

**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): February 3, 2026**

**TEMPEST THERAPEUTICS, INC.**

(Exact name of Registrant as Specified in its Charter)

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

**001-35890**  
(Commission  
File Number)

**45-1472564**  
(IRS Employer  
Identification No.)

**2000 Sierra Point Parkway, Suite 400**  
**Brisbane, California**  
(Address of principal executive offices)

**94005**  
(Zip Code)

**Registrant's telephone number, including area code: (415) 798-8589**

**N/A**  
(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 (see General Instruction A.2. below):

- 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:

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.001 per share	TPST	The Nasdaq Stock Market LLC
Series A Junior Participating Preferred Purchase Rights	N/A	The Nasdaq Stock Market LLC

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.

## **Introductory Note.**

As previously disclosed, on November 19, 2025, Tempest Therapeutics, Inc. (the “**Company**”) executed an Asset Purchase Agreement (the “**Asset Purchase Agreement**”) with Erigen LLC, a Delaware limited liability company (“**Erigen**”), and Factor Bioscience Inc., a Delaware corporation (together with Erigen, “**Sellers**”), pursuant to which Sellers agreed to sell and transfer to the Company all right, title and interest of Sellers in and to all of the assets primarily related to (a) the autologous BCMA/CD19 dual-targeting CAR T-cell therapy known as ERI-2003, (b) the autologous CD70/CD70 dual-targeting CAR T-cell therapy known as ERI-2206, (c) the allogeneic BCMA/CD19 dual-targeting CAR T-cell therapy with a gene edit in the TRAC locus that inactivates the T cell receptor known as ERI-3003, and (d) the allogeneic CD70/CD70 dual-targeting CAR T-cell therapy with a gene edit in the TRAC locus that inactivates the T cell receptor known as ERI-3206 (collectively, the “**Assets**”), in exchange for an aggregate purchase price of 8,268,495 shares of common stock, par value \$0.001 per share, of the Company (“**Common Stock**”), to be issued to Erigen on behalf of both Sellers.

### **Item 1.01 Entry into a Material Definitive Agreement.**

On January 20, 2026, the Company issued a press release announcing that its Board of Directors (the “**Board**”) declared a record date of January 30, 2026 (the “**Record Date**”) for the distribution of a dividend (the “**Warrant Dividend**”) in the form of a warrant to purchase a share of Common Stock (collectively, the “**Warrants**”) for each share of Common Stock outstanding on the Record Date. The Warrants were issued on the terms and conditions described in the Warrant Agreement, dated February 3, 2026, between the Company, Computershare Inc., and its affiliate, Computershare Trust Company, N.A., as Warrant Agent (the “**Warrant Agreement**”), on February 3, 2026. In addition, on February 3, 2026, certain warrants that were outstanding on the Record Date also received Warrants on a one-for-one basis, pursuant to the terms of such warrants (together with the Warrant Dividend, the “**Warrant Distribution**”). In the aggregate, 6,784,989 Warrants were issued pursuant to the Warrant Distribution.

Each Warrant will entitle the holder to purchase, at the holder’s election, one share of Common Stock at a cash exercise price of \$18.48 per share. Payment for shares of Common Stock upon exercise of Warrants must be in cash.

The Warrants cannot be exercised until there is an effective registration statement covering the sale of shares of Common Stock upon exercise of the Warrants. The Company intends to file a registration statement registering up to 6,784,989 shares of Common Stock issuable upon exercise of the Warrants under the Securities Act of 1933, as amended (the “**Securities Act**”).

The Warrants will expire and cease to be exercisable at 5:00 p.m. New York City time on February 3, 2031 (the “**Expiration Date**”).

The foregoing description of the Warrants and the Warrant Agreement is only a summary and is qualified in its entirety by reference to the full text of the Warrants and the Warrant Agreement, which are filed as an exhibit to this report.

### **No Offer or Solicitation**

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

### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

The information contained in the Introductory Note of this Form 8-K is incorporated by reference into this Item 2.01.

On February 3, 2026, the Company completed the acquisition of the Assets under the Asset Purchase Agreement (the “**Asset Acquisition**”) and issued to Erigen 8,268,495 shares of Common Stock (the “**Share Issuance**”).

The foregoing description of the Asset Purchase Agreement, the Asset Acquisition and the Share Issuance does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Asset Purchase Agreement, which is filed as Exhibit 10.1 to the Company’s Current Report on Form 8-K, filed with the Securities and Exchange Commission (the “**SEC**”) on November 19, 2025 and is incorporated herein by reference.

### **Item 3.02 Unregistered Sales of Equity Securities.**

The information contained above in Item 1.01 relating to the Warrants is hereby incorporated by reference into this Item 3.02. The Warrants have not been registered under the Securities Act or the securities laws of any state, and are being issued in reliance on the exemption from registration under the Securities Act, afforded by Section 2(a)(3) and/or Section 3(a)(9), as applicable, promulgated thereunder, and have not been registered under the Securities Act.

The information contained above in Item 2.01 relating to the Share Issuance is hereby incorporated by reference into this Item 3.02. Based in part upon the representations of the Sellers in the Asset Purchase Agreement, the shares of Common Stock issued pursuant to the Share Issuance was offered in a private placement under Section 4(a)(2) of the Securities Act, and have not been registered under the Securities Act. Appropriate legends were affixed to the shares of Common Stock issued pursuant to the Share Issuance.

### **Item 5.01 Changes in Control of Registrant.**

The information contained in the Introductory Note and Item 2.01 of this Form 8-K is incorporated by reference into this Item 5.01.

Immediately following the Share Issuance, the equityholders of the Company immediately prior to the Share Issuance owned approximately 38.7% of the outstanding shares of Common Stock immediately following the Share Issuance, and Erigen owned approximately 61.3% of the outstanding shares of Common Stock immediately following the Share Issuance. Following the Share Issuance and the concurrent distribution of the Common Stock to Matthew Angel, Ph.D. and Lotus Capital (BVI) Limited, Erigen's members and pre-closing equityholders, are expected to own approximately 35.9% and 25.5% of the Company's Common Stock, respectively. As of immediately following the Share Issuance, there were 13,481,070 shares of Common Stock outstanding.

### **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

#### **Board Changes**

On February 3, 2026, immediately following the closing of the Asset Acquisition (the "**Closing**"), Geoff Nichol resigned from the Board, effective immediately. Mr. Nichol's resignation was not because of any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

In addition, Michael Raab, Chair of the Company's Board since 2018, in light of his other professional commitments and in consideration of the Company's current strategic objectives, determined that it would be appropriate to transition the role of Chair of the Board to a successor. Accordingly, Mr. Raab proposed that Stephen Brady succeed him, which the Board approved, effective immediately following the Closing.

#### **Executive Officer Changes**

##### ***Stephen Brady and Matt Angel***

On February 3, 2026, immediately following the Closing, Mr. Brady resigned from his positions of President and Chief Executive Officer of the Company. Dr. Angel was appointed to serve as the Company's President and Chief Executive Officer, succeeding Mr. Brady in such capacities, and as a member of the Board as a Class I director.

Dr. Angel, age 45, has served as Co-Founder, President, Chief Executive Officer and Chairman of the Board of Directors of Factor Bioscience Inc. since 2011. From January 2023 to December 2023, Dr. Angel served as President and Chief Executive Officer and as a director of Ernexa Therapeutics Inc. (f/k/a Eterna Therapeutics Inc.). From May 2022 to December 2022, Dr. Angel served as Interim President, Chief Executive Officer and as a director of Ernexa Therapeutics Inc. In 2020, Dr. Angel co-founded Exacis Biotherapeutics Inc. ("**Exacis**") and served as the Chief Science Officer, Secretary, Treasurer and as a director of Exacis from 2020 until the sale of Exacis in May 2023. Dr. Angel also co-founded and served as the Chief Science Officer, Secretary and as a director of Novellus, Inc., from 2014 until the sale of Novellus in July 2021. Dr. Angel received a Ph.D. from the Massachusetts Institute of Technology in 2012 and a B.S. in Engineering from Princeton University in 2003.

In connection with his appointment as President and Chief Executive Officer of the Company, Dr. Angel entered into an employment agreement with the Company (the “**Angel Employment Agreement**”), effective as of February 3, 2026. Pursuant to the Angel Employment Agreement, Dr. Angel is entitled to receive an annual base salary of \$650,000 and will be eligible to receive an annual bonus equal to 50% of his base salary, as determined by the Board in its sole discretion. In addition, on February 3, 2026, Dr. Angel received an option to purchase 269,621 shares of Common Stock, with an exercise price per share equal to the fair market value on the grant date (the “**Option**”). The Option vests over a four-year period, with one quarter (1/4) of the shares subject to the Option vesting on the first anniversary of the grant date, and the remaining shares vesting equally over the following 36 months of continuous service. The Option was issued pursuant to the terms and conditions of the Company’s Amended and Restated 2023 Equity Incentive Plan (the “**Plan**”). Beginning in calendar year 2027, and in the Company’s sole discretion, Dr. Angel will be considered for future equity incentive award grants under the Plan.

Dr. Angel’s employment with the Company is at-will and can be terminated by Dr. Angel or the Company with or without Cause (as defined in the Angel Employment Agreement) and with or without advance notice. If Dr. Angel’s employment is terminated by the Company without Cause or by Dr. Angel for Good Reason (as defined in the Angel Employment Agreement) unrelated to a Change in Control (as defined in the Angel Employment Agreement), Dr. Angel will receive any unpaid and accrued base salary through date of termination as well as (i)(a) severance equal to 12 months of his then-current base salary, plus (b) 100% of Dr. Angel’s target bonus in the calendar year in which his employment is terminated, prorated based on the number of days Dr. Angel is employed in such calendar year, payable over a 12-month period on the Company’s regular payroll schedule and subject to applicable tax withholdings, and (ii) if Dr. Angel elects to continue health insurance coverage under COBRA, the payment of the monthly premium under COBRA until the earlier of 12 months following termination date or the date on which Dr. Angel commences full-time employment or employment that provides eligibility for healthcare benefits substantially comparable to those provided by the Company.

In addition, if Dr. Angel’s employment is terminated by the Company without Cause or by Dr. Angel for Good Reason during a Change in Control Period, Dr. Angel will receive compensation substantially similar to that in a termination without Cause or resignation for Good Reason, except Dr. Angel will be entitled to receive (i)(a) severance equal to 18 months of his then-current base salary, plus (b) 150% of Dr. Angel’s target bonus in the calendar year in which his employment is terminated, prorated based on the number of days Dr. Angel is employed in such calendar year, payable over a 18-month period on the Company’s regular payroll schedule and subject to applicable tax withholdings, (ii) if Dr. Angel elects to continue health insurance coverage under COBRA, the payment of the monthly premium under COBRA until the earlier of 18 months following termination date or the date on which Dr. Angel commences full-time employment or employment that provides eligibility for healthcare benefits substantially comparable to those provided by the Company, and (iii) full acceleration of any equity awards.

There is no arrangement or understanding between Dr. Angel and any other person pursuant to which he was selected as the Company’s President and Chief Executive Officer, and there is no family relationship between Dr. Angel and any of the Company’s executive officers or directors. Other than with respect to the compensation matters described above, there are no transactions between Dr. Angel and the Company that would be required to be reported under Item 404(a) of Regulation S-K.

In connection with Dr. Angel’s appointment, the Company and Dr. Angel also will enter into the Company’s standard form of indemnification agreement, which requires the Company to indemnify Dr. Angel, to the fullest extent permitted by Delaware law, for certain liabilities to which he may become subject as a result of his affiliation with the Company.

### ***Nicholas Maestas***

As previously announced in the Current Report on Form 8-K, filed by the Company with the SEC on November 19, 2025, on November 19, 2025, the Company rehired Nicholas Maestas on a full-time basis. On February 3, 2026, the Company entered into an employment agreement with Mr. Maestas (the “**Maestas Employment Agreement**”), pursuant to which Mr. Maestas is entitled to receive compensation consistent with his previously filed employment agreement, as described in the Company’s definitive proxy statement filed with the SEC on December 31, 2025.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
4.1	<a href="#"><u>Warrant Agreement (including Form of Warrant), dated February 3, 2026, between the Company, Computershare Inc., a Delaware corporation, and Computershare Trust Company, N.A., as Warrant Agent.</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURES**

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

Tempest Therapeutics, Inc.

Date: February 6, 2026

By: /s/ Nicholas Maestas  
Nicholas Maestas  
Chief Financial Officer and Head of Corporate Strategy

**WARRANT AGREEMENT**

Dated as of February 3, 2026

between

**TEMPEST THERAPEUTICS, INC.**

and

**COMPUTERSHARE INC. and COMPUTERSHARE TRUST COMPANY N.A.**

as Warrant Agent

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Warrants for  
Shares of Common Stock of  
Tempest Therapeutics, Inc.

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.01    Definitions	1
Section 1.02    Other Definitions	4
Section 1.03    Rules of Construction	5
ARTICLE II FORM OF WARRANT; BENEFICIAL INTERESTS	5
Section 2.01    Issuance and Registration	5
Section 2.02    Warrant Certificates	8
Section 2.03    Warrant Register	7
Section 2.04    Transfer and Exchange	7
Section 2.05    Definitive Warrants	9
Section 2.06    Replacement Certificates	10
Section 2.07    Outstanding Warrants	11
Section 2.08    Cancellation	11
Section 2.09    CUSIP Numbers	11
ARTICLE III EXERCISE TERMS	12
Section 3.01    Exercise	12
Section 3.02    Exercise Period	12
Section 3.03    Expiration	13
Section 3.04    Manner of Exercise	13
Section 3.05    Issuance of Warrant Shares	15
Section 3.06    Fractional Warrant Shares	15
Section 3.07    Reservation of Warrant Shares	16
Section 3.08    Ownership Limitation	16
Section 3.09    Adjustments of Prices	17
ARTICLE IV ADJUSTMENT AND NOTICE PROVISIONS	17
Section 4.01    Adjustments	17
Section 4.02    Calculation of Adjustments; Timing of Issuance of Additional Warrant Shares Upon Certain Adjustments; Adjustment Rules	25
Section 4.03    Share Exchange Events	25
Section 4.04    Notice of Adjustments	27
Section 4.05    Adjustment to Warrant Certificate	27
Section 4.06    Amendments	28
ARTICLE V REGISTRATION OF WARRANT SHARES	29
Section 5.01    Effectiveness of Registration Statement	29
Section 5.02    Suspension	30
Section 5.03    Expenses	30

ARTICLE VI RESERVED		30
ARTICLE VII WARRANT AGENT		30
Section 7.01	Appointment of Warrant Agent	30
Section 7.02	Rights and Duties of Warrant Agent	30
Section 7.03	Individual Rights of Warrant Agent	34
Section 7.04	Warrant Agent’s Disclaimer	34
Section 7.05	Compensation and Indemnity	34
Section 7.06	Successor Warrant Agent	36
Section 7.07	Bank Accounts	38
Section 7.08	Delivery of Warrant Exercise Price	38
Section 7.09	Further Assurances	38
Section 7.10	Force Majeure	38
Section 7.11	Confidentiality	38
ARTICLE VIII MISCELLANEOUS		39
Section 8.01	Persons Benefiting	39
Section 8.02	Rights of Holders	39
Section 8.03	Notices	39
Section 8.04	Governing Law	40
Section 8.05	Successors	40
Section 8.06	Counterparts	40
Section 8.07	Severability	41
Section 8.08	Withholding Rights	41
Section 8.09	Calculations; Calculation Agent	41
Section 8.10	Limited Responsibility of Calculation Agent and Independent Advisor	42
Section 8.11	Entire Agreement	42

EXHIBIT A Form of Warrant

WARRANT AGREEMENT, dated as of February 3, 2026 (this "Agreement"), between Tempest Therapeutics, Inc., a corporation incorporated under the laws of the state of Delaware (the "Company"), and Computershare Inc., a Delaware corporation ("Computershare"), and its affiliate, Computershare Trust Company N.A., a federally chartered trust company, collectively as Warrant Agent (the "Warrant Agent") (each a "Party" and collectively, the "Parties").

The Board of Directors has declared a dividend distribution (the "Warrant Distribution") to the holders of record of the Company's common stock, par value \$0.001 per share (the "Common Stock"), as of 5:00 p.m., New York City time, on January 30, 2026 (such date and time, the "Distribution Record Date"), in the form of warrants to purchase shares of Common Stock. The Company desires to issue the warrants on the terms and conditions described herein (the "Warrants") in satisfaction of the Warrant Distribution. The Warrants will be issued on or about February 3, 2026 (the date of the actual distribution, the "Issue Date").

The Company desires the Warrant Agent to act on behalf of the Company in connection with the issuance, registration, transfer, exchange, exercise, redemption and cancellation of the Warrants as provided herein, and the Warrant Agent is willing to so act.

Each Party hereto agrees for the benefit of the other Party and for the equal and ratable benefit of the registered holders of the Warrants (the "Holders"):

## **Article I**

### **DEFINITIONS**

#### Section 1.01 Definitions.

"Affiliate" of any Person means any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person. For purposes hereof, "control" of a Person means the power, direct or indirect, to direct or cause the direction or actions of the management and policies of such Person whether by contract or otherwise.

"Board of Directors" means the Board of Directors of the Company or any committee thereof duly authorized to act on behalf of such Board of Directors.

"Business Combination" means a merger, consolidation, amalgamation, statutory share exchange or similar transaction that requires the approval of the Company's stockholders.

"Business Day" means a day that is not (i) a Saturday, (ii) a Sunday, or (iii) a day on which banking institutions are allowed by law, regulation or executive order to be closed in the State of New York.

"Calculation Agent" means Conv-Ex Advisors Limited, or such successor Person as may be appointed by the Company to serve as calculation agent for the Warrants.

"Capital Stock" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) shares issued by that entity but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

“Close of Business” means 5:00 p.m., New York City time.

“Common Equity” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“Definitive Warrant” means a Warrant Certificate in definitive form that is not deposited with the Depository or with the Warrant Agent as the Warrant Custodian.

“Depository” means The Depository Trust Company, its nominees, and their respective successors.

“Ex-Date” means the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of shares of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“Exchange” means the Nasdaq Capital Market.

“Exchange Act” means the U.S. Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, as they may be amended from time to time.

“Fair Market Value” means, with respect to any security or other property, the fair market value of such security or other property as determined by the Board of Directors, acting in good faith.

“Independent Advisor” means a nationally recognized independent investment banking firm or financial advisor with appropriate expertise (which may include the person acting as the Calculation Agent or any affiliate thereof) retained by the Company at its own expense.

“Last Reported Sale Price” means, with respect to the Common Stock (or other security), on any given day, the last sale price, regular way, or, in case no such sale takes place on such day, the average of the last bid price and last ask price (or, if more than one in either case, the arithmetic average of the average last bid prices and the average last prices), regular way, of the Common Stock (or such other security, as the case may be) as reported in composite transactions for the Exchange on such day, without regard to after-hours or extended market trading; *provided* that if the Common Stock (or such other security, as the case may be) is not listed on the Exchange on any date of determination, the Last Reported Sale Price of the Common Stock (or such other security, as the case may be) on such date of determination means the closing sale price as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or such other security, as the case may be) is so listed or quoted, or, if

no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Stock (or such other security, as the case may be) is so listed or quoted, or, if the Common Stock (or such other security, as the case may be) is not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price for the Common Stock (or such other security, as the case may be) in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization, or, if that bid price is not available, the Last Reported Sale Price of the Common Stock (or such other security, as the case may be) on that date shall mean the Fair Market Value per share of Common Stock (or such other security, as the case may be) as of such day.

“Officer” means, with respect to the Company, the President and Chief Executive Officer, the Chief Financial Officer, the Secretary or Treasurer of the Company or, with respect to any other Person, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Assistant Treasurer, or the Secretary or an Assistant Secretary of such Person.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.

“Record Date” means, for the purposes of Sections 4.01 and 4.02, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the U.S. Securities Act of 1933 and the rules and regulations promulgated thereunder, as they may be amended from time to time.

“Trading Day” means a day on which the Common Stock (or other security) (i) at the close of regular way trading (not including after-hours or extended market trading) is not suspended from trading on the Exchange or, if the Common Stock (or such other security, as the case may be) is not listed on the Exchange, any U.S. national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock (or such other security, as the case may be) at the Close of Business, and (ii) has traded at least once regular way on the Exchange or, if the Common Stock (or such other security, as the case may be) is not listed on the Exchange, such other U.S. national securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock (or such other security, as the case may be); *provided* that if the Common Stock (or such other security, as the case may be) is not so listed or traded, “Trading Day” means a Business Day.

“Warrant Certificate” means any Global Warrant or Definitive Warrant issued by the Company under this Agreement.

“Warrant Custodian” means the custodian with respect to a Global Warrant (as appointed by the Depositary) or any successor Person thereto.

“Warrant Exercise Price” has the meaning set forth in Section 3.01.

“Warrant Exercise Rate” means initially one (1) share of Common Stock, subject to adjustment or amendment from time to time in accordance with Article IV.

“Warrant Shares” means the shares of Common Stock issuable on exercise of the Warrants.

“Whole Number” means any non-negative number, including zero, that is not a fraction or decimal.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
Agent Members	Section 2.01(c)(ii)
Agreement	Preamble
Clause A Distribution	Section 4.01(c)
Clause B Distribution	Section 4.01(c)
Clause C Distribution	Section 4.01(c)
Common Stock	Recitals
Common Stock Shelf Registration Statement	Section 5.01
Company	Preamble
Computershare	Preamble
Distributed Property	Section 4.01(c)(i)(5)
Distribution Record Date	Recitals
Exercise Date	Section 3.04(a)
Exercise Notice	Section 3.04(a)(ii)
Exercise Period	Section 3.02(c)
Exercise Suspension Period	Section 5.01
Expiration Date	Section 3.02(b)
Funds	Section 7.07
Global Warrant	Section 2.01(a)
Holder	Recitals
Issue Date	Recitals
Moody’s	Section 7.07
Offer Expiration Date	Section 4.01(e)
Ownership Limitation	Section 3.08(a)
Parties	Preamble
Party	Preamble
PDF	Section 2.02
Reference Property	Section 4.03
S&P	Section 7.07
Share Exchange Event	Section 4.03
Spin-Off	Section 4.01(c)(ii)

<u>Term</u>	<u>Defined in Section</u>
Stock Transfer Agent	Section 3.05(a)
Trigger Event	Section 4.01(c)
unit of Reference Property	Section 4.03
Valuation Period	Section 4.01(c)(ii)
Valuation Trading Day	Section 4.01(c)(ii)
Warrant Agent	Preamble
Warrant Distribution	Recitals
Warrant Exercise Price	Section 3.01(a)
Warrant Register	Section 2.03
Warrants	Recitals

Section 1.03 Rules of Construction. Unless the text or context otherwise requires:

- (a) a defined term has the meaning assigned to it herein;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with U.S. generally accepted accounting principles as in effect from time to time;
- (c) “including” means including, without limitation;
- (d) words in the singular include the plural and words in the plural include the singular;
- (e) references to any statute, rule, standard, regulation or other law include a reference to (x) the corresponding rules and regulations and (y) each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time; and
- (f) headings to Articles, Sections and Sub-Sections in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

## Article II

### FORM OF WARRANT; BENEFICIAL INTERESTS

Section 2.01 Issuance and Registration.

(a) Warrants. The Warrants shall initially be issued to the registered holders of shares of Common Stock as of the Distribution Record Date, as reflected in the Company’s direct registration system for the Common Stock. The Warrant Agent shall allocate the Warrants to, and register the Warrants in the names of, such registered holders in accordance with the Company’s direct registration system or the Warrant Agent’s other book-entry procedures pursuant to an allocation schedule provided by the Company. Any Warrants registered through the Company’s direct registration system or the Warrant Agent’s other book-entry procedures shall be issued in uncertificated form and shall not be represented by Warrant Certificates. Notwithstanding the foregoing, some or all of the Warrants may, at initial issuance or any time thereafter, be represented

by one or more permanent Global Warrants, in definitive, fully registered form with the global securities legend set forth in Exhibit A hereto (each, a “Global Warrant”). Any such Global Warrant shall be deposited on behalf of the relevant Holders with the Warrant Agent, as custodian for the Depositary (or with such other custodian as the Depositary may direct), registered in the name of the Depositary or a nominee of the Depositary, and duly executed by the Company and countersigned by the Warrant Agent as hereinafter provided.

(b) Definitive Warrants. Holders of Warrants or holders of beneficial interests in any Global Warrant will not be entitled to physical delivery of Definitive Warrants (except as provided in Section 2.05).

(c) Procedures for Global Warrants. This Section 2.01(c) shall apply only to any Global Warrant deposited with or on behalf of the Depositary.

(i) If any Warrants are to be represented by a Global Warrant, the Company shall execute and the Warrant Agent shall, in accordance with Section 2.02, countersign and deliver initially one or more Global Warrants that (a) shall be registered in the name of the Depositary for such Global Warrant or Global Warrants or of the nominee of the Depositary and (b) shall be delivered by the Warrant Agent to the Depositary or pursuant to the Depositary’s instructions or held by the Warrant Agent as custodian for the Depositary. No Global Warrant Certificate shall be valid for any purpose, and no Warrant evidenced thereby shall be exercisable, until such Global Warrant Certificate has been countersigned by the manual, facsimile or electronic signature of the Warrant Agent. Such signature by the Warrant Agent upon any Global Warrant Certificate executed by the Company shall be conclusive evidence that such Global Warrant Certificate so countersigned has been duly issued hereunder.

(ii) Members of, or participants in, the Depositary (“Agent Members”) shall have no rights under this Agreement with respect to any Global Warrant held on their behalf by the Depositary or by the Warrant Agent as the custodian of the Depositary or under such Global Warrant, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary, or impair, as between the Depositary and its Agent Members, the operation of customary practices of the Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Warrant.

(d) No Fractional Warrants. The Company shall not issue fractional Warrants or distribute Warrant Certificates which evidence fractional Warrants. If any fractional Warrant would otherwise be required to be issued or distributed pursuant to the Warrant Distribution, the Company or Warrant Agent, as applicable, to the extent reasonably practicable, shall first aggregate the total number of Warrants to be issued to the relevant holder of Common Stock and then round down the total number to the nearest Whole Number and no cash or other adjustment will be made in lieu of the fraction of a Warrant so rounded down.

Section 2.02 Warrant Certificates. If any Warrant Certificates are issued hereunder, then at least one Officer shall sign such Warrant Certificates for the Company by manual, facsimile or portable document format (“PDF”) signature or by means of other electronic transmission.

(a) If an Officer whose signature is on a Warrant Certificate no longer holds that office at the time the Warrant Agent countersigns the Warrant Certificate, the Warrants evidenced by such Warrant Certificate shall be valid, nevertheless.

(b) At any time and from time to time after the execution of this Agreement, the Warrant Agent shall, upon receipt of a written order of the Company signed by an Officer of the Company, countersign, either by manual, facsimile, PDF signature or by means of other electronic transmission, and issue a Warrant Certificate evidencing the number of Warrants specified in such order. Such order shall specify the number of Warrants to be evidenced on the Warrant Certificate to be countersigned, the date on which such Warrant Certificate is to be countersigned, whether such Warrant Certificate is to be a Global Warrant or a Definitive Warrant, and the number of Warrants then authorized. Each Warrant shall be dated the date of its countersignature.

(c) The Warrants (whether or not evidenced by a Warrant Certificate) shall not be valid until registered on the Warrant Register.

Section 2.03 Warrant Register. The Warrants shall be issued in registered form only. Upon the receipt of all relevant information from the Company or its agents, the Warrant Agent shall keep a register (the “Warrant Register”) of the Warrants (and Warrant Certificates, if applicable) and of their transfer and exchange. The Warrant Register shall show the names and addresses of the respective Holders and the date and number of Warrants owned by such Holders (as evidenced on the face of each of the Warrant Certificates, if applicable). The Holder of any Global Warrant will be the Depository or a nominee in whose name the Global Warrant is registered. No service charge shall be made for any exchange or registration of transfer of the Warrants, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed on the Holder in connection with any such exchange or registration of transfer. The Warrant Agent shall have no obligation to effect an exchange or register a transfer unless and until any payments required by the immediately preceding sentence have been made.

Prior to due presentment for registration of transfer or exchange of any Warrant in accordance with the procedures set forth in this Agreement, the Warrant Agent and the Company may deem and treat the Person in whose name Warrants are registered in the Warrant Register as the absolute owner of such Warrant (notwithstanding any notation of ownership or other writing made in a Global Warrant Certificate by anyone), for the purpose of any exercise thereof, for the purpose of any distribution to the Person in whose name Warrants are registered in the Warrant Register thereof, and for all other purposes, and neither the Warrant Agent nor the Company shall be affected by notice to the contrary.

Section 2.04 Transfer and Exchange.

(a) Transfer and Exchange of Warrants.

(i) The transfer and exchange of Warrants or beneficial interests therein shall be effected through the Company's direct registration system or the Warrant Agent's other book-entry procedures and, in the case of any Global Warrants, the Depository, in each case in accordance with this Agreement and the procedures of the Warrant Agent and, as applicable, the Depository therefor. The Company may instruct the Warrant Agent from time to time that Warrants held by a member of the Board of Directors, an Officer of the Company or an Affiliate of the Company are subject to restrictions on transfers or exchanges related to compliance with applicable securities laws, in which case the Warrant Agent shall not permit the transfer or exchange of such Warrants without the consent of the Company.

(ii) Except as set forth in Section 2.04(a)(iii), a Global Warrant may only be transferred as a whole, and not in part, and only by (x) the Depository to a nominee of the Depository, (y) a nominee of the Depository to the Depository or another nominee of the Depository or (z) the Depository or any such nominee to a successor Depository or its nominee.

(iii) In the event that a Global Warrant is exchanged and transferred for Definitive Warrants pursuant to Section 2.05, such Warrants may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.04 and such other procedures as may from time to time be adopted by the Company.

(iv) The Warrant Agent may register the transfer of any Definitive Warrant upon written request of the Holder delivered to the Warrant Agent and surrender of the Warrant Certificates to be transferred, split up, combined or exchanged, together with the form of assignment and certificate duly executed and properly completed and such other documentation that the Company or the Warrant Agent may reasonably request, at the office of the Warrant Agent designated for such purposes. Any requested transfer of Warrants shall be accompanied by reasonable evidence of authority of the party making such request, which evidence shall include a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association. Upon any such transfer, one or more new Definitive Warrants representing an equal aggregate number of Definitive Warrants shall be issued and the transferred certificate shall be canceled.

(b) Cancellation or Adjustment of Global Warrant. At such time as all beneficial interests in a Global Warrant have been exchanged for Definitive Warrants, redeemed, repurchased or canceled, such Global Warrant shall be returned to the Depository for cancellation or retained and canceled by the Warrant Agent. At any time prior to such cancellation, if any beneficial interest in a Global Warrant is exchanged for Definitive Warrants, repurchased or canceled, the number of Warrants represented by such Global Warrant shall be reduced and an adjustment shall be made on the books and records of the Warrant Agent (if it is then the Warrant Custodian for such Global Warrant) with respect to such Global Warrant, by the Warrant Agent, to reflect such reduction.

(c) Obligations with Respect to Transfers and Exchanges of Warrants.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Warrant Agent shall countersign, by either manual, facsimile or PDF signature or by means of other electronic transmission, any Global Warrants and Definitive Warrants, if applicable, as required subject to the provisions of Section 2.02 and this Section 2.04.

(ii) No service charge shall be made for any registration of transfer or exchange. Any transfer tax, assessments, or similar governmental charge payable in connection with any registration of transfer or exchange shall be paid by the Holder.

(iii) The Company may require payment from the Holder of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Warrants. The Warrant Agent shall not have any duty or obligation to take any action under any section of this Agreement or any Warrant that requires the payment of taxes and/or charges unless and until the Warrant Agent is reasonably satisfied that all such payments have been made.

(iv) Prior to the due presentation for registration of transfer of any Warrant, the Company and the Warrant Agent may deem and treat the Person in whose name Warrants are registered as the absolute owner of such Warrants, and neither the Company nor the Warrant Agent shall be affected by notice to the contrary.

(v) All Warrants issued upon any transfer or exchange pursuant to the terms of this Agreement shall be valid obligations of the Company, entitled to the same benefits under this Agreement as the Warrants surrendered upon such transfer or exchange.

(d) No Obligation of the Warrant Agent. The Warrant Agent shall have no responsibility or obligation to any beneficial owner of a Global Warrant, an Agent Member or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Warrants or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice, or the payment of any amount, under or with respect to such Warrants. All notices and communications to be given to the Holders and all payments to be made to Holders under the Warrants shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Warrant). The rights of beneficial owners in any Global Warrant shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Warrant Agent shall not be liable and may rely on and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

Section 2.05 Definitive Warrants.

(a) Subject to Section 2.05(e), beneficial interests in a Global Warrant deposited with the Depository or with the Warrant Agent as custodian shall be transferred to the beneficial owners thereof in the form of Definitive Warrants in a number equal to the number of Warrants represented by such Global Warrant, in exchange for such Global Warrant, only if such

transfer complies with Section 2.04 and (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for such Global Warrant or if at any time the Depositary ceases to be a “clearing agency” registered under the Exchange Act and, in each such case, a successor depositary is not appointed by the Company within 90 days of such notice, or (ii) the Company, in its sole discretion, notifies the Warrant Agent in writing that it elects to cause the issuance of Definitive Warrants under this Agreement. In such event, the transfer, exchange or exercise of the Warrants shall be conducted in accordance with the customary procedures of the Warrant Agent.

(b) Any Global Warrant that is transferable to the beneficial owners thereof pursuant to this Section 2.05 shall be surrendered by the Depositary to the Warrant Agent, to be so transferred, in whole or from time to time in part, without charge, and the Warrant Agent shall countersign, by either manual, facsimile or PDF signature or by means of other electronic transmission, and deliver to each beneficial owner in the name of such beneficial owner, upon such transfer of each portion of such Global Warrant, Definitive Warrants evidencing a number of Warrants equivalent to such beneficial owner’s beneficial interest in the Global Warrant. The Warrant Agent shall register such transfer in the Warrant Register, and upon such transfer the surrendered Global Warrant shall be canceled by the Warrant Agent. Any such Definitive Warrants shall bear such restrictive legends as the Company may instruct. No service charge shall be made for any exchange or registration of transfer of the Warrants, but the Company may require payment of a sum sufficient to cover any stamp or other tax or other governmental charge that may be imposed on the Holder in connection with any such exchange or registration of transfer. The Warrant Agent shall have no obligation to effect an exchange or register a transfer unless and until any payments required by the immediately preceding sentence have been made.

(c) Subject to the provisions of Section 2.05(b), the registered Holder of a Global Warrant may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Agreement or the Warrants.

(d) In the event of the occurrence of either of the events specified in Section 2.05(a), the Company shall promptly make available to the Warrant Agent a reasonable supply of Definitive Warrants in definitive, fully registered form.

(e) The Depositary shall notify the Warrant Agent of the names and the amounts in which the Definitive Warrants will be issued. Neither the Company nor the Warrant Agent shall be liable or responsible for any names or any amounts provided by the Depositary.

(f) Notwithstanding the foregoing, in lieu of issuing a Definitive Warrant to any Person, the Warrant Agent may, upon the Company’s instruction, register Warrants in the name of such Person through the Company’s direct registration system or the Warrant Agent’s other book-entry procedures.

Section 2.06 Replacement Certificates. Upon receipt by the Warrant Agent of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of a Warrant Certificate, which evidence shall include an affidavit of loss, or in the case of mutilated certificates, the certificate or portion thereof remaining, and, in case of loss, theft or destruction, of indemnity in form and amount satisfactory to the Warrant Agent (including the posting of an open penalty surety bond satisfactory to the

Warrant Agent to protect the Company and the Warrant Agent from any loss that either of them may suffer if a Warrant Certificate is replaced, and which open penalty surety bond holds the Warrant Agent and the Company harmless), and satisfaction of any other reasonable requirements of the Warrant Agent or as established by Section 8-405 of the Uniform Commercial Code as in effect in the State of New York, together with reimbursement to the Company and the Warrant Agent of all reasonable expenses incidental thereto, and upon surrender to the Warrant Agent and cancellation of the Warrant Certificate if mutilated, absent notice to the Warrant Agent that such Warrant Certificate has been acquired by a bona fide purchaser, the Company shall make and deliver a new Warrant Certificate of like tenor to the Warrant Agent for delivery to the Holder in lieu of the Warrant Certificate so lost, stolen, destroyed or mutilated. The Warrant Agent may, at its option, issue replacement Warrants for mutilated certificates upon presentation thereof without such indemnity. The Company and the Warrant Agent may charge the Holder for their expenses in replacing a Warrant Certificate. Every replacement Warrant Certificate evidences an additional obligation of the Company.

Section 2.07 Outstanding Warrants. All Warrants evidenced as outstanding in the Warrant Register shall be deemed to be outstanding for purposes of this Agreement (which, in the case of Warrants represented by Warrant Certificates, shall include all Warrant Certificates authenticated by the Warrant Agent excluding those canceled by it and those delivered to it for cancellation). A Warrant does not cease to be outstanding because an Affiliate of the Company holds the Warrant. A Warrant ceases to be outstanding if the Company holds the Warrant.

If a Warrant Certificate is replaced pursuant to Section 2.06, the Warrants evidenced thereby cease to be outstanding unless the Warrant Agent and the Company receive proof satisfactory to them that the replaced Warrant Certificate is held by a protected purchaser (as defined for purposes of the Delaware Uniform Commercial Code).

Section 2.08 Cancellation. In the event the Company shall purchase or otherwise acquire Definitive Warrants, the Company may, at its option, deliver the same to the Warrant Agent for cancellation.

All Warrant Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Warrant Agent for cancellation or in cancelled form, or, if surrendered to the Warrant Agent, shall be cancelled by it, and no Warrant Certificate shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Warrant Agent for cancellation and retirement, and the Warrant Agent shall so cancel and retire any other Warrant Certificate purchased or acquired by the Company otherwise than upon the exercise thereof.

The Warrant Agent and no one else shall cancel all Warrant Certificates surrendered for transfer, exchange, replacement, exercise or cancellation. The Company may not issue new Warrant Certificates to replace Warrant Certificates to the extent they evidence Warrants which have been exercised or Warrants which the Company has canceled.

Section 2.09 CUSIP Numbers. The Company has assigned a "CUSIP" number in connection with the issuance of the Warrants and the Warrant Agent may use such "CUSIP" number in notices as a convenience to Holders; provided, however, that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Warrant Certificates or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Warrant Certificates.

**Article III**  
**EXERCISE TERMS**

Section 3.01 Exercise.

(a) Each Warrant shall entitle the Holder thereof to purchase, during the Exercise Period, for each Warrant evidenced thereby, a number of shares of Common Stock equal to the Warrant Exercise Rate in effect immediately prior to the Close of Business on the relevant Exercise Date, subject to Section 3.06, at an exercise price equal to \$18.48 per Warrant (subject to amendment from time to time in accordance with Section 4.06, the “Warrant Exercise Price”), payable only in cash. Holders may exercise all or a portion of their Warrants or choose not to exercise any Warrants at all, or may otherwise sell or transfer their Warrants, in each case, in their sole and absolute discretion.

(b) The number of shares of Common Stock issuable in respect of any exercise of Warrants represented by a Global Warrant shall be determined by the Depositary (or, as may be agreed from time to time between the Calculation Agent and the Company, the Calculation Agent) in accordance with this Agreement; and *provided further*, however, that in the event the Company disagrees in good faith with any such calculation, the Company may make such calculation in good faith or appoint an Independent Advisor to make such calculation, and the Company’s (or, as the case may be, such Independent Advisor’s) calculation shall be determinative and final and binding on the Depositary, the Warrant Agent, the Calculation Agent, the Holders and (where such calculation is made by an Independent Advisor) the Company. The Warrant Agent shall have no obligation under any Section of this Agreement to make or verify any such calculation, and shall be fully authorized and protected in relying upon any such calculation. The number of shares of Common Stock issuable in respect of any exercise of Warrants represented through the Company’s direct registration system or the Warrant Agent’s other book-entry procedures shall be determined by the Warrant Agent (or, as may be agreed from time to time between the Calculation Agent and the Company, the Calculation Agent) in accordance with this Agreement; and *provided further*, however, that in the event the Company disagrees in good faith with any such calculation, the Company may make such calculation in good faith or appoint an Independent Advisor to make such calculation, and the Company’s (or, as the case may be, such Independent Advisor’s) calculation shall be determinative and final and binding on the Warrant Agent, the Calculation Agent, the Holders and (where such calculation is made by an Independent Advisor) the Company.

Section 3.02 Exercise Period.

(a) Subject to the terms and conditions set forth herein (including without limitation Section 3.04 and Article V), the Warrants shall be exercisable at any time and from time to time on or after the Issue Date until the Close of Business on the Expiration Date. Notwithstanding the foregoing, the Holders will be able to exercise the Warrants only if (i) the Common Stock Shelf Registration Statement relating to the Warrant Shares is effective and the

Exercise Date does not fall in an Exercise Suspension Period and (ii) the Warrant Shares are qualified for sale or exempt from qualification under the applicable securities laws of the states or other jurisdictions in which such Holders reside except as otherwise provided in Section 5.01. The Company may instruct the Warrant Agent in writing from time to time that Warrants held by a member of the Board of Directors, an Officer of the Company or an Affiliate of the Company are subject to further restrictions on exercise related to compliance with applicable securities laws, in which case the Warrant Agent shall not permit the exercise of such Warrants without the written consent of the Company.

(b) Subject to the terms and conditions set forth herein (including without limitation Section 3.04 and Article V), the Warrants will expire and cease to be exercisable at the Close of Business on February 3, 2031 (the "Expiration Date").

(c) The "Exercise Period" is the period during which the Warrants are exercisable in accordance with the terms and conditions set forth herein (including without limitation this Section 3.02 and Article V).

Section 3.03 Expiration. A Warrant shall terminate and become void as of the earliest of (i) the Close of Business on the Expiration Date and (ii) the time such Warrant is exercised.

Section 3.04 Manner of Exercise.

(a) Subject to Sections 3.02(b) and 3.03, Warrants may be exercised by a Holder in full or in part, on any Business Day (each, an "Exercise Date") falling in the Exercise Period, by

(i) (x) delivery to the Warrant Agent, at its office designated for such purposes, of the related Warrant Certificate, in the case of Warrants issued in certificated form, (y) delivery of the Warrant through the procedures of the Warrant Agent in the case of Warrants represented through the Company's direct registration system or the Warrant Agent's other book-entry procedures or (z) delivery of the Warrant through the systems of the Depository, in the case of Global Warrants;

(ii) electronic delivery to the Warrant Agent of an election to purchase Warrant Shares in the applicable form included in Exhibit A (an "Exercise Notice"), duly completed and signed by the Holder; and

(iii) payment in United States dollars by check payable to the order of the Company or the Warrant Agent or by wire transfer to the Company or the Warrant Agent of immediately available funds to an account of or for the benefit of the Company (as designated by the Company and available upon request from the Warrant Agent) in an amount equal to the Warrant Exercise Price multiplied by the number of Warrants so exercised;

*provided* that if any of (i), (ii) or (iii) above has occurred at or after the Close of Business on any day, it shall instead be deemed to have occurred on the immediately following Business Day (subject to Sections 3.04(c) and 3.04(d)); and *provided further* that the Exercise Date shall be the first Business Day on which all of (i), (ii) and (iii) above have occurred, as determined by the Company in consultation with the Warrant Agent. Notwithstanding anything to the contrary set forth herein, the Company may, in its sole discretion, from time to time offer Holders or their brokers the right to deliver a notice of guaranteed delivery on the Exercise Date with respect to Warrants in order to satisfy the delivery requirements of clause (i) above as of the Exercise Date.

(b) In the case of a Global Warrant, any Person with a beneficial interest in such Global Warrant shall effect compliance with the requirements in Section 3.04(a)(i), (ii) and (iii) above through the relevant Agent Member in accordance with the procedures of the Depositary.

(c) Subject to Section 3.04(d), if the purported Exercise Date of any Warrants is or is deemed to be after the Close of Business on the Expiration Date, the exercise thereof will be null and void and any funds delivered to the Warrant Agent or the Company will be returned to the Holder as soon as practicable. In no event will interest accrue on Funds deposited with the Warrant Agent in respect of an exercise or attempted exercise of Warrants.

(d) Notwithstanding anything to the contrary herein, any otherwise valid exercise of a Warrant submitted after any applicable deadline for exercise may, in the sole and absolute discretion of the Company, be accepted and honored. The Company's decision with respect to any such exercise shall be determinative.

(e) In the case of a Global Warrant, whenever some but not all of the Warrants represented by such Global Warrant are exercised in accordance with the terms thereof and of this Agreement, such Global Warrant shall be surrendered by the Holder to the Warrant Agent, which shall cause an adjustment to be made to such Global Warrant so that the number of Warrants represented thereby will be equal to the number of Warrants theretofore represented by such Global Warrant less the number of Warrants then exercised. The Warrant Agent shall thereafter promptly return such Global Warrant to the Holder or its nominee or custodian.

(f) In the case of a Definitive Warrant or book-entry Warrant, whenever some but not all of the Warrants represented by such Definitive Warrant or book-entry Warrant are exercised in accordance with the terms thereof and of this Agreement, the Holder shall be entitled, at the request of the Holder, to receive from the Company within a reasonable time, and in any event not exceeding ten (10) Business Days, a new Definitive Warrant or book-entry statement in substantially identical form for the number of Warrants equal to the number of Warrants theretofore represented by such Definitive Warrant or book-entry statement less the number of Warrants then exercised.

(g) If a Warrant Certificate shall have been exercised in full, the Warrant Agent shall promptly cancel such certificate following its receipt from the Holder or the Depositary, as applicable.

(h) If a Common Stock Shelf Registration Statement is not effective at any time or from time to time for any reason, the right to exercise Warrants shall be automatically suspended until such Common Stock Shelf Registration Statement becomes effective as specified in Section 5.01.

Section 3.05 Issuance of Warrant Shares.

(a) Subject to Section 3.02(a), upon any exercise of Warrants in compliance with this Agreement, the Company shall issue and cause the transfer agent for the Common Stock (the "Stock Transfer Agent," which may be the Warrant Agent) to cause to be registered in the Company's register of stockholders via the direct registration system a number of full Warrant Shares so purchased upon the exercise of such Warrants (determined in accordance with Section 3.06) or units of Reference Property to which it is entitled, registered or otherwise, to the Holder or Holders entitled to receive the same or upon the written order of the Holder(s) in such name or names as the Holder(s) may designate (including any depository institution so designated by a Holder). In no event shall the Company have the right or obligation or be required to settle the exercise of Warrants through delivery of cash in lieu of Common Stock.

(b) Such Warrant Shares or units of Reference Property shall be delivered after the applicable Exercise Date on the transfer agent's standard turnaround time.

(c) The Company hereby instructs the Warrant Agent to record the cost basis for newly issued shares (or units of Reference Property) as the sum of (x) the then applicable Warrant Exercise Price plus (y) the Holder's cost basis in the exercised Warrant, if any, which the Warrant Agent shall request of the Holder, if necessary. The Warrant Agent shall have no responsibility or duty to make or verify any such calculation and is fully authorized and protected in relying upon the Company's (or the Depository's or the Calculation Agent's) calculation of cost basis made pursuant to the preceding sentence. In the event of a cashless exercise, the Company shall provide cost basis for shares issued pursuant to a cashless exercise at the time the Company provides the exercise ratio to the Warrant Agent pursuant to this Article III.

(d) The Depository's (or the Calculation Agent's) determination of the number of shares of Common Stock (or units of Reference Property) to be issued on any exercise of Warrants and the validity of such exercise, pursuant to this Agreement, shall govern and the Warrant Agent shall have no duty or obligation to investigate or confirm whether such determinations are accurate or correct.

(e) The Person in whose name any shares of Common Stock (or units of Reference Property) shall be issuable upon exercise of a Warrant shall be treated as a stockholder of record of such shares (or holder of such units of Reference Property) as of the Close of Business on the relevant Exercise Date, assuming the satisfaction of all conditions, including the payment of the Warrant Exercise Price. Upon the exercise of any Warrants, such Person shall no longer be a Holder of such Warrants as of the Close of Business on the relevant Exercise Date.

Section 3.06 Fractional Warrant Shares. The Company shall not be required to issue fractional shares of Common Stock (or units of Reference Property) on the exercise of Warrants or pay cash in lieu thereof. The number of shares of Common Stock (or units of Reference Property) that shall be issuable upon an exercise of Warrants by a Holder pursuant to any one Exercise Notice at any time shall be computed on the basis of the aggregate number of shares of Common Stock (or units of Reference Property) which may be purchased pursuant to the Warrants being exercised by that Holder pursuant to such Exercise Notice. If any fraction of a share of Common Stock (or units of Reference Property) would be issuable upon the exercise of Warrants pursuant to such Exercise Notice, the total number of shares of Common Stock (or units of Reference Property) to be issued to the relevant Holder in respect of such Exercise Notice shall be rounded down to the nearest Whole Number and no cash or other adjustment will be made in lieu of the fraction of a share of Common Stock (or unit of Reference Property) so rounded down.

Section 3.07 Reservation of Warrant Shares.

(a) The Company shall at all times keep reserved out of its authorized Common Stock a number of shares of Common Stock sufficient to provide for the exercise of all outstanding Warrants. The Company will keep a copy of this Agreement on file with the Stock Transfer Agent and will furnish to such Stock Transfer Agent a copy of all notices of adjustments (and certificates related thereto) transmitted to each Holder.

(b) The Company covenants that all Warrant Shares that may be issued upon proper exercise of Warrants (including payment of the Warrant Exercise Price) shall, upon issue, be fully paid, nonassessable and free of preemptive rights.

(c) The Company shall provide an opinion of counsel on or prior to the date hereof which shall state that all Warrants and Warrant Shares, as applicable, (i) were offered, sold or issued as part of an offering that was registered in compliance with the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act (as the case may be), (ii) were issued in compliance with all applicable state securities or “blue sky” laws, and (iii) are validly issued, fully paid and non-assessable.

Section 3.08 Ownership Limitation.

(a) Notwithstanding any other provision in this Agreement, without the prior written consent of the Company (which consent may be withheld in the Company’s sole discretion), a Holder will not be permitted to exercise Warrants for any shares of Common Stock, and the Company shall not be obligated to effect such exercise if, immediately after giving effect to such exercise, the Holder (together with such Holder’s Affiliates, and any other Persons acting as a group with such Holder and its Affiliates) would beneficially own 9.9% or more shares of the Common Stock outstanding, including without limitation, through synthetic or derivative financial instruments that give effect to a direct or indirect ownership in the common stock of the Company (the “Ownership Limitation”). No consideration or repayment will be made to any Holder as a result of an inability to exercise a Warrant in whole or in part because of such ownership limitations. The terms “beneficial ownership” and “group” shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(b) Notwithstanding any other provision in this Agreement, without the prior written consent of the Company, any exercise of Warrants contrary to Section 3.08(a) shall be void *ab initio* to the extent of such violation.

(c) For purposes of this Section 3.08, a Holder may rely on the number of outstanding shares of Common Stock reflected in (x) the Company’s most recent periodic or annual report filed with the SEC or (y) any more recent notice published on the Company’s website and provided to the Warrant Agent.

(d) Notwithstanding anything in this Agreement to the contrary, the Warrant Agent shall incur no liability and shall not be responsible if any Holder exceeds the Ownership Limitation or breaches any other term or provision in this Section 3.08.

Section 3.09 Adjustments of Prices. Whenever any provision of this Agreement requires the Calculation Agent to calculate the average of the Last Reported Sale Prices over a span of multiple days (if the Calculation Agent determines in its sole discretion it is able to make such adjustment in its capacity as Calculation Agent), the Calculation Agent shall make appropriate adjustments, if any, to each to account for any adjustment to the Warrant Exercise Rate that becomes effective, or any event requiring an adjustment to the Warrant Exercise Rate where the Ex-Date or effective date, as the case may be, of the event occurs, at any time during or after the period when the average of the Last Reported Sale Prices is to be calculated. If the Calculation Agent is not able to make such adjustment, the Company may make such adjustment in good faith or appoint an Independent Advisor to make such adjustment, and the Company's (or, as the case may be, such Independent Advisor's) calculation shall be determinative and final and binding on the Warrant Agent, the Calculation Agent and the Holders.

#### Article IV

#### ADJUSTMENT AND NOTICE PROVISIONS

Section 4.01 Adjustments. Subject to the provisions of this Article IV, the Warrant Exercise Rate shall be subject to adjustment, without duplication, as follows, except that the Company shall not make any such adjustments if the Company determines that each Holder has the opportunity to participate, at the same time and upon the same terms as holders of the shares of Common Stock and solely as a result of holding the Warrants in any of the transactions described in this Section 4.01, without having to exercise such Holder's Warrants, as if such Holder held a number of shares of Common Stock equal to the product (rounded down to the nearest Whole Number) of (i) the Warrant Exercise Rate in effect on the Record Date for such transaction and (ii) the number of Warrants held by it on such Record Date:

(a) Stock Dividends, Splits, Subdivisions, Reclassifications and Combinations. If the Company shall (i) exclusively issue shares of Common Stock to all or substantially all holders of Common Stock as a dividend or distribution on shares of the Common Stock, (ii) subdivide or reclassify the issued and outstanding shares of Common Stock into a greater number of shares, or (iii) combine, consolidate or reclassify the issued and outstanding shares of Common Stock into a smaller number of shares, then the Warrant Exercise Rate shall be increased (or, in the case of (iii) above only, decreased) based on the following formula:

$$WER_1 = WER_0 \times \frac{OS_1}{OS_0}$$

where:

- WER<sub>1</sub> = the Warrant Exercise Rate in effect at the open of business on the Ex-Date for such dividend or distribution, or at the open of business on the effective date of such subdivision, combination, consolidation or reclassification, as applicable;
- WER<sub>0</sub> = the Warrant Exercise Rate in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or immediately prior to open of business on the effective date of such subdivision, combination, consolidation or reclassification, as applicable;
- OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after, and solely as a result of giving effect to, such dividend, distribution, subdivision, combination, consolidation or reclassification, as applicable;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Date or effective date, as applicable (before giving effect to any such dividend, distribution, or subdivision, consolidation, combination or reclassification, as applicable).

Any adjustment made under this clause (a) shall become effective at the open of business on such Ex-Date for such dividend or distribution, or at the open of business on the effective date for such subdivision, consolidation, combination or reclassification, as applicable. If an adjustment to the Warrant Exercise Rate is made in respect of any dividend or distribution, subdivision, consolidation, combination or reclassification of the type described in this clause (a) but (and to the extent) such dividend or distribution, subdivision, consolidation, combination or reclassification is not so paid or made, the Warrant Exercise Rate shall be readjusted, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, subdivision, consolidation, combination or reclassification, to the Warrant Exercise Rate that would then be in effect had the adjustment (if any) been made on the basis of the dividend or distribution, subdivision, consolidation, combination or reclassification (if any) actually made or paid.

(b) Rights Issues. If the Company issues to all or substantially all holders of Common Stock any rights, options or warrants (other than pursuant to a stockholder rights plan) entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the arithmetic average of the Last Reported Sale Prices of the Common Stock on each Trading Day comprised in the period of 10 consecutive Trading Days immediately preceding the date of announcement of such issuance, the Warrant Exercise Rate shall be increased based on the following formula:

$$WER_1 = WER_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where:

- WER<sub>1</sub> = the Warrant Exercise Rate in effect at the open of business on the Ex-Date for such issuance;
- WER<sub>0</sub> = the Warrant Exercise Rate in effect immediately prior to the open of business on the Ex-Date for such issuance;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the arithmetic average of the Last Reported Sale Prices of the Common Stock on each Trading Day comprised in the period of 10 consecutive Trading Days immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any adjustment to the Warrant Exercise Rate made under this clause (b) shall be made whenever any such rights, options or warrants are issued and shall become effective at the open of business on the Ex-Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Warrant Exercise Rate shall be decreased to the Warrant Exercise Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If an adjustment to the Warrant Exercise Rate is made in respect of any such issuance of rights, options or warrants but (and to the extent) such rights, options or warrants are not so issued, the Warrant Exercise Rate shall be readjusted, effective as of the date the Board of Directors determines not to issue such rights, options or warrants, to the Warrant Exercise Rate that would then be in effect had the adjustment (if any) been made on the basis of such rights, options or warrants (if any) actually issued.

For purposes of this clause (b), in determining whether any rights, options or warrants entitle the holders of the Common Stock to subscribe for or purchase shares of the Common Stock at less than such arithmetic average of the Last Reported Sale Prices of the Common Stock on each Trading Day comprised in the period of 10 consecutive Trading Days immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) Other Distributions and Spin-Offs.

(i) Distributions Other than Spin-Offs. If the Company makes a distribution to all or substantially all holders of its Common Stock, of its Capital Stock, evidences of indebtedness, other assets or property of the Company, or rights, options or warrants to acquire its Capital Stock or other securities, excluding:

- (1) any dividends, distributions or issuances described in clause (a) above or clause (b) above;

(2) any dividends or distributions paid exclusively in cash described in clause (d) below;

(3) distributions of Reference Property in exchange for, or upon conversion of, the Common Stock in a Share Exchange Event as described in Section 4.03;

(4) any rights issued pursuant to a stockholder rights plan adopted by the Company, except to the extent provided in clause (e); and

(5) any Spin-Offs described below in Section 4.01(c)(ii) (any of such Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the “Distributed Property”), then the Warrant Exercise Rate shall be increased based on the following formula:

$$WER_1 = WER_0 \times \frac{SP_0}{SP_0 - FMV}$$

where:

WER<sub>1</sub> = the Warrant Exercise Rate in effect at the open of business on the Ex-Date for such distribution;

WER<sub>0</sub> = the Warrant Exercise Rate in effect immediately prior to the open of business on the Ex-Date for such distribution;

SP<sub>0</sub> = the arithmetic average of the Last Reported Sale Prices of the Common Stock on each Trading Day comprised in the period of 10 consecutive Trading Days immediately preceding the Ex-Date for such distribution; and

FMV = the Fair Market Value, as of the open of business on the Ex-Date for such distribution, of the shares of Capital Stock, evidences of indebtedness, assets or property of the Company, cash, rights or warrants distributed with respect to each outstanding share of Common Stock.

Any adjustment to the Warrant Exercise Rate under this clause (c)(i) shall become effective at the open of business on the Ex-Date for such distribution. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP<sub>0</sub>” (as defined above), in lieu of the foregoing increase in the Warrant Exercise Rate, each Holder of a Warrant shall receive, at the same time and upon the same terms as holders of shares of Common Stock, without having to exercise such Holder’s Warrants, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the product (rounded down to the nearest Whole Number) of (i) the Warrant Exercise Rate in effect on the Record Date for such distribution and (ii) the number of Warrants held by it on such Record Date.

(ii) Spin-Offs. With respect to an adjustment pursuant to this clause (c) where there has been a payment of a dividend or other distribution by the Company to all or substantially all holders of its Common Stock in shares of Capital Stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit of the Company that will be, upon distribution, listed or quoted on a U.S. national or regional securities exchange (a "Spin-Off"), then the Warrant Exercise Rate shall be increased based on the following formula:

$$WER_1 = WER_0 \times \frac{FMV + SP_0}{SP_0}$$

where:

WER<sub>1</sub> = the Warrant Exercise Rate in effect at the open of business on the Ex-Date of the Spin-Off;

WER<sub>0</sub> = the Warrant Exercise Rate in effect immediately prior to the open of business on the Ex-Date of the Spin-Off;

FMV = the arithmetic average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock on each day which is a Trading Day for both the Common Stock and the Capital Stock or similar equity interest so distributed (each, a "Valuation Trading Day") comprised in the period of 10 consecutive Valuation Trading Days commencing on the Ex-Date for such Spin-Off (or, if such Ex-Date is not a Valuation Trading Day, commencing on the immediately following Valuation Trading Day) (such period, the "Valuation Period"); and

SP<sub>0</sub> = the arithmetic average of the Last Reported Sale Prices of the Common Stock on each Valuation Trading Day comprised in the Valuation Period.

Any adjustment to the Warrant Exercise Rate under this clause (c)(ii) shall be made promptly after the Close of Business on the last day of the Valuation Period but shall become effective at the open of business on the Ex-Date for the Spin-Off, subject to Section 4.02(b)(ii).

If an adjustment to the Warrant Exercise Rate is made in respect of any distribution of the type described in this clause (c) but (and to the extent) such distribution is not so made, the Warrant Exercise Rate shall be readjusted, effective as of the date the Board of Directors determines not to make such distribution, to the Warrant Exercise Rate that would then be in effect at such time had the adjustment (if any) been made on the basis of the distribution (if any) actually made.

For purposes of this clause (c) (and subject in all respects to clause (f)), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this clause (c) (and no adjustment to the Warrant Exercise Rate under this this clause (c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be

deemed to have been distributed and an adjustment (if any is required) to the Warrant Exercise Rate shall be made in accordance with this clause (c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Warrant Agreement, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Warrant Exercise Rate under this clause (c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Warrant Exercise Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Warrant Exercise Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Warrant Exercise Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of clause (a), clause (b) and this clause (c), if any dividend or distribution to which this clause (c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which clause (a) is applicable (the “Clause A Distribution”); or

(B) a dividend or distribution of rights, options or warrants to which clause (b) is applicable (the “Clause B Distribution”),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this clause (c) is applicable (the “Clause C Distribution”) and any Warrant Exercise Rate adjustment required by this clause (c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Warrant Exercise Rate adjustment required by clause (a) and clause (b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Ex-Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the open of business on such Ex-Date or effective date” within the meaning of clause (a) or “outstanding immediately prior to the open of business on such Ex-Date” within the meaning of clause (b).

(d) Cash Dividends or Distributions. If any cash dividend or distribution is paid to all or substantially all holders of Common Stock, then the Warrant Exercise Rate shall be increased based on the following formula:

$$WER_1 = WER_0 \times \frac{SP_0}{SP_0 - C}$$

where:

- WER<sub>1</sub> = the Warrant Exercise Rate in effect at the open of business on the Ex-Date for such dividend or distribution; and
- WER<sub>0</sub> = the Warrant Exercise Rate in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution;
- SP<sub>0</sub> = the arithmetic average of the Last Reported Sale Prices of the Common Stock on each Trading Day comprised in the period of ten consecutive Trading Days immediately preceding the Ex-Date for such dividend or distribution;
- C = the amount in cash per share the Company distributes to holders of the Common Stock;

Any adjustment to the Warrant Exercise Rate made under this clause (d) shall become effective at the open of business on the Ex-Date for such dividend or distribution. If an adjustment to the Warrant Exercise Rate is made in respect of any dividend or distribution of the type described in this clause (d) but (and to the extent) such dividend or distribution is not so paid, the Warrant Exercise Rate shall be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Warrant Exercise Rate that would then be in effect at such time had the adjustment (if any) been made on the basis of the dividend or distribution actually paid. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP<sub>0</sub>” (as defined above), in lieu of the foregoing increase to the Warrant Exercise Rate, each Holder of a Warrant shall receive, at the same time and upon the same terms as holders of shares of the Common Stock, without having to exercise such Holder’s Warrants, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the product (rounded down to the nearest Whole Number) of (i) the Warrant Exercise Rate in effect on the Record Date for such dividend or distribution and (ii) the number of Warrants held by it on such Record Date.

(e) If the Company or any of its subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock that is subject to the then-applicable tender offer rules under the Exchange Act (other than any odd-lot tender offer), to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the arithmetic average of the Last Reported Sale Prices of the Common Stock on each Trading Day comprised in the period of 10 consecutive Trading Days commencing on, and including, the Trading Day immediately following the date (the “Offer Expiration Date”) which is the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Warrant Exercise Rate shall be increased based on the following formula:

$$WER_1 = WER_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

- WER<sub>1</sub> = the Warrant Exercise Rate in effect at the open of business on the Trading Day immediately following the Offer Expiration Date; and
- WER<sub>0</sub> = the Warrant Exercise Rate in effect immediately prior to the open of business on the Trading Day immediately following the Offer Expiration Date;
- AC = the aggregate value of all cash and any other consideration (as determined by the Company) paid or payable for the shares of Common Stock purchased in such tender or exchange offer;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding on the Offer Expiration Date (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the Offer Expiration Date (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP<sub>1</sub> = the arithmetic average of the Last Reported Sale Prices of the Common Stock on each Trading Day comprised in the period of 10 consecutive Trading Days commencing on, and including, the Trading Day immediately following the Offer Expiration Date.

Any adjustment to the Warrant Exercise Rate made under this clause (e) shall be made promptly after the Close of Business on the 10th Trading Day following the Offer Expiration Date but shall become effective at the open of business on the Trading Day immediately following the Offer Expiration Date, subject to Section 4.02(b)(ii). If an adjustment to the Warrant Exercise Rate is made pursuant to this clause (e) in respect of any purchase of shares of Common Stock which the Company is obligated to make pursuant to any tender offer or exchange offer of the type described in this clause (e) but (and to the extent) the Company is, or the relevant subsidiary is, permanently prevented by applicable law from consummating such purchases, or such purchases are rescinded, then the Warrant Exercise Rate shall be readjusted, effective as of the date the Board of Directors determines not to consummate such purchases, to the Warrant Exercise Rate that would then be in effect if such tender offer or exchange offer had been made only in respect of the purchases (if any) that have actually been consummated.

(f) Stockholder Rights Plan. If the Company has a stockholder rights plan in effect upon the Exercise Date of a Warrant, each share of Common Stock, if any, issued upon such exercise shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such exercise shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any exercise, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan so that the Holders of Warrants would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon exercise, the Warrant Exercise Rate shall be adjusted at the time of separation as if the Company had made a distribution to all or substantially all holders of its Common Stock of Distributed Property as provided in Section 4.01(b), subject to readjustment in the event of the expiration, termination or redemption of such rights as provided in Section 4.01(b).

Section 4.02 Calculation of Adjustments; Timing of Issuance of Additional Warrant Shares Upon Certain Adjustments; Adjustment Rules.

(a) All adjustments to the Warrant Exercise Rate under Section 4.01 shall be made by the Calculation Agent to the nearest whole multiple of 0.00001 (with 0.000005 being rounded upwards) share of Common Stock.

(b) Notwithstanding anything to the contrary in this Agreement or the Warrants, (i) if the provisions of Section 4.01 shall require that an adjustment be made to the Warrant Exercise Rate in respect of any distribution or other relevant event, and the shares of Common Stock issuable in respect of any exercise are entitled to participate in such distribution or other relevant event, such adjustment shall not be given effect for the purpose of such exercise of Warrants and (ii) if the Exercise Date in respect of any exercise of Warrants falls after (a) the Record Date for any Spin-Off and on or before the last day of the relevant Valuation Period or (b) the Offer Expiration Date for any tender or exchange offer of the type described in clause (e) and on or before the last day of the period of 10 consecutive Trading Days commencing on, and including, the Trading Day immediately following such Offer Expiration Date, delivery of the shares of Common Stock issuable pursuant to such exercise shall occur as soon as practicable after the last day of such Valuation Period, or, as the case may be, as soon as practicable after the last day of such period of 10 consecutive Trading Days.

(c) Any adjustments pursuant to Section 4.01 shall be made successively whenever an event referred to therein shall occur.

Section 4.03 Share Exchange Events. In the event of (i) any Business Combination, (ii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's subsidiaries substantially as an entirety or (iii) recapitalization, reclassification or change of the Common Stock (other than a change in par value, or from/to par value to/from no par value, or changes resulting from a subdivision or combination) reclassification of Common Stock referred to in Section 4.01), in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "Share Exchange Event"), then at and after the effective time of such Share Exchange Event the Holder's right to receive Warrant Shares upon exercise of a Warrant shall be changed into the right to exercise such Warrant to acquire, per each Warrant, the kind and amount of shares or other securities or property (including cash or any combination thereof) that a holder of a

number of shares of Common Stock equal to the Warrant Exercise Rate in effect immediately prior to such Share Exchange Event would have owned or been entitled to receive (the “Reference Property,” with each “unit of Reference Property” meaning the kind and amount of Reference Property that a holder of one share of Common Stock would have been entitled to receive) upon consummation of such Share Exchange Event; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the Holder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be achievable, to the Holder’s right to exercise such Warrant in exchange for a unit of Reference Property pursuant to this paragraph. If the Share Exchange Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then the composition of the unit of Reference Property into which the Warrants will be exercisable shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock. If the Reference Property in respect of any such Share Exchange Event includes, in whole or in part, shares of Common Equity or depositary receipts (or other interests) in respect thereof, the amended Warrant Agreement providing that the Warrants will be exercisable for units of Reference Property will also provide for anti-dilution and other adjustments that shall be as nearly equivalent as practicable to the adjustments provided for in this Article 4 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts (or other interests) in respect thereof). If the Reference Property in respect of any Share Exchange Event includes shares of stock, securities or other property or assets (other than cash and/or cash equivalents) of a company other than the Company or the successor or acquiring company, as the case may be, in such Share Exchange Event, then such other company, if an Affiliate of the Company or the successor or acquiring company, shall also execute such amended Warrant Agreement, and such amended Warrant Agreement shall contain such additional provisions to protect the interests of the Holders as the Company in good faith reasonably considers necessary by reason of the foregoing.

None of the foregoing provisions shall affect the right of a Holder to exercise its Warrants for shares of Common Stock as set forth in Section 3 prior to the effective date of such Share Exchange Event.

The above provisions of this Section 4.03 shall similarly apply to successive Share Exchange Events.

Section 4.04 Notice of Adjustments. Whenever any adjustment is made pursuant to this Article IV, the Company shall cause notice of such adjustment to be delivered to the Warrant Agent as soon as practicable following the effective date of such adjustment, such notice to include in reasonable detail (i) the reason for the adjustment, (ii) the computation of any adjustments, and (iii) the new or amended exercise terms, including, as applicable, the adjusted Warrant Exercise Rate (or the number of shares or the units of Reference Property purchasable upon exercise of each Warrant) after giving effect to such adjustment. The calculations, adjustments and determinations included in the Company's notice shall, absent manifest error, be final and binding on the Company, the Warrant Agent and the Holders. The Warrant Agent shall be fully authorized to rely on, protected in relying on, and entitled to rely on such notice and any adjustment therein contained and the Warrant Agent shall not be deemed to have knowledge of any such adjustment unless and until it shall have received such notice. The Warrant Agent shall have no obligation under any section of this Agreement to determine whether an adjustment is required, to calculate any of the adjustments set forth herein, or to verify any such adjustment or calculation. The Company shall provide notice to holders of the Warrant of any such adjustment by press release or such other method as the Company may reasonably determine adequately informs holders of Warrants of such adjustment. The Warrant Agent shall as soon as practicable after receipt of such notice from the Company (which notice must specifically direct the Warrant Agent to perform delivery) cause a similar notice to be delivered to the Depositary pursuant to the customary procedures of the Depositary. The Warrant Agent shall have no obligation under any Section of this Agreement to determine whether any adjustment has occurred pursuant to this Article IV, or to calculate any of the adjustments set forth herein. The company shall transmit, or cause to be transmitted, to the Warrant Agent, and the Warrant Agent shall have no obligation under this Agreement to calculate, any adjustment made pursuant to this Article IV. The number of shares of Common Stock to be issued on any such exercise shall be determined by the relevant party as provided in Section 3.01(b) and, if such party is not the Warrant Agent, with prompt written notice thereof to the Warrant Agent and the Warrant Agent shall have no duty or obligation to investigate or confirm such determination is accurate or correct.

Section 4.05 Adjustment to Warrant Certificate. The form of Warrant Certificate need not be changed because of any adjustment made pursuant to this Article IV, and Warrant Certificates issued after such adjustment may state the same Warrant Exercise Rate as are stated in any Warrant Certificates issued prior to such adjustment. The Company, however, may at any time in its sole discretion make any change in the form of Warrant Certificate that it may deem appropriate to give effect to such adjustments and that does not affect the substance of the Warrant Certificate, including the rights, duties, immunities, and obligations of Warrant Agent, and any Warrant Certificate thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed. For the avoidance of doubt, no change to the Warrant Certificate or this Agreement as a result of an adjustment pursuant to this Article IV shall require the consent of the Holders of the Warrants or the Warrant Agent.

Section 4.06 Amendments.

(a) The Company and the Warrant Agent, without the consent of the Holders, may from time to time and at any time amend this Agreement and/or the Warrant Certificate for one or more of the following purposes:

- (i) to cure any ambiguity, omission, defect or inconsistency;
- (ii) to provide for the assumption by any successor company in any Share Exchange Event;
- (iii) to postpone the Expiration Date;
- (iv) to increase the Warrant Exercise Rate or decrease the Warrant Exercise Price (whether on a temporary basis or permanently);
- (v) to provide for net share settlement upon exercise of the Warrants;
- (vi) to make any change that does not adversely affect the rights of any Holder in any material respect;
- (vii) to provide for a successor Warrant Agent or Calculation Agent;
- (viii) in connection with any Share Exchange Event, to provide that the Warrants are exercisable for units of Reference Property; or
- (ix) to conform the provisions of this Agreement or the Warrant Certificate to the “Description of the Warrants” section of the prospectus supplement relating to the issuance and sale of shares of Common Stock upon exercise of the Warrants.

Any amendment authorized by the provisions of this Section 4.06(a) may be executed by the Company and the Warrant Agent without the consent of the Holders of any of the Warrants at the time outstanding, notwithstanding any of the provisions of Section 4.06(b). The Warrant Agent shall not unreasonably refuse to execute any such amendment proposed by the Company.

(b) With the written consent of the Holders of a majority of the then outstanding Warrants, the Company may from time to time amend this Agreement and/or the Warrant Certificate in a manner that has a material adverse effect on the interests of any of the Holders. In determining whether the Holders of the required number of Warrants have concurred in any direction, waiver or consent, only Warrants outstanding at the time shall be considered in any such determination, and Warrants known to the Warrant Agent to be owned by the Company shall be disregarded and deemed not to be outstanding for such purpose. The Company or the Warrant Agent may set a Record Date for any such direction, waiver or consent and only the Holders as of such Record Date shall be entitled to make or give such direction, waiver or consent.

(c) No supplement or amendment to this Agreement or any Warrant Certificate pursuant to Section 4.06 shall be effective unless duly executed by the Warrant Agent and the Company. As a condition precedent to the Warrant Agent's execution of any amendment, the Company shall deliver to the Warrant Agent a certificate from a duly authorized Officer of the Company that states that the proposed amendment is in compliance with the terms of Section 4.06. Notwithstanding anything in this Agreement to the contrary, the Warrant Agent may, but shall not be obligated to, enter into any supplement or amendment that adversely affects the Warrant Agent's own rights, duties, immunities or obligations under this Agreement.

(d) The Company shall provide reasonable notice to the Holders via press release or Form 8-K filing of any material amendment to this Agreement or the Warrant Certificate pursuant to this Section 4.06, and in each case materiality shall be determined by the Company using its sole reasonable discretion. The Warrant Agent shall as soon as practicable after receipt of such notice from the Company (which notice must specifically direct the Warrant Agent to perform delivery) cause a similar notice to be delivered to the Depository pursuant to the customary procedures of the Depository. Upon the execution of any amendment of this Agreement or the Warrant Certificate pursuant to the provisions of this Section 4.06, this Agreement and/or the Warrant Certificate shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under Agreement of the Company, the Warrant Agent and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such amendment shall be and be deemed to be part of the terms and conditions of this Agreement and the Warrant Certificate for any and all purposes.

## Article V

### REGISTRATION OF WARRANT SHARES

Section 5.01 Effectiveness of Registration Statement. The Company shall use commercially reasonable efforts to cause a shelf registration statement (including, at the Company's election, an existing registration statement or a replacement thereof), filed pursuant to Rule 415 (or any successor provision) of the Securities Act, covering the issuance of Warrant Shares to the Holders upon exercise of the Warrants by the Holders thereof (the "Common Stock Shelf Registration Statement") to, subject to certain exceptions, (i) become effective as promptly as reasonably practicable after the date of this Agreement and (ii) remain effective at least until the earlier of (x) such time as all Warrants have been exercised and (y) the Close of Business on the Expiration Date. The Company shall promptly inform the Warrant Agent of any change in the status of the effectiveness or availability of the Common Stock Shelf Registration Statement. For the avoidance of doubt, no Warrants shall be exercisable at any time until a Common Stock Shelf Registration Statement becomes effective. If a Common Stock Shelf Registration Statement is not effective at any time or from time to time for any reason, the right to exercise Warrants shall be automatically suspended until such Common Stock Shelf Registration Statement becomes effective (any such period, an "Exercise Suspension Period"). As promptly as practicable upon the occurrence of an Exercise Suspension Period, the Company shall provide notice by press release, with a copy to the Warrant Agent and the Calculation Agent, of such Exercise Suspension Period. Notwithstanding anything to the contrary in this Agreement, if the Expiration Date would otherwise fall in an Exercise Suspension Period, the Expiration Date shall be delayed by the number of days comprised in such Exercise Suspension Period.

Section 5.02 Suspension. The Company shall be entitled to suspend the availability of the Common Stock Shelf Registration Statement from time to time if the Board of Directors determines in the exercise of its reasonable judgment that such suspension is necessary or desirable, as determined by the Company in its sole discretion, and provides notice via press release that such determination was made to the Warrant Agent and Holders of the Warrants (provided that upon request by the Company, the Stock Transfer Agent will deliver a copy of such notice to the Depository pursuant to the customary procedures of the Depository); *provided, however*, that (i) if the Company exercises such right in a period in which the Expiration Date would otherwise fall, the Expiration Date shall be delayed by the number of days during such period for which the availability of the Common Stock Shelf Registration Statement was suspended and (ii) in no event shall the Company be required to disclose the business purpose for such suspension if the Company determines in good faith that such business purpose should remain confidential.

Section 5.03 Expenses. Subject to Section 2.04(c)(ii), all expenses incurred directly by the Company that are incident to the Company's performance of or compliance with its obligations under this Article V relating to the issuance of the Warrant Shares will be borne by the Company, including without limitation: (i) all SEC, stock exchange or Financial Industry Regulatory Authority registration and filing fees, (ii) all fees and expenses incurred by the Company in connection with the compliance with state securities or blue sky laws, (iii) all expenses of any Persons incurred by or on behalf of the Company with the prior written consent of the Company in preparing or assisting in preparing, printing and distributing the Common Stock Shelf Registration Statement or any other registration statement, prospectus, any amendments or supplements thereto and other documents relating to the performance of and compliance with this Article V, (iv) the fees and disbursements of counsel for the Company and (v) the fees and disbursements of the independent public accountants of the Company.

#### **Article VI**

#### **RESERVED**

#### **Article VII**

#### **WARRANT AGENT**

Section 7.01 Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the express terms and conditions of this Agreement (and no implied terms or conditions shall be read into this Agreement against the Warrant Agent) and the Warrant Agent hereby accepts such appointment.

#### Section 7.02 Rights and Duties of Warrant Agent.

(a) Agent for the Company. In acting under this Agreement and in connection with the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligation or relationship or agency or trust for or with any of the holders of Warrant Certificates or beneficial owners of Warrants. All fees and expenses due the Warrant Agent shall be paid to the Warrant Agent by the Company. The Warrant Agent shall have no duty to determine which costs, if any, under this Agreement shall be borne by the Holders or by the Company.

(b) Counsel. The Warrant Agent may consult at any time with counsel satisfactory to it (who may be counsel for the Company or an employee of the Warrant Agent), and the advice or opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken, suffered or omitted by it in accordance with such advice or opinion, absent gross negligence, bad faith or willful misconduct on the part of the Warrant Agent (which gross negligence, bad faith or willful misconduct must be determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).

(c) Documents. The Warrant Agent shall be authorized and protected and shall incur no liability or responsibility to the Company or to any Holder for any action taken, suffered or omitted to be taken by it in reliance on any written notice, resolution, waiver, consent, order, certificate or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties. The Warrant Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder, and the Warrant Agent shall be fully protected and shall incur no liability for failing to take action in connection therewith unless and until it has received such notice in writing. The Warrant Agent shall not take any instructions or directions except those given in accordance with this Agreement. The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken by it in reliance upon any Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties.

(d) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are specifically set forth herein and in the Warrant Certificates, and no implied duties or obligations of the Warrant Agent shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder that may tend to involve it in any expense or liability for which it does not receive indemnity satisfactory to it. The Warrant Agent shall not be accountable or under any duty or responsibility for the application by the Company of the proceeds of the Warrants. The Warrant Agent shall have no duty or responsibility in case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a Holder with respect to such default, including any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise.

(e) Not Responsible for Adjustments or Validity of Stock. The Warrant Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist that may require an adjustment of the Warrant Exercise Rate, or with respect to the nature or extent of any adjustment when made, or with respect to the method employed, or herein or in any supplemental agreement provided to be employed, in making the same, or with respect to any new exercise terms, or with respect to calculations of any adjustments or any amounts due in connection with any exercise of the Warrants. The Warrant Agent shall not be accountable with respect to the validity or value of any shares of Common Stock or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to Article IV, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any Warrant Shares upon the surrender of any Warrant Certificate for the purpose of exercise, nor shall the Warrant Agent be liable for any liquidated damages or any other damages associated therewith.

(f) No Liability for Interest. The Warrant Agent shall have no liability for interest on any monies at any time received by it pursuant to any of the provisions of this Agreement or of the Warrant Certificates.

(g) Agents and Attorneys. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys, accountants, agents or other experts, and the Warrant Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company or the Holders resulting from any such act, default, neglect or misconduct, absent gross negligence, bad faith or willful misconduct in the election and continued employment thereof (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).

(h) Medallion Guarantee. The Warrant Agent may rely on and be fully authorized and protected in acting or failing to act upon (i) any guaranty of signature by an “eligible guarantor institution” that is a member or participant in the Securities Transfer Agents Medallion Program or other comparable “signature guarantee program” or insurance program in addition to, or in substitution for, the foregoing; or (ii) any law, act, regulation or any interpretation of the same even though such law, act, or regulation may thereafter have been altered, changed, amended or repealed.

(i) Statements of the Company. The statements and recitals contained herein and in the Global Warrant Certificates shall be taken as statements of the Company, and the Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Global Warrant Certificates or be required to verify the same (except as to its countersignature on such Global Warrant Certificates). Except as expressly provided herein, the Warrant Agent assumes no responsibility with respect to the execution, delivery or distribution of the Global Warrant Certificates.

(j) No Responsibility for Failures of the Company. The Warrant Agent shall not be responsible for any failure of the Company to comply with any of the covenants contained in this Agreement or in the Global Warrant Certificates to be complied with by the Company, nor shall it at any time be under any duty or responsibility to any Holder to make or cause to be made any adjustment in the Exercise Price or in the number of Warrants Shares any Warrant is exercisable for (except as instructed in writing by the Company), or to determine whether any facts exist that may require any such adjustments, or with respect to the nature or extent of or method employed in making any such adjustments when made.

(k) No Duty to Litigate. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense or liability, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon the Company. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrants or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as Warrant Agent, and any recovery or judgment shall be for the ratable benefit of the Holders, as their respective rights or interests may appear.

(l) Damages. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in connection with this Agreement except in connection with its own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). Notwithstanding anything in this Agreement to the contrary, in no event will the Warrant Agent be liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if the Warrant Agent has been advised of the possibility of such loss or damage and regardless of the form of the action.

(m) Disclaimer of Responsibility. The Warrant Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due and validly authorized execution hereof by the Warrant Agent) or in respect of the validity or execution of any Global Warrant Certificate (except its due and validly authorized countersignature thereof), nor shall the Warrant Agent by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of the Warrant Shares to be issued pursuant to this Agreement or any Warrant or as to whether the Warrant Shares will when issued be validly issued, fully paid and nonassessable or as to the Exercise Price or the number of Warrant Shares a Warrant is exercisable for. The Warrant Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist that may require an adjustment, or the calculation of any adjustments or any amounts due in connection with any exercise of the Warrants. Provided the Warrant Agent has performed its duties as soon as commercially practicable, the Warrant Agent shall not be liable for the Company's failure to timely deliver shares of Common Stock pursuant to the terms of the Warrants, nor shall the Warrant Agent be liable for any damages associated therewith.

(n) No Duty to Risk Own Funds. No provision of this Agreement shall require the Warrant Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if it believes that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(o) No Responsibility to Verify Legality of Warrants. The Warrant Agent shall not be under any duty or responsibility to ensure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Warrants.

(p) Other Agreements. Unless otherwise expressly provided in this Agreement, the Warrant Agent shall not be subject to, nor be required to comply with, or determine if any Person has complied with, the Warrants or any other agreement between or among the parties hereto, even though reference thereto may be made in this Agreement, or to comply with any notice, instruction, direction, request or other communication, paper or document other than as expressly set forth in this Agreement.

(q) Ambiguities. In the event the Warrant Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Warrant Agent hereunder, or is for any reason unsure as to what action to take hereunder, the Warrant Agent shall notify the Company in writing as soon as practicable, and upon delivery of such notice may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to the Company or any Holder or other Person for refraining from taking such action, unless the Warrant Agent receives written instructions signed by the Company which eliminates such ambiguity or uncertainty to the satisfaction of Warrant Agent.

(r) Survival. The provisions of this Section 7.02 shall survive the termination of this Agreement, the termination, exercise or expiration of the Warrants and the resignation or removal of the Warrant Agent.

Section 7.03 Individual Rights of Warrant Agent. The Warrant Agent, and any member, stockholder, affiliate, director, officer or employee thereof, may buy, sell or deal in any of the Warrants or other securities of the Company or its Affiliates or become pecuniarily interested in any transactions in which the Company or its Affiliates may be interested, or contract with or lend money to the Company or its Affiliates or otherwise act as fully and freely as though it was not the Warrant Agent under this Agreement, or a member, stockholder, director, officer or employee of the Warrant Agent, as the case may be. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

Section 7.04 Warrant Agent's Disclaimer. The Warrant Agent shall not be responsible for and makes no representation as to the validity or adequacy of this Agreement or the Warrant Certificates (other than its countersignature thereof) and it shall not be responsible for any statements of fact or recitals contained in this Agreement or the Warrant Certificates other than its countersignature thereof by the Company, or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only; nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant Certificate or as to whether any shares of Common Stock will, when issued, be duly authorized, validly issued, fully paid and nonassessable.

Section 7.05 Compensation and Indemnity.

(a) Compensation. The Company agrees that the Warrant Agent is entitled, from time to time, to reasonable compensation for its services as agreed in accordance with a fee schedule to be mutually agreed upon between the Company and the Warrant Agent in writing for all services rendered by the Warrant Agent and to reimburse the Warrant Agent for reasonable out-of-pocket expenses (including reasonable and documented counsel fees and other disbursements incurred in the preparation, delivery, negotiation, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder) by the Warrant Agent in connection with the services rendered hereunder by the Warrant Agent.

(b) Indemnity. The Company covenants and agrees to indemnify and to hold harmless the Warrant Agent, its officers, directors, agents and counsel against any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including reasonable attorneys' fees and expenses) which may be paid, incurred or suffered by or to which it may become subject arising from or out of, directly or indirectly, any claims or liability resulting from any action taken, suffered or omitted by the Warrant Agent in connection with the execution, acceptance, administration, exercise and performance of its duties under this Agreement, including the reasonable costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly, or of enforcing its indemnification rights under this Agreement. The Warrant Agent shall notify the Company promptly of any claim for which it may seek indemnity (in which the Company is not also named) and shall reasonably cooperate (at the Company's expense) with the Company in defending such claim, but failure of the Warrant Agent to notify the Company shall not affect or limit the right of the Warrant Agent to seek indemnification from the Company pursuant to the preceding sentence unless the Company shall have been actually prejudiced by such failure (as finally determined by a court of competent jurisdiction). The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Warrant Agent, its officers, directors, agents and/or counsel through willful misconduct or gross negligence of any one or more of them (which willful misconduct or gross negligence must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).

The obligations of the Company set forth in this Section 7.05(b) shall survive the exercise or expiration of the Warrants, the termination of this Agreement and the resignation, replacement or removal of the Warrant Agent.

(c) Company Instructions. Whenever in the performance of its duties under this Agreement the Warrant Agent deems it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, the Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from an Appropriate Officer of the Company and to apply to such Appropriate Officer for advice or instructions in connection with its duties, and such instructions shall be full authorization and protection to the Warrant Agent and, absent gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), the Warrant Agent shall not be liable for any action taken, suffered to be taken, or omitted to be taken by it in accordance with instructions of any such Appropriate Officer or in reliance upon any statement signed by any one of such Appropriate Officers of the Company with respect to any fact or matter (unless other evidence in respect thereof is herein specifically prescribed) which may be deemed to be conclusively proved and established by such signed statement. The Warrant Agent shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from Company. From time to time, the Company may provide the Warrant Agent with instructions concerning the services performed by the Warrant Agent hereunder. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by the Company for any action taken or omitted in the absence of bad faith by the Warrant Agent (i) in reliance upon any written Company instructions or (ii) upon the advice or opinion of such counsel (in which case, the Warrant Agent shall provide advance notice to the Company if it will not take an action required by this Agreement because of the advice or opinion of such counsel). The Warrant Agent shall not be held to have notice of any change of authority of any person, until receipt of written notice thereof from the Company.

(d) Limitation of Liability. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Agreement with respect to, arising from, or arising in connection with this Agreement, or from all services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid hereunder by the Company to the Warrant Agent as fees and charges, but not including reimbursable expenses, during the twelve (12) months immediately preceding the event for which recovery from Warrant Agent is being sought.

(e) Consequential Damages. Anything in this Agreement to the contrary notwithstanding, in no event shall either party to this Agreement be liable under or in connection with this Agreement for any indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Warrant Agent has been advised of the possibility thereof and regardless of the form of action in which such damages are sought, or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

(f) Survival. The Parties' obligations pursuant to this Section 7.05 shall survive the termination, exercise or expiration of the Warrants, the termination of this Agreement and the resignation, replacement or removal of the Warrant Agent. For the avoidance of doubt, the rights, immunities, duties and obligations of the Warrant Agent pursuant to Section 7.05(d) of this Agreement shall survive the termination, exercise or expiration of the Warrants, the termination of this Agreement and the resignation, replacement or removal of the Warrant Agent.

#### Section 7.06 Successor Warrant Agent.

(a) Company to Provide and Maintain Warrant Agent. The Company agrees for the benefit of the Holders that there shall at all times be a Warrant Agent hereunder (which may include the Company) until all the Warrants have been exercised or are no longer exercisable.

(b) Resignation and Removal. The Warrant Agent may at any time resign by giving written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective; provided, however, that such date shall not be less than thirty (30) days after the date on which such notice is given unless the Company otherwise agrees in writing. In the event the transfer agency relationship in effect between the Company and the Warrant Agent terminates, the Warrant Agent shall be deemed to have resigned automatically, notwithstanding the second clause of the preceding sentence, and be discharged from its duties under this Agreement as of the effective date of such termination, and the Company shall be responsible for sending any required notice. The Warrant Agent hereunder may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the date when it shall become effective, which date shall not be fewer than thirty (30) days after such notice is given unless the Warrant Agent otherwise agrees in writing.

(c) The Company to Appoint Successor. In the event that at any time the Warrant Agent shall resign, or shall be removed, or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or shall commence a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency or similar law or shall consent to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator (or other similar official) of the Warrant Agent or its property or affairs, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of any such action, or a decree or order for relief by a court shall have been entered in respect of the Warrant Agent in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, or a decree or order by a court shall have been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator (or similar official) of the Warrant Agent or of its property or affairs, or any public officer shall take charge or control of the Warrant Agent or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, a successor Warrant Agent, qualified as aforesaid, shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. Notwithstanding the foregoing, if the Company fails to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent, then any Holder may apply to any court of competent jurisdiction for the appointment of a new Warrant Agent. Pending appointment of a successor to such Warrant Agent either by the Company or by such court, the duties of the Warrant Agent shall be carried out by the Company.

(d) Successor to Expressly Assume Duties. Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the rights and obligations of such predecessor with like effect as if originally named as Warrant Agent hereunder, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as Warrant Agent hereunder; provided that, the predecessor Warrant Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing.

(e) Successor by Merger. Any Person into which the Warrant Agent hereunder may be merged or consolidated, or any Person resulting from any merger or consolidation to which the Warrant Agent shall be a party, or any Person to which the Warrant Agent shall sell or otherwise transfer all or substantially all of its assets and business, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the Parties.

Section 7.07 Bank Accounts. All funds received by the Warrant Agent under this Agreement that are to be distributed or applied by the Warrant Agent in the performance of Services (the “Funds”) shall be held by the Warrant Agent as agent for the Company and deposited in one or more bank accounts to be maintained by the Warrant Agent in its name as agent for the Company. Until paid pursuant to this Agreement, the Warrant Agent may hold or invest the Funds through such accounts in: (a) funds backed by obligations of, or guaranteed by, the United States of America; (b) debt or commercial paper obligations rated A-1 or P-1 or better by S&P Global Inc. (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”), respectively; (c) Government and Treasury backed AAA-rated Fixed NAV money market funds that comply with Rule 2a-7 of the Investment Company Act of 1940, as amended; or (d) short term certificates of deposit, bank repurchase agreements, and bank accounts with commercial banks with Tier 1 capital exceeding \$1 billion, or with an investment grade rating by S&P (LT Local Issuer Credit Rating), Moody’s (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). The Warrant Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit or investment made by the Warrant Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Warrant Agent may from time to time receive interest, dividends or other earnings in connection with such deposits or investments. The Warrant Agent shall not be obligated to pay such interest, dividends or earnings to the Company, any holder or any other party.

Section 7.08 Delivery of Warrant Exercise Price. The Warrant Agent shall forward funds received for warrant exercises in a given month by the fifth (5<sup>th</sup>) Business Day of the following month upon written request of the Company by wire transfer to an account designated by the Company.

Section 7.09 Further Assurances. The Company shall perform, acknowledge and deliver or cause to be performed, acknowledged and delivered all such further and other acts, documents, instruments and assurances as may be reasonably required by the Warrant Agent for the carrying out or performing by the Warrant Agent of the provisions of this Agreement.

Section 7.10 Force Majeure. Notwithstanding anything to the contrary contained herein, the Company and Warrant Agent shall not incur any liability for any delays or failures to perform any act, duty, obligation or responsibility by reason of any occurrence beyond its reasonable control (including without limitation any act or provision of any present or future law or regulation or governmental authority, any act of God, war, civil disorder, civil unrest, failure of any means of communication, terrorist acts (including cyberbreaches of any type of a Party’s electronic information systems), pandemics, epidemics, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties).

Section 7.11 Confidentiality. The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including *inter alia*, personal, non-public Holder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement including the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law, including, without limitation, pursuant to subpoenas from state, or federal or national government authorities (e.g., in divorce and criminal actions); provided, that for the avoidance of doubt, this Agreement may be filed by the Company with the SEC (without including any fee information).

**Article VIII**  
**MISCELLANEOUS**

Section 8.01 Persons Benefiting. Nothing in this Agreement is intended or shall be construed to confer upon any Person other than the Company, the Warrant Agent and the Holders any right, remedy or claim under or by reason of this Agreement or any part hereof.

Section 8.02 Rights of Holders. Holders of unexercised Warrants, as such, have no rights as stockholders and are not entitled to exercise any rights whatsoever as stockholders of the Company, including, but not limited to the rights to (a) receive dividends or other distributions, (b) receive notice of or vote at any meeting of the stockholders, (c) consent to any action of the stockholders, (d) receive notice of any other proceedings of the Company or (e) exercise any preemptive right.

Section 8.03 Notices. Any notice or communication between the parties to this Agreement shall be in writing and delivered in Person or mailed by first-class mail with overnight delivery service. Notices sent by mail as described in this section should be addressed as follows:

if to the Company:

Matthew M. Angel  
2000 Sierra Point Parkway, Suite 400  
Brisbane, CA 94005  
Attention: Chief Executive Officer

With a copy to:

Cooley LLP  
1299 Pennsylvania Avenue, Suite 700  
Washington, DC 20004  
Attention: Jaime L. Chase

and

Conv-Ex Advisors Limited  
80 Coleman Street  
London  
EC2R 5BJ  
United Kingdom  
Attention: Calculation Agency Team

if to the Warrant Agent:

Computershare Trust Company N.A.,  
Computershare Inc.  
150 Royall Street  
Canton, MA 02021  
Attention: Client Services

The Company or the Warrant Agent each by notice to the other may designate in writing additional or different physical addresses or e-mail addresses for subsequent notices or communications.

Except for any notice which may be given by issuance of a press release pursuant to the terms of this Agreement, any notice or communication mailed to a Holder shall be mailed to the Holder at the Holder's address as it appears on the Warrant Register, and shall be sufficiently given if so mailed within the time prescribed. Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is delivered in the manner provided above, it is duly given when sent, whether or not the addressee receives it.

Notwithstanding any other provision of this Agreement, where this Agreement provides for notice of any event to the Holders, such notice shall be sufficiently given to any Holder of a Warrant represented by a Global Warrant if given to the Depository pursuant to the customary procedures of the Depository.

Except for any notice which provides for a shorter period pursuant to the terms of this Agreement, any notice delivered pursuant to this Agreement that restricts the ability of a Holder to exercise its Warrant not otherwise described in this Agreement shall only be effective at least five (5) Business Days after the delivery of such notice.

Notwithstanding anything to the contrary herein, Issuance by the Company of a press release in accordance with its customary procedures or as prescribed by this Agreement shall satisfy any requirement to provide public notice or notice in writing or by email under this Agreement (except for notices required to be delivered to the Warrant Agent).

Section 8.04 Governing Law. THE LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS AGREEMENT, THE WARRANT CERTIFICATES AND THE WARRANTS. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE WARRANT CERTIFICATES AND THE WARRANTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

Section 8.05 Successors. All agreements of the Company in this Agreement and the Warrant Certificates shall bind its successors. All agreements of the Warrant Agent in this Agreement shall bind its successors.

Section 8.06 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Counterparts may be delivered via facsimile, PDF, electronic mail (including any electronic signature covered by the U.S. federal ESIGN of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, including 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.

Section 8.07 Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect in that jurisdiction only such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Agreement in any jurisdiction; *provided, however*, that if such excluded provision shall materially and adversely affect the rights, immunities, liabilities, duties or obligations of the Warrant Agent, the Warrant Agent shall be entitled to resign immediately upon written notice to the Company.

Section 8.08 Withholding Rights. In the event that the Company, the Warrant Agent or their agents determine that they are obligated to withhold or deduct any tax or other governmental charge under any applicable law on behalf of a Holder (whether upon the distribution of the Warrants under this Agreement, upon any adjustment made pursuant to Article IV, upon exercise or otherwise), the Company, the Warrant Agent or their agents shall be entitled, but not obligated, to deduct and withhold such amount by withholding a portion or all of the Warrants or Warrant Shares otherwise deliverable or by otherwise using any property (including, without limitation, Warrants, Warrant Shares or cash) that would otherwise be delivered to or is owned by such Holder, in each case in such amounts as they deem necessary to meet their withholding obligations, and shall also be entitled, but not obligated, to sell all or a portion of such withheld Warrants, Warrant Shares or such other property by public or private sale in such amounts and in such manner as they deem necessary and practicable to pay such taxes and charges. In such case, (i) the Company, the Warrant Agent or their agents, as applicable, shall remit to the applicable tax or other authority the required withholding amount or other charge, and (ii) any withheld amounts (and, if applicable in connection with adjustments pursuant to Article IV, other property) shall be treated for all purposes of this Agreement as having been distributed to the Holders in respect of which such deduction and withholding was made. The Warrant Agent has no obligation to deliver shares or to take, suffer or omit to take any action in connection therewith unless and until it has received evidence satisfactory to it that any tax or other governmental charge under any applicable law has been paid in full, and that no further taxes or other governmental charges are presently due.

Section 8.09 Calculations; Calculation Agent. Conv-Ex Advisors Limited shall be the initial Calculation Agent, pursuant and subject to the terms of the Calculation Agency Agreement, dated on or about the date of this Agreement. The Calculation Agent will be responsible for making all calculations and other determinations specified to be made by it under this Agreement and the Warrants, and any calculations and determinations not so specified will be the responsibility of the Company or an Independent Advisor. All calculations and determinations will be made in good faith and, absent manifest error, such calculations and determinations will be final and binding on the Company, the Warrant Agent and the Holders. The Company will provide with reasonable notice a schedule of the calculations and determinations made by the Company, the Calculation Agent or an Independent Advisor, as applicable, to the Warrant Agent. The Warrant Agent is entitled to rely conclusively upon the accuracy of the calculations and determinations made by the Company, the Calculation Agent and any Independent Advisor appointed in accordance with this Agreement without independent verification.

Section 8.10 Limited Responsibility of Calculation Agent and Independent Advisor. The Calculation Agent (and any Independent Advisor appointed in connection with the Warrants) is acting exclusively as an agent for, and upon request by, the Company. Neither the Calculation Agent (acting in such capacity) nor any Independent Advisor appointed in connection with the Warrants (acting in such capacity) shall have any relationship of agency or trust with, nor shall the Calculation Agent (acting in such capacity) nor any Independent Advisor appointed as aforesaid shall be liable to nor shall they incur any liability as against, the Holders or the Warrant Agent.

Section 8.11 Entire Agreement. This Agreement and the Warrant Certificate contain the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. Notwithstanding anything to the contrary contained in this Agreement, in the event of inconsistency between any provision in this Agreement and any provision in a Warrant Certificate, as it may from time to time be amended, the terms of this Agreement shall prevail. Notwithstanding anything to the contrary contained in this Agreement, in the event of an inconsistency between any provision in this Agreement and any provision in a Warrant Certificate which adversely affects the Warrant Agent's own rights, duties, immunities or obligations under this Agreement, as determined in the Warrant Agent's own judgment, the Warrant Agent shall be entitled to resign immediately without regard to the resignation procedures described in Section 7.06(b) of this Agreement.

*[Signature pages follow]*

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

TEMPEST THERAPEUTICS, INC.

By: /s/ Stephen R. Brady

Name: Stephen R. Brady

Title: President and Chief Executive Officer

*Tempest Therapeutics, Inc - Signature Page to Warrant Agreement*

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COMPUTERSHARE INC., and  
COMPUTERSHARE TRUST COMPANY N.A.  
as Warrant Agent

On behalf of both entities

By: /s/ Collin Ekeogu

Name: Collin Ekeogu

Title: Senior Manager, Corporate Actions

*Warrant Agent - Signature Page to Warrant Agreement*

**FORM OF WARRANT**

[Global Securities Legend]

UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE WARRANT AGREEMENT REFERRED TO BELOW.

**WARRANT TO PURCHASE SHARES OF COMMON STOCK OF  
TEMPEST THERAPEUTICS, INC.**

THIS CERTIFIES THAT [ ], or its registered assigns, is the registered holder of the number of Warrants set forth above (the “Warrants”). Each Warrant entitles the holder thereof (the “Holder”), at its option and subject to the provisions contained herein and in the Warrant Agreement referred to below, to purchase from Tempest Therapeutics, Inc., a corporation organized under the laws of the State of Delaware (including any successor thereto, the “Company”) a number of shares of common stock, par value of \$0.001 per share, of the Company (the “Common Stock”) equal to the Warrant Exercise Rate (which is initially one (1) at an exercise price of \$[ ] per Warrant (the “Warrant Exercise Price”), payable in cash as described in the Warrant Agreement. This Warrant Certificate shall terminate and become void as of the earlier of (x) the Close of Business, on the Expiration Date or (y) upon the exercise hereof as to all the shares of Common Stock subject hereto. The number of shares issuable upon exercise of the Warrants shall be subject to adjustment from time to time as set forth in the Warrant Agreement.

This Warrant Certificate is issued under and in accordance with a Warrant Agreement, dated as of [ ], 2026 (the “Warrant Agreement”), between the Company and Computershare Trust Company N.A. (the “Warrant Agent,” which term includes any successor Warrant Agent under the Warrant Agreement), and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Holder of this Warrant Certificate consents by acceptance hereof. The Warrant Agreement is hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full statement of the respective rights, limitations of rights, duties and obligations of the Company, the Warrant Agent and the Holders of the Warrants. In the event of an inconsistency between the terms of this Warrant Certificate and the Warrant Agreement, the terms of the Warrant Agreement shall prevail. The Company shall amend any provisions of the Warrant Certificate in compliance with Section 4.06 of the Warrant Agreement.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Warrant Agreement. A copy of the Warrant Agreement may be obtained for inspection by the Holder hereof upon written request to the Warrant Agent, 150 Royall Street, Suite 101, Canton, MA 02021.

Subject to the terms of the Warrant Agreement, the Warrants may be exercised in whole or in part prior to 5:00 p.m., New York City time, on any Business Day (each, an “Exercise Date”), in accordance with Section 3.04 of the Warrant Agreement; *provided however*, that no Warrant shall be exercisable after the Close of Business on the Expiration Date, as it may be adjusted in accordance with the Warrant Agreement.

If the date specified as the Exercise Date is not a Business Day, the Warrants will be deemed to be received and exercised on the next succeeding Business Day. If a notice of Exercise of Warrants is received or deemed to be received after the Close of Business on the Expiration Date, the exercise thereof will be null and void and any funds delivered to the Warrant Agent will

be returned to the Holder as soon as practicable. In no event will interest accrue on funds deposited with the Warrant Agent in respect of an exercise or attempted exercise of Warrants. Any otherwise valid exercise of Warrants submitted after any applicable deadline for exercise may, in the sole and absolute discretion of the Company, be accepted and honored. The Company's decision with respect to any such exercise shall be determinative.

Notwithstanding the foregoing, holders of Warrants will be able to exercise their Warrants only if the Common Stock Shelf Registration Statement relating to the Warrant Shares is effective and not subject to suspension pursuant to the Warrant Agreement and such securities are qualified for sale or exempt from qualification under the applicable securities laws of any relevant states or other jurisdictions.

Upon any partial exercise of the Warrants, there shall be countersigned and issued to the Holder hereof a new Warrant Certificate representing those Warrants which were not exercised. This Warrant Certificate may be exchanged at the office of the Warrant Agent by presenting this Warrant Certificate properly endorsed with a request to exchange this Warrant Certificate for other Warrant Certificates evidencing an equal number of Warrants. No fractional Warrant Shares will be issued upon the exercise of the Warrants. If any fraction of a Warrant Share would be issuable upon the exercise of Warrants, the Company shall round down the total number of shares of Common Stock to be issued to the relevant Holder to the nearest Whole Number.

All Warrant Shares shall, upon such issue, be duly and validly issued and fully paid and non-assessable.

The holder in whose name the Warrant Certificate is registered may be deemed and treated by the Company and the Warrant Agent as the absolute owner of the Warrant Certificate for all purposes whatsoever and neither the Company nor the Warrant Agent shall be affected by notice to the contrary.

Holders of Warrants do not have any rights as a stockholder with respect to the shares of Common Stock issuable upon exercise of the warrants prior to the time such warrants are validly exercised in accordance with all the terms and conditions of this Warrant Agreement, and the Warrant Exercise Price is paid.

*[Signature page follows]*

This Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Warrant Agent.

TEMPEST THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name: Stephen R. Brady  
Title: Chief Executive Officer

DATED: \_\_\_\_\_, 2026  
Countersigned:

COMPUTERSHARE INC. and  
COMPUTERSHARE TRUST COMPANY N.A.  
as Warrant Agent  
On behalf of both entities

By: \_\_\_\_\_  
Authorized Signatory

**FORM OF EXERCISE NOTICE**

(to be executed only upon exercise of Warrants)

TEMPEST THERAPEUTICS, INC.

The undersigned hereby irrevocably elects to exercise the number of Warrants set forth below, each of which entitles the holder to purchase a number of shares of common stock, par value \$0.001 per share of Tempest Therapeutics, Inc. (the "Common Stock"), equal to the Warrant Exercise Rate, at an exercise price of \$[ ] per Warrant (the "Warrant Exercise Price"), payable in cash on the terms and conditions specified in the Warrant Certificate and the Warrant Agreement therein referred to, surrenders all right, title and interest in the number of Warrants exercised hereby to Tempest Therapeutics, Inc. and directs that the shares of Common Stock deliverable upon the exercise of such Warrants, and interests in any Global Warrant or Definitive Warrant representing unexercised Warrants, be registered or placed in the name and at the address specified below and delivered thereto. If other than the registered holder of the Warrants, the undersigned must pay all transfer taxes, assessments or similar governmental charges in connection with any exercise of such Warrants. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Warrant Agreement.

A. Number of Warrants exercised hereby: \_\_\_\_\_

B. Warrant Exercise Price: \$[ ]

C. Aggregate Warrant Exercise Price in respect of number of Warrants exercised hereby: \$ \_\_\_\_\_ (=A x B)

D.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Signature of Owner)<sup>1</sup>

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

<sup>1</sup> The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatsoever.

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Securities to be issued to:

If held in book-entry form through the Depositary:

Depositary Account Number:

Name of Agent Member:

If in definitive or uncertificated form:

Social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

Any unexercised Warrants evidenced by the exercising Holder's interest in the Global Warrant or Definitive Warrant, as the case may be, to be issued to:

If in book-entry form through the Depositary:

Depositary Account Number:

Name of Agent Member:

If in definitive form:

Social security or identifying number:

Name:

Street Address:

City, State and Zip Code:

**FORM OF WARRANT TRANSFER**

For value received, the undersigned hereby sells, assigns and transfers unto the right to purchase [ ] Warrant Shares representing shares of common stock, par value \$0.001 per share (the "Common Stock") of Tempest Therapeutics, Inc. (the "Company") pursuant to the attached Warrant Certificate and does hereby irrevocably constitute and appoint attorney to transfer the Warrant, or such portion as is transferred hereby, on the books of the Company with full power of substitution in the premises. The undersigned requests said attorney to issue to the transferee a Warrant Certificate evidencing such transfer and to issue to the undersigned a new Warrant Certificate evidencing the right to purchase Warrant Shares for the balance not so transferred, if any.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Owner)<sup>2</sup>

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

Medallion Guarantee by:

Name in which new Warrant(s) should be registered:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

\_\_\_\_\_  
(social security or identifying number)

<sup>2</sup> The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatsoever, and must be medallion guaranteed by an eligible guarantor institution.

**SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY<sup>3</sup>**

The initial number of Warrants represented by the Global Warrants is [    ].

The following increases or decreases in this Global Security have been made:

<b><u>Date of Exercise or Exchange</u></b>	<b><u>Decrease in number of Warrants in this Global Warrant Certificate</u></b>	<b><u>Increase in number of Warrants in this Global Warrant Certificate</u></b>	<b><u>Number of Warrants in this Global Warrant Certificate following such change</u></b>	<b><u>Signature of authorized officer of Warrant Agent</u></b>
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<sup>3</sup> To be included only if Warrants are in global form.