, if there are not sufficient votes for the adoption of the Asset Purchase Agreement on the date on which such meeting is held. Stockholder shall not take or commit or agree to take any action inconsistent with the foregoing. Other than as set forth in this Section 1.1(a), Stockholder shall retain the right to vote the Subject Shares on any other matters that are presented for consideration to the stockholders of the Company in Stockholder's sole discretion and without any limitations.

1.2 No Inconsistent Arrangements. Except as provided hereunder or under the Asset Purchase Agreement, from and after the date hereof until this Agreement is terminated pursuant to Section 4.2, Stockholder shall not, directly or indirectly, (a) create any Encumbrance other than restrictions imposed by Law or pursuant to this Agreement on any Subject Shares, (b) transfer, sell, assign (directly or indirectly), pledge, exchange, gift, grant, place in trust or otherwise dispose of (including, without limitation, by the creation of an Encumbrance pursuant to clause (a) hereto), or offer to do any of the foregoing (collectively, "Transfer"), or enter into any Contract, option, commitment or other arrangement or understanding with respect to the direct or indirect Transfer of any right, title or interest (including any right or power to vote to which the holder thereof may be entitled, whether such right or power is granted by proxy or otherwise) to any Subject Share, (c) grant or permit the grant of any proxy, power of attorney or other authorization in or with respect to the Subject Shares, (d) deposit or permit the deposit of the Subject Shares into a voting trust or enter into a voting agreement or similar arrangement with respect to the Subject Shares or grant any proxy or power of attorney with respect thereto (other than this Agreement), or (e) take any action that would reasonably be expected to make any representation or warranty of Stockholder contained herein untrue or incorrect or have the effect of restricting Stockholder's legal power, authority and right to vote all of the Subject Shares or would otherwise have the effect of preventing or disabling Stockholder from performing Stockholder's obligations hereunder. Any action taken in violation of the foregoing sentence shall be null and void *ab initio*. Notwithstanding the foregoing, (i) the Stockholder may make Transfers of the Subject Shares (A) by will, operation of law, or for estate planning or charitable purposes, (B) to stockholders, corporations, partnerships or other business entities that are direct or indirect affiliates (within the meaning set forth in Rule 405 under the Securities Act), current or former partners (general or limited), members or managers of the Stockholder, as applicable, or to the estates of any such stockholders, affiliates, general or limited partners, members or managers, or to another corporation, partnership, limited liability company or other business entity that controls, is controlled by or is under common control with the Stockholder or (C) if the Stockholder is a trust, to any beneficiary of the Stockholder or the estate of any such beneficiary, and (ii) with respect to the Stockholder's options for Company Shares ("Company Options") which would otherwise expire prior to the Effective Time, the Stockholder may make Transfers of Subject Shares to the Company as payment for the exercise price thereof and any tax withholding obligations, provided that, the Subject Shares (taking in account any net exercise or shares withheld to settle tax obligations) shall continue to be subject to the restrictions on transfer set forth in this Agreement; provided that, with respect to clause (i), the transferee agrees in writing to be bound by the terms and conditions of this Agreement and either the Stockholder or the transferee provides the Company with a copy of such agreement promptly prior to the consummation of any such Transfer.

1.3 Documentation and Information. Stockholder shall permit and hereby authorizes the Company and Purchaser to publish and disclose in any or all documents and schedules filed with the SEC, and any press release or other disclosure document that the Company or Purchaser reasonably determines to be necessary in connection with the Contemplated Transactions, Stockholder's identity and ownership of the Subject Shares and the nature of Stockholder's commitments and obligations under this Agreement, in each case, in a manner consistent with the terms of this Agreement and the Asset Purchase Agreement.

1.4 Irrevocable Proxy. Stockholder hereby revokes (or agrees to cause to be revoked) any proxies that such Stockholder has heretofore granted with respect to the Subject Shares and the Contemplated Transactions. In the event and solely to the extent that Stockholder fails to execute and deliver a proxy card or voting instructions to vote the Subject Shares in accordance with Section 1.1(a), Stockholder shall be deemed to have irrevocably appointed the Purchaser and any designee of the Purchaser as attorney-in-fact and proxy for and on behalf of Stockholder, for and in the name, place and stead of Stockholder, to: (a) attend any and all meetings of the stockholders of the Company (including the Stockholders Meeting) with respect to any of the matters specified in Section 1.1(a), (b) vote, express consent or dissent or issue instructions to the record holder to vote the Subject Shares in accordance with the provisions of Section 1.1(a) at any and all meetings of the stockholders of the Company (including the Stockholders Meeting) or in connection with any action sought to be taken by written consent of stockholders of the Company without a meeting, and (c) grant or withhold, or issue instructions to the record holder to grant or withhold, consistent with the provisions of Section 1.1(a), all written consents with respect to the Subject Shares at any and all meetings of the stockholders of the Company (including the Stockholders Meeting) or in connection with any action sought to be taken by written consent of stockholders of the Company without a meeting. Purchaser agrees not to exercise the proxy granted herein for any purpose other than the purposes expressly described in this Agreement. The foregoing proxy shall be deemed to be a proxy coupled with an interest, is irrevocable until the termination of this Agreement and shall not be terminated by operation of law or upon the occurrence of any other event other than the termination of this Agreement pursuant to Section 4.2. Stockholder authorizes such attorney and proxy to substitute any other Person to act hereunder, to revoke any substitution and to file this proxy and any substitution or revocation with the President (or equivalent) of the Company. Stockholder hereby affirms that the proxy set forth in this Section 1.4 is given in connection with and granted in consideration of and as an inducement to Purchaser and the Company to enter into the Asset Purchase Agreement and that such proxy is given to secure the obligations of Stockholder under Section 1.1(a). With respect to any Subject Shares that are owned beneficially by a Stockholder but are not held of record by Stockholder (other than shares beneficially owned by Stockholder that are held in the name of a bank, broker or nominee), Stockholder shall take all action necessary to cause the record holder of such Subject Shares to grant the irrevocable proxy and take all other actions provided for in this Section 1.4 with respect to such Subject Shares.

1.5 **No Ownership Interest**. Nothing contained in this Agreement will be deemed to vest in Purchaser (in its role as Purchaser in respect of the Contemplated Transactions) any direct or indirect ownership or incidents of ownership of or with respect to the Subject Shares. All rights, ownership and economic benefits of and relating to the Subject Shares will remain and belong to Stockholder, and the Purchaser (in its role as Purchaser in respect of the Contemplated Transactions) will have no authority to manage, direct, superintend, restrict, regulate, govern or administer any of the policies or operations of the Seller or exercise any power or authority to direct Stockholder in the voting of any of the Subject Shares, except as otherwise expressly provided herein with respect to the Subject Shares.

1.6 **Agreements of Stockholder**. In connection with the Contemplated Transactions, Stockholder hereby expressly agrees that:

(a) Stockholder will not bring, commence, institute, maintain, prosecute, participate in or voluntarily aid any action, claim, suit or cause of action, in law or in equity, in any court or before any Governmental Entity, which (i) challenges the validity of or seeks to enjoin the operation of any provision of this Agreement or (ii) alleges that the execution and delivery of this Agreement by Stockholder, or the approval of the Asset Purchase Agreement, the Asset Sale or the other Contemplated Transactions by the Board, breaches any fiduciary duty of the Board or any member thereof; provided that Stockholder may defend against, contest or settle any such action, claim, suit or cause of action brought against Stockholder that relates solely to Stockholder's capacity as a director, officer or securityholder of the Company;

(b) Stockholder shall not take any action that would reasonably be expected to have the effect of impairing the ability of Stockholder to perform its obligations under this Agreement or preventing or delaying the consummation of any of the Contemplated Transactions;

(c) Subject to the provisions of Section 4.13 hereof, Stockholder shall not, from and after the date hereof until this Agreement is terminated pursuant to Section 4.2, directly or indirectly, take any action that the Company is prohibited from taking pursuant to Section 6.17(a) and Section 6.17(b) of the Asset Purchase Agreement, and in the event Stockholder shall receive or become aware of any Acquisition Proposal subsequent to the date hereof, Stockholder shall promptly inform the Company as to any such matter and the details thereof, subject to any confidentiality obligations to which Stockholder is bound as of the date hereof; and

(d) any shares of capital stock or other securities of the Company that Stockholder purchases or with respect to which Stockholder otherwise acquires beneficial ownership on or after the date of the Asset Purchase Agreement and prior to the Closing, including by reason of exercise of warrants or stock split, stock dividend, reverse stock split, reclassification, recapitalization, or other similar transaction, shall be subject to the terms and conditions of this Agreement to the same extent as if such securities were included on Schedule A and shall constitute Subject Shares for all purposes of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF STOCKHOLDER

Stockholder represents and warrants to each of the Purchaser and the Company that:

2.1 **Organization; Authorization; Binding Agreement**. To the extent Stockholder is an entity, Stockholder is duly incorporated or organized, as applicable, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Stockholder has full legal capacity and all necessary power, right and authority to execute and deliver this Agreement and to perform Stockholder's obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, performance by Stockholder's obligations hereunder and the consummation of the transactions contemplated hereby by Stockholder have been duly authorized by all necessary action on the part of Stockholder and no other proceeding on the part of Stockholder are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Stockholder, and constitutes a legal, valid and binding obligation of Stockholder enforceable against Stockholder in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws of general application affecting or relating to the enforcement of creditors rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at Law or in equity. If Stockholder is an individual, Stockholder has the legal capacity to execute and deliver this Agreement, to perform Stockholder's obligations hereunder and to consummate the transactions contemplated hereby.

2.2 **Ownership of Subject Shares; Total Shares**. Stockholder is the record or Beneficial Owner of the Subject Shares and has good and marketable title to the Subject Shares free and clear of any Encumbrances (including any restriction on the right to vote or otherwise Transfer the Subject Shares), and has sole or shared, and otherwise unrestricted, voting power with respect to such Subject Shares and none of the Subject Shares is subject to any voting trust or other agreement, arrangement or restriction with respect to the voting of the Subject Shares, except (a) as provided hereunder, (b) pursuant to any applicable restrictions on Transfer under the Securities Act of 1933, as amended, (c) subject to any risk of forfeiture with respect to any Company Shares granted to the Stockholder under an agreement with or employee benefit plan of the Company, (d) with respect to Subject Shares underlying Company Options, as provided pursuant to the terms of the Company Option and any stock option plan under which such Company Option was granted and (e) as provided in the Organizational Documents. The Subject Shares listed on Schedule A opposite Stockholder's name constitute all of the equity securities of the Company Beneficially Owned by Stockholder as of the date hereof. Except pursuant to the Company's Organizational Documents and the right of the Company to purchase or acquire any Company Shares pursuant to a benefit plan of the Company, no Person has any contractual or other right or obligation to purchase or otherwise acquire any of the Subject Shares. For purposes of this Agreement, "Beneficial Ownership" and derivations of such term shall be interpreted as defined in Rule 13d-3 under the Exchange Act; provided that for purposes of determining Beneficial Ownership, a Person shall be deemed to be the Beneficial Owner of any securities that may be acquired by such Person pursuant to any Contract or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise (irrespective of whether the right to acquire such securities is exercisable immediately or only after the passage of time, including the passage of time in excess of 60 days, the satisfaction of any conditions, the occurrence of any event or any combination of the foregoing).

2.3 **Voting Power**. Stockholder has full voting power with respect to the Subject Shares, and full power of disposition, full power to issue instructions with respect to the matters set forth herein and full power to agree to all of the matters set forth herein, in each case, with respect to all of the Subject Shares. None of the Subject Shares are subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of the Subject Shares.

2.4 **Reliance**. Stockholder has had the opportunity to review the Asset Purchase Agreement and this Agreement with counsel of Stockholder's own choosing. Stockholder has had an opportunity to review with its own tax advisors the tax consequences of the Asset Sale and the other transactions contemplated by the Asset Purchase Agreement. Stockholder understands that it must rely solely on its advisors and not on any statements or representations made by any other Person. Stockholder understands that Stockholder (and not Purchaser or the Company) shall be responsible for Stockholder's tax liability that may arise as a result of the Asset Sale or any other transaction contemplated by the Asset Purchase Agreement. Stockholder understands and acknowledges that the Company and Purchaser are entering into the Asset Purchase Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

2.5 **Absence of Litigation**. With respect to Stockholder, as of the date hereof, there is no Action pending against, or, to the knowledge of the Stockholder, threatened against, Stockholder or any of Stockholder's properties or assets (including the Subject Shares) that could reasonably be expected to prevent, delay or impair the ability of Stockholder to perform Stockholder's obligations hereunder or to consummate the transactions contemplated hereby.

2.6 **Non-Contravention**. The execution and delivery of this Agreement by Stockholder and the performance of the transactions contemplated by this Agreement by Stockholder or its obligations hereunder and the compliance by Stockholder with any provisions hereof, do not and will not violate, conflict with, result in a breach of or constitute a default (or an event that with notice or lapse of time or both would become a material default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on any Subject Shares pursuant to: (a) the organizational documents of Stockholder or the Organizational Documents, (b) any applicable Law or any injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Entity to which Stockholder is subject, or (c) any Contract to which Stockholder is a party or is bound or to which the Subject Securities are subject, such that it could reasonably be expected to prevent, delay or impair the ability of Stockholder to perform Stockholder's obligations hereunder or to consummate the transactions contemplated hereby.

2.7 **Consent**. The execution and delivery of this Agreement by Stockholder does not, and the performance of this Agreement by Stockholder does not and will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or Regulatory Authority by Stockholder except for applicable requirements, if any, of the Exchange Act, and except where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not prevent or delay the performance by Stockholder of his, her or its obligations under this Agreement.

2.8 **Financial Advisor**. No investment banker, broker, finder or other intermediary is entitled to a fee or commission from the Company or Purchaser in respect of this Agreement based upon any Contract made by or on behalf of Stockholder

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Stockholder that:

3.1 **Organization; Authorization**. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware. The consummation of the transactions contemplated hereby is within the Company's corporate powers and has been duly authorized by all necessary corporate actions on the part of the Company. The Company has full power and authority to execute, deliver and perform this Agreement, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws of general application affecting or relating to the enforcement of creditors rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at Law or in equity.

3.2 **Binding Agreement**. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws of general application affecting or relating to the enforcement of creditors rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at Law or in equity.

ARTICLE IV

MISCELLANEOUS

4.1 **Notices**. All notices, requests and other communications to either party hereunder shall be in writing (including electronic mail) and shall be given, (a) if to the Company or Purchaser, in accordance with the provisions of the Asset Purchase Agreement and (b) if to Stockholder, to Stockholder's address or electronic mail address set forth on a signature page hereto, or to such other address or electronic mail address as Stockholder may hereafter specify in writing.

4.2 **Termination**. This Agreement, and all rights and obligations of the parties hereunder, shall terminate automatically, without any notice or other action by any Person, upon the earliest of (a) the termination of the Asset Purchase Agreement in accordance with its terms, (b) a Change in Recommendation, (c) the Closing and (d) written agreement of the parties hereto to terminate this Agreement. Upon termination of this Agreement, no party shall have any further obligations or liabilities under this Agreement; *provided*, *however*, that (i) nothing set forth in this Section 4.2 shall relieve a party from liability for any breach of this Agreement prior to termination hereof, and (ii) the provisions of this ARTICLE IV shall survive any termination of this Agreement.

4.3 **Confidentiality**. Except to the extent required by applicable Law, Stockholder shall hold any non-public information regarding this Agreement, the Asset Purchase Agreement and the Asset Sale in strict confidence and shall not divulge any such information to any third person until the Company has publicly disclosed its entry into the Asset Purchase Agreement and this Agreement; *provided*, *however*, that Stockholder may disclose such information (a) to its attorneys, accountants, consultants, trustees, beneficiaries and other representatives (provided such representatives are subject to confidentiality obligations at least as restrictive as those contained herein), and (b) to any Affiliate, partner, member, stockholder, parent or subsidiary of Stockholder in the ordinary course of business, *provided* in each case that Stockholder informs the Person receiving the information that such information is confidential and such Person is subject to confidentiality obligations at least as restrictive as those set forth herein. Neither Stockholder nor any of its Affiliates (other than the Company, whose actions shall be governed by the Asset Purchase Agreement), shall issue or cause the publication of any press release or other public announcement with respect to this Agreement, the Asset Sale, the Asset Purchase Agreement or the other transactions contemplated hereby or thereby without the prior written consent of the Company and Purchaser, except as may be required by applicable Law in which circumstance such announcing party shall make reasonable efforts to consult with the Company and Purchaser to the extent practicable.

4.4 **Amendments and Waivers**. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

4.5 **Binding Effect; Benefit; Assignment**. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as set forth in Sections 1.3 and 4.3, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and permitted assigns. No party hereto may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other parties.

4.6 **Governing Law; Jurisdiction; Venue and Service.**

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any conflicts or choice of Law rule or principle (whether of the State of Delaware or any other jurisdiction) that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

(b) Subject to Section 4.10, each of the parties hereto hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware) for any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement, and agrees not to commence any action, suit or proceeding (other than appeals therefrom) related thereto except in such courts.

(c) Each of the parties hereto further hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement in the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware), and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(d) Each of the parties hereto further agrees that service of any process, summons, notice or document by registered mail to its address set forth in Section 4.1 shall be effective service of process for any action, suit or proceeding brought against it under this Agreement in any such court.

4.7 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by portable document format (*e.g.*, "pdf" or "jpg") or other electronic transmission (including DocuSign and AdobeSign). The use of electronic signatures and electronic records shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the Delaware Uniform Electronic Transactions Act and any other applicable Law.

4.8 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof.

4.9 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and reasonably acceptable to the parties hereto.

4.10 **Equitable Relief**. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. It is accordingly agreed that parties hereto shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches, or to enforce compliance with, the covenants and obligations of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereto hereby waives (a) any requirement that any other party hereto post a bond or other security as a condition for obtaining any such relief, and (b) any defenses in any action for specific performance, including the defense that a remedy at law would be adequate.

4.11 **Interpretation**. Except where the context otherwise requires, wherever used, the singular includes the plural, the plural the singular, the use of any gender shall be applicable to all genders and the word "or" is used in the inclusive sense (and/or). The captions of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The term "including" as used herein does not limit the generality of any description preceding such term. The language of this Agreement shall be deemed to be the language mutually chosen by the parties hereto and no rule of strict construction shall be applied against any party hereto. Unless otherwise specified or where the context otherwise requires, (a) references in this Agreement to any Article, Section, Schedule or Exhibit are references to such Article, Section, Schedule or Exhibit of this Agreement; (b) references in any Section to any clause are references to such clause of such Section; (c) "hereof," "hereto," "hereby," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (d) references to a Person are also to its permitted successors and assigns; (e) references to a Law include any amendment or modification to such Law and any rules or regulations issued thereunder, in each case, as in effect at the relevant time of reference thereto; (f) references to any agreement, instrument or other document in this Agreement refer to such agreement, instrument or other document as originally executed or, if subsequently amended, replaced or supplemented from time to time, as so amended, replaced or supplemented and in effect at the relevant time of reference thereto; and (g) references to monetary amounts are denominated in United States Dollars.

4.12 **Further Assurances**. Each of the parties hereto will execute and deliver, or cause to be executed and delivered, all further documents and instruments and use their respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable Law to perform their respective obligations as expressly set forth under this Agreement.

4.13 **Capacity as Stockholder**. Stockholder has executed this Agreement solely in Stockholder's capacity as a holder of Company Shares, and not in Stockholder's capacity as a director, officer or employee of Company or any of its Subsidiaries or in Stockholder's capacity as a trustee or fiduciary of any employee benefit plan or trust. Notwithstanding anything herein to the contrary, nothing herein shall in any way restrict a director or officer of Company in the exercise of his or her fiduciary duties as a director or officer of Company or in his or her capacity as a trustee or fiduciary of any employee benefit plan or trust or prevent or be construed to create any obligation on the part of any director or officer of Company or any trustee or fiduciary of any employee benefit plan or trust from taking any action in his or her capacity as such director, officer, trustee or fiduciary.

4.14 **Conversion or Exercise**. Nothing contained in this Agreement shall require the Stockholder (or shall entitle any proxy of the Stockholder) to (a) convert, exercise or exchange any option, warrants or convertible securities in order to obtain any underlying Subject Shares or (b) vote, or execute any consent with respect to, any Subject Shares underlying such options, warrants or convertible securities that have not yet been issued as of the applicable record date for that vote or consent.

4.15 **Representations and Warranties**. The representations and warranties contained in this Agreement and in any certificate or other writing delivered pursuant hereto shall not survive the Closing or the termination of this Agreement.

4.16 **No Agreement Until Executed**. Irrespective of negotiations among the parties or the exchanging of drafts of this Agreement, this Agreement shall not constitute or be deemed to evidence a contract, agreement, arrangement or understanding between the parties hereto unless and until (a) the Board has approved the Asset Sale and the Asset Purchase Agreement, (b) the Asset Purchase Agreement is executed by all parties thereto, and (c) this Agreement is executed by all parties hereto.

(SIGNATURE PAGE FOLLOWS)

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

COMPANY

SERES THERAPEUTICS, INC.

By: _____
Name:
Title:

PURCHASER

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

By: _____
Name:
Title:

[Signature Page to Support Agreement]

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

STOCKHOLDER

[NAME]

By: _____

Email:

[Signature Page to Support Agreement]

Schedule A

Company Shares

Name	Common Stock

[Schedule A to Support Agreement]

Form of Support Agreement

This **SUPPORT AGREEMENT** (this "Agreement") is made as of August 5, 2024, by and among Seres Therapeutics, Inc., a corporation organized and existing under the laws of Delaware (the "Company"), Société des Produits Nestlé S.A., a *société anonyme* organized under the laws of Switzerland ("Purchaser"), and the Person set forth on Schedule A hereto ("Stockholder").

WHEREAS, as of the date hereof, Stockholder is a Beneficial Owner (defined below) of, and has sole or shared voting power with respect to, the number of shares of capital stock ("Company Shares") of the Company, set forth opposite Stockholder's name on Schedule A (all Company Shares owned by Stockholder, or hereafter issued to or otherwise acquired, whether beneficially or of record, or with respect to which Stockholder otherwise acquires sole or shared voting power (including by proxy), whether by the exercise of the Company's options or otherwise including, without limitation, by gift, succession, in the event of a stock split or as a dividend or distribution of any Company Shares, and including the Company Shares set forth on Schedule A, being referred to herein as the "Subject Shares");

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company and Purchaser have entered into an Asset Purchase Agreement, dated as of the date hereof (as the same may be amended from time to time in accordance with the terms thereof, the "Asset Purchase Agreement"), which provides, among other things, for the purchase of certain assets of the Company by Purchaser (the "Asset Sale"), upon the terms and subject to the conditions set forth in the Asset Purchase Agreement (capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Asset Purchase Agreement); and

WHEREAS, as a condition to its willingness to enter into the Asset Purchase Agreement, Purchaser has required that Stockholder, and as an inducement and in consideration therefor, Stockholder (in Stockholder's capacity as a holder of the Subject Shares) has agreed to, enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I

SUPPORT AGREEMENT; GRANT OF PROXY

Stockholder hereby covenants and agrees that:

1.1 Voting of Subject Shares; Asset Sale Approval. From and after the date hereof until this Agreement is terminated pursuant to Section 4.2, at every meeting of the stockholders of the Company (including the Stockholders Meeting), however called, and at every adjournment or postponement thereof (or pursuant to a written consent if the stockholders of the Company act by written consent in lieu of a meeting), Stockholder shall, or shall cause the holder of record on any applicable record date to, be present (in person or by proxy) or to otherwise cause the Subject Shares to be counted as present thereat for purposes of calculating a quorum and to vote the Subject Shares (i) in favor of adopting and approving the Asset Purchase Agreement and approving the Asset Sale, and any other transactions contemplated by the Asset Purchase Agreement and any and all other agreements entered into in connection with the Asset Sale (the Asset Sale and all other transactions contemplated by this clause (i), collectively, the "Contemplated Transactions"), (ii) against any proposal made in opposition to, or in competition with, or would otherwise be reasonably be expected to impede, interfere with, delay, postpone, discourage or adversely affect the Contemplated Transactions, (iii) against any Acquisition Proposal and (iv) in favor of approving any proposal to adjourn or postpone the Stockholder Meeting to a later date, if there are not sufficient votes for the adoption of the Asset Purchase Agreement on the date on which such meeting is held. Stockholder shall not take or commit or agree to take any action inconsistent with the foregoing. Other than as set forth in this Section 1.1(a), Stockholder shall retain the right to vote the Subject Shares on any other matters that are presented for consideration to the stockholders of the Company in Stockholder's sole discretion and without any limitations.

1.2 **No Inconsistent Arrangements**. Except as provided hereunder or under the Asset Purchase Agreement, from and after the date hereof until this Agreement is terminated pursuant to Section 4.2, Stockholder shall not, directly or indirectly, (a) create any Encumbrance other than restrictions imposed by Law or pursuant to this Agreement on any Subject Shares, (b) transfer, sell, assign (directly or indirectly), pledge, exchange, gift, grant, place in trust or otherwise dispose of (including, without limitation, by the creation of an Encumbrance pursuant to clause (a) hereto), or offer to do any of the foregoing (collectively, "Transfer"), or enter into any Contract, option, commitment or other arrangement or understanding with respect to the direct or indirect Transfer of any right, title or interest (including any right or power to vote to which the holder thereof may be entitled, whether such right or power is granted by proxy or otherwise) to any Subject Share, (c) grant or permit the grant of any proxy, power of attorney or other authorization in or with respect to the Subject Shares, (d) deposit or permit the deposit of the Subject Shares into a voting trust or enter into a voting agreement or similar arrangement with respect to the Subject Shares or grant any proxy or power of attorney with respect thereto (other than this Agreement), or (e) take any action that would reasonably be expected to make any representation or warranty of Stockholder contained herein untrue or incorrect or have the effect of restricting Stockholder's legal power, authority and right to vote all of the Subject Shares or would otherwise have the effect of preventing or disabling Stockholder from performing Stockholder's obligations hereunder. Any action taken in violation of the foregoing sentence shall be null and void *ab initio*. Notwithstanding the foregoing, (i) the Stockholder may make Transfers of the Subject Shares (A) by will, operation of law, or for estate planning or charitable purposes, (B) to stockholders, corporations, partnerships or other business entities that are direct or indirect affiliates (within the meaning set forth in Rule 405 under the Securities Act), current or former partners (general or limited), members or managers of the Stockholder, as applicable, or to the estates of any such stockholders, affiliates, general or limited partners, members or managers, or to another corporation, partnership, limited liability company or other business entity that controls, is controlled by or is under common control with the Stockholder or (C) if the Stockholder is a trust, to any beneficiary of the Stockholder or the estate of any such beneficiary, and (ii) with respect to the Stockholder's options for Company Shares ("Company Options") which would otherwise expire prior to the Effective Time, the Stockholder may make Transfers of Subject Shares to the Company as payment for the exercise price thereof and any tax withholding obligations, provided that, the Subject Shares (taking in account any net exercise or shares withheld to settle tax obligations) shall continue to be subject to the restrictions on transfer set forth in this Agreement; provided that, with respect to clause (i), the transferee agrees in writing to be bound by the terms and conditions of this Agreement and either the Stockholder or the transferee provides the Company with a copy of such agreement promptly prior to the consummation of any such Transfer.

1.3 Documentation and Information. Stockholder shall permit and hereby authorizes the Company and Purchaser to publish and disclose in any or all documents and schedules filed with the SEC, and any disclosure document that the Company or Purchaser reasonably determines to be necessary in connection with the Contemplated Transactions, Stockholder's identity and ownership of the Subject Shares and the nature of Stockholder's commitments and obligations under this Agreement, in each case, in a manner consistent with the terms of this Agreement and the Asset Purchase Agreement; provided, that, any press release issued by the Company and/or Purchaser disclosing Stockholder's identity and ownership of the Subject Shares and the nature of Stockholder's commitments and obligations under this Agreement shall require the prior written consent of the Stockholder (such consent not to be unreasonably withheld, conditioned or delayed).

1.4 Irrevocable Proxy. Stockholder hereby revokes (or agrees to cause to be revoked) any proxies that such Stockholder has heretofore granted with respect to the Subject Shares and the Contemplated Transactions. In the event and solely to the extent that Stockholder fails to execute and deliver a proxy card or voting instructions to vote the Subject Shares in accordance with Section 1.1(a), Stockholder shall be deemed to have irrevocably appointed the Purchaser and any designee of the Purchaser as attorney-in-fact and proxy for and on behalf of Stockholder, for and in the name, place and stead of Stockholder, to: (a) attend any and all meetings of the stockholders of the Company (including the Stockholders Meeting) with respect to any of the matters specified in Section 1.1(a), (b) vote, express consent or dissent or issue instructions to the record holder to vote the Subject Shares in accordance with the provisions of Section 1.1(a) at any and all meetings of the stockholders of the Company (including the Stockholders Meeting) or in connection with any action sought to be taken by written consent of stockholders of the Company without a meeting, and (c) grant or withhold, or issue instructions to the record holder to grant or withhold, consistent with the provisions of Section 1.1(a), all written consents with respect to the Subject Shares at any and all meetings of the stockholders of the Company (including the Stockholders Meeting) or in connection with any action sought to be taken by written consent of stockholders of the Company without a meeting. Purchaser agrees not to exercise the proxy granted herein for any purpose other than the purposes expressly described in this Agreement. The foregoing proxy shall be deemed to be a proxy coupled with an interest, is irrevocable until the termination of this Agreement and shall not be terminated by operation of law or upon the occurrence of any other event other than the termination of this Agreement pursuant to Section 4.2. Stockholder authorizes such attorney and proxy to substitute any other Person to act hereunder, to revoke any substitution and to file this proxy and any substitution or revocation with the President (or equivalent) of the Company. Stockholder hereby affirms that the proxy set forth in this Section 1.4 is given in connection with and granted in consideration of and as an inducement to Purchaser and the Company to enter into the Asset Purchase Agreement and that such proxy is given to secure the obligations of Stockholder under Section 1.1(a). With respect to any Subject Shares that are owned beneficially by a Stockholder but are not held of record by Stockholder (other than shares beneficially owned by Stockholder that are held in the name of a bank, broker or nominee), Stockholder shall take all action necessary to cause the record holder of such Subject Shares to grant the irrevocable proxy and take all other actions provided for in this Section 1.4 with respect to such Subject Shares.

1.5 **No Ownership Interest**. Nothing contained in this Agreement will be deemed to vest in Purchaser (in its role as Purchaser in respect of the Contemplated Transactions) any direct or indirect ownership or incidents of ownership of or with respect to the Subject Shares. All rights, ownership and economic benefits of and relating to the Subject Shares will remain and belong to Stockholder, and the Purchaser (in its role as Purchaser in respect of the Contemplated Transactions) will have no authority to manage, direct, superintend, restrict, regulate, govern or administer any of the policies or operations of the Seller or exercise any power or authority to direct Stockholder in the voting of any of the Subject Shares, except as otherwise expressly provided herein with respect to the Subject Shares.

1.6 **Agreements of Stockholder**. In connection with the Contemplated Transactions, Stockholder hereby expressly agrees that:

(a) Stockholder will not bring, commence, institute, maintain, prosecute, participate in or voluntarily aid any action, claim, suit or cause of action, in law or in equity, in any court or before any Governmental Entity, which (i) challenges the validity of or seeks to enjoin the operation of any provision of this Agreement or (ii) alleges that the execution and delivery of this Agreement by Stockholder, or the approval of the Asset Purchase Agreement, the Asset Sale or the other Contemplated Transactions by the Board, breaches any fiduciary duty of the Board or any member thereof; provided that Stockholder may defend against, contest or settle any such action, claim, suit or cause of action brought against Stockholder that relates solely to Stockholder's capacity as a director, officer or securityholder of the Company;

(b) Stockholder shall not take any action that would reasonably be expected to have the effect of impairing the ability of Stockholder to perform its obligations under this Agreement or preventing or delaying the consummation of any of the Contemplated Transactions;

(c) Subject to the provisions of Section 4.13 hereof, Stockholder shall not, from and after the date hereof until this Agreement is terminated pursuant to Section 4.2, directly or indirectly, take any action that the Company is prohibited from taking pursuant to Section 6.17(a) and Section 6.17(b) of the Asset Purchase Agreement, and in the event Stockholder shall receive or become aware of any Acquisition Proposal subsequent to the date hereof, Stockholder shall promptly inform the Company as to any such matter and the details thereof, subject to any confidentiality obligations to which Stockholder is bound as of the date hereof; and

(d) any shares of capital stock or other securities of the Company that Stockholder purchases or with respect to which Stockholder otherwise acquires beneficial ownership on or after the date of the Asset Purchase Agreement and prior to the Closing, including by reason of exercise of warrants or stock split, stock dividend, reverse stock split, reclassification, recapitalization, or other similar transaction, shall be subject to the terms and conditions of this Agreement to the same extent as if such securities were included on Schedule A and shall constitute Subject Shares for all purposes of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF STOCKHOLDER

Stockholder represents and warrants to each of the Purchaser and the Company that:

2.1 Organization; Authorization; Binding Agreement. To the extent Stockholder is an entity, Stockholder is duly incorporated or organized, as applicable, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Stockholder has full legal capacity and all necessary power, right and authority to execute and deliver this Agreement and to perform Stockholder's obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, performance by Stockholder's obligations hereunder and the consummation of the transactions contemplated hereby by Stockholder have been duly authorized by all necessary action on the part of Stockholder and no other proceeding on the part of Stockholder are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Stockholder, and constitutes a legal, valid and binding obligation of Stockholder enforceable against Stockholder in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws of general application affecting or relating to the enforcement of creditors rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at Law or in equity. If Stockholder is an individual, Stockholder has the legal capacity to execute and deliver this Agreement, to perform Stockholder's obligations hereunder and to consummate the transactions contemplated hereby.

2.2 Ownership of Subject Shares; Total Shares. Stockholder is the record or Beneficial Owner of the Subject Shares and has good and marketable title to the Subject Shares free and clear of any Encumbrances (including any restriction on the right to vote or otherwise Transfer the Subject Shares), and has sole or shared, and otherwise unrestricted, voting power with respect to such Subject Shares and none of the Subject Shares is subject to any voting trust or other agreement, arrangement or restriction with respect to the voting of the Subject Shares, except (a) as provided hereunder, (b) pursuant to any applicable restrictions on Transfer under the Securities Act of 1933, as amended, (c) subject to any risk of forfeiture with respect to any Company Shares granted to the Stockholder under an agreement with or employee benefit plan of the Company, (d) with respect to Subject Shares underlying Company Options, as provided pursuant to the terms of the Company Option and any stock option plan under which such Company Option was granted and (e) as provided in the Organizational Documents. The Subject Shares listed on Schedule A opposite Stockholder's name constitute all of the equity securities of the Company Beneficially Owned by Stockholder as of the date hereof. Except pursuant to the Company's Organizational Documents and the right of the Company to purchase or acquire any Company Shares pursuant to a benefit plan of the Company, no Person has any contractual or other right or obligation to purchase or otherwise acquire any of the Subject Shares. For purposes of this Agreement, "Beneficial Ownership" and derivations of such term shall be interpreted as defined in Rule 13d-3 under the Exchange Act; provided that for purposes of determining Beneficial Ownership, a Person shall be deemed to be the Beneficial Owner of any securities that may be acquired by such Person pursuant to any Contract or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise (irrespective of whether the right to acquire such securities is exercisable immediately or only after the passage of time, including the passage of time in excess of 60 days, the satisfaction of any conditions, the occurrence of any event or any combination of the foregoing).

2.3 **Voting Power**. Stockholder has full voting power with respect to the Subject Shares, and full power of disposition, full power to issue instructions with respect to the matters set forth herein and full power to agree to all of the matters set forth herein, in each case, with respect to all of the Subject Shares. None of the Subject Shares are subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of the Subject Shares.

2.4 **Reliance**. Stockholder has had the opportunity to review the Asset Purchase Agreement and this Agreement with counsel of Stockholder's own choosing. Stockholder has had an opportunity to review with its own tax advisors the tax consequences of the Asset Sale and the other transactions contemplated by the Asset Purchase Agreement. Stockholder understands that it must rely solely on its advisors and not on any statements or representations made by any other Person. Stockholder understands that Stockholder (and not Purchaser or the Company) shall be responsible for Stockholder's tax liability that may arise as a result of the Asset Sale or any other transaction contemplated by the Asset Purchase Agreement. Stockholder understands and acknowledges that the Company and Purchaser are entering into the Asset Purchase Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

2.5 **Absence of Litigation**. With respect to Stockholder, as of the date hereof, there is no Action pending against, or, to the knowledge of the Stockholder, threatened against, Stockholder or any of Stockholder's properties or assets (including the Subject Shares) that could reasonably be expected to prevent, delay or impair the ability of Stockholder to perform Stockholder's obligations hereunder or to consummate the transactions contemplated hereby.

2.6 **Non-Contravention**. The execution and delivery of this Agreement by Stockholder and the performance of the transactions contemplated by this Agreement by Stockholder or its obligations hereunder and the compliance by Stockholder with any provisions hereof, do not and will not violate, conflict with, result in a breach of or constitute a default (or an event that with notice or lapse of time or both would become a material default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on any Subject Shares pursuant to: (a) the organizational documents of Stockholder or the Organizational Documents, (b) any applicable Law or any injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Entity to which Stockholder is subject, or (c) any Contract to which Stockholder is a party or is bound or to which the Subject Securities are subject, such that it could reasonably be expected to prevent, delay or impair the ability of Stockholder to perform Stockholder's obligations hereunder or to consummate the transactions contemplated hereby.

2.7 **Consent**. The execution and delivery of this Agreement by Stockholder does not, and the performance of this Agreement by Stockholder does not and will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity or Regulatory Authority by Stockholder except for applicable requirements, if any, of the Exchange Act, and except where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not prevent or delay the performance by Stockholder of his, her or its obligations under this Agreement.

2.8 **Financial Advisor**. No investment banker, broker, finder or other intermediary is entitled to a fee or commission from the Company or Purchaser in respect of this Agreement based upon any Contract made by or on behalf of Stockholder.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Stockholder that:

3.1 **Organization; Authorization**. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware. The consummation of the transactions contemplated hereby is within the Company's corporate powers and has been duly authorized by all necessary corporate actions on the part of the Company. The Company has full power and authority to execute, deliver and perform this Agreement, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws of general application affecting or relating to the enforcement of creditors rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at Law or in equity.

3.2 **Binding Agreement**. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws of general application affecting or relating to the enforcement of creditors rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at Law or in equity.

ARTICLE IV

MISCELLANEOUS

4.1 **Notices**. All notices, requests and other communications to either party hereunder shall be in writing (including electronic mail) and shall be given, (a) if to the Company or Purchaser, in accordance with the provisions of the Asset Purchase Agreement and (b) if to Stockholder, to Stockholder's address or electronic mail address set forth on a signature page hereto, or to such other address or electronic mail address as Stockholder may hereafter specify in writing.

4.2 **Termination**. This Agreement, and all rights and obligations of the parties hereunder, shall terminate automatically, without any notice or other action by any Person, upon the earliest of (a) the termination of the Asset Purchase Agreement in accordance with its terms, (b) the Closing and (c) written agreement of the parties hereto to terminate this Agreement. Upon termination of this Agreement, no party shall have any further obligations or liabilities under this Agreement; *provided*, *however*, that (i) nothing set forth in this Section 4.2 shall relieve a party from liability for any breach of this Agreement prior to termination hereof, and (ii) the provisions of this ARTICLE IV shall survive any termination of this Agreement.

4.3 **Confidentiality**. Except to the extent required by applicable Law, Stockholder shall hold any non-public information regarding this Agreement, the Asset Purchase Agreement and the Asset Sale in strict confidence and shall not divulge any such information to any third person until the Company has publicly disclosed its entry into the Asset Purchase Agreement and this Agreement; *provided*, *however*, that Stockholder may disclose such information (a) to its attorneys, accountants, consultants, trustees, beneficiaries and other representatives (provided such representatives are subject to confidentiality obligations at least as restrictive as those contained herein), and (b) to any Affiliate, partner, member, stockholder, parent or subsidiary of Stockholder in the ordinary course of business, *provided* in each case that Stockholder informs the Person receiving the information that such information is confidential and such Person is subject to confidentiality obligations at least as restrictive as those set forth herein. Neither Stockholder nor any of its Affiliates (other than the Company, whose actions shall be governed by the Asset Purchase Agreement), shall issue or cause the publication of any press release or other public announcement with respect to this Agreement, the Asset Sale, the Asset Purchase Agreement or the other transactions contemplated hereby or thereby without the prior written consent of the Company and Purchaser, except as may be required by applicable Law in which circumstance such announcing party shall make reasonable efforts to consult with the Company and Purchaser to the extent practicable.

4.4 **Amendments and Waivers**. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

4.5 **Binding Effect; Benefit; Assignment**. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as set forth in Sections 1.3 and 4.3, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and permitted assigns. No party hereto may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other parties.

4.6 **Governing Law; Jurisdiction; Venue and Service.**

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any conflicts or choice of Law rule or principle (whether of the State of Delaware or any other jurisdiction) that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

(b) Subject to Section 4.10, each of the parties hereto hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware) for any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement, and agrees not to commence any action, suit or proceeding (other than appeals therefrom) related thereto except in such courts.

(c) Each of the parties hereto further hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement in the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept or does not have jurisdiction over a particular matter, any federal or other state court sitting in New Castle County within the State of Delaware), and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(d) Each of the parties hereto further agrees that service of any process, summons, notice or document by registered mail to its address set forth in Section 4.1 shall be effective service of process for any action, suit or proceeding brought against it under this Agreement in any such court.

4.7 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by portable document format (*e.g.*, "pdf" or "jpg") or other electronic transmission (including DocuSign and AdobeSign). The use of electronic signatures and electronic records shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the Delaware Uniform Electronic Transactions Act and any other applicable Law.

4.8 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof.

4.9 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and reasonably acceptable to the parties hereto.

4.10 **Equitable Relief**. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. It is accordingly agreed that parties hereto shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches, or to enforce compliance with, the covenants and obligations of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereto hereby waives (a) any requirement that any other party hereto post a bond or other security as a condition for obtaining any such relief, and (b) any defenses in any action for specific performance, including the defense that a remedy at law would be adequate.

4.11 **Interpretation**. Except where the context otherwise requires, wherever used, the singular includes the plural, the plural the singular, the use of any gender shall be applicable to all genders and the word "or" is used in the inclusive sense (and/or). The captions of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The term "including" as used herein does not limit the generality of any description preceding such term. The language of this Agreement shall be deemed to be the language mutually chosen by the parties hereto and no rule of strict construction shall be applied against any party hereto. Unless otherwise specified or where the context otherwise requires, (a) references in this Agreement to any Article, Section, Schedule or Exhibit are references to such Article, Section, Schedule or Exhibit of this Agreement; (b) references in any Section to any clause are references to such clause of such Section; (c) "hereof," "hereto," "hereby," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (d) references to a Person are also to its permitted successors and assigns; (e) references to a Law include any amendment or modification to such Law and any rules or regulations issued thereunder, in each case, as in effect at the relevant time of reference thereto; (f) references to any agreement, instrument or other document in this Agreement refer to such agreement, instrument or other document as originally executed or, if subsequently amended, replaced or supplemented from time to time, as so amended, replaced or supplemented and in effect at the relevant time of reference thereto; and (g) references to monetary amounts are denominated in United States Dollars.

4.12 **Further Assurances**. Each of the parties hereto will execute and deliver, or cause to be executed and delivered, all further documents and instruments and use their respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable Law to perform their respective obligations as expressly set forth under this Agreement.

4.13 **Capacity as Stockholder**. Stockholder has executed this Agreement solely in Stockholder's capacity as a holder of Company Shares, and not in Stockholder's capacity as a director, officer or employee of Company or any of its Subsidiaries or in Stockholder's capacity as a trustee or fiduciary of any employee benefit plan or trust. Notwithstanding anything herein to the contrary, nothing herein shall in any way restrict a director or officer of Company in the exercise of his or her fiduciary duties as a director or officer of Company or in his or her capacity as a trustee or fiduciary of any employee benefit plan or trust or prevent or be construed to create any obligation on the part of any director or officer of Company or any trustee or fiduciary of any employee benefit plan or trust from taking any action in his or her capacity as such director, officer, trustee or fiduciary.

4.14 **Conversion or Exercise**. Nothing contained in this Agreement shall require the Stockholder (or shall entitle any proxy of the Stockholder) to (a) convert, exercise or exchange any option, warrants or convertible securities in order to obtain any underlying Subject Shares or (b) vote, or execute any consent with respect to, any Subject Shares underlying such options, warrants or convertible securities that have not yet been issued as of the applicable record date for that vote or consent.

4.15 **Representations and Warranties**. The representations and warranties contained in this Agreement and in any certificate or other writing delivered pursuant hereto shall not survive the Closing or the termination of this Agreement.

4.16 **No Agreement Until Executed**. Irrespective of negotiations among the parties or the exchanging of drafts of this Agreement, this Agreement shall not constitute or be deemed to evidence a contract, agreement, arrangement or understanding between the parties hereto unless and until (a) the Board has approved the Asset Sale and the Asset Purchase Agreement, (b) the Asset Purchase Agreement is executed by all parties thereto, and (c) this Agreement is executed by all parties hereto.

(SIGNATURE PAGE FOLLOWS)

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

COMPANY

SERES THERAPEUTICS, INC.

By: _____
Name:
Title:

PURCHASER

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

By: _____
Name:
Title:

[Signature Page to Support Agreement]

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

STOCKHOLDER

FLAGSHIP PIONEERING INC.

By: _____

Email:

[Signature Page to Support Agreement]

Schedule A

Company Shares

Name	Common Stock
Flagship Pioneering Inc.	[●]

[Schedule A to Support Agreement]