

**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): September 25, 2023**

**Decibel Therapeutics, Inc.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-40030**  
(Commission  
File Number)

**46-4198709**  
(IRS Employer  
Identification No.)

**1325 Boylston Street, Suite 500**  
**Boston, Massachusetts**  
(Address of Principal Executive Offices)

**02215**  
(Zip Code)

**Registrant's telephone number, including area code: (617) 370-8701**

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (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<br/>Symbol(s)</u> | <u>Name of each exchange<br/>on which registered</u> |
|---|------------------------------|--|
| Common stock, \$0.001 par value per share | DBTX                         | Nasdaq Global Select Market                          |

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

Emerging growth company

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

## Introductory Note

As previously disclosed in the Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on August 9, 2023, Decibel Therapeutics, Inc., a Delaware corporation (the “Company”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), dated as of August 8, 2023, with Regeneron Pharmaceuticals, Inc., a New York corporation (“Parent”), and Symphony Acquisition Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“Purchaser”).

Pursuant to the Merger Agreement, on August 25, 2023, Purchaser commenced a tender offer (the “Offer”) to acquire all of the issued and outstanding shares of the common stock, par value \$0.001 per share (“Common Stock”), of the Company in exchange for (i) \$4.00 per share, payable in cash at closing, without interest and subject to reduction for any applicable withholding of taxes (the “Cash Consideration”), plus (ii) one contractual, non-tradeable contingent value right per share (each, a “CVR”), which entitles the holder to potentially receive contingent payments of up to an aggregate of \$3.50 per CVR, without interest and subject to reduction for any applicable withholding taxes, upon the achievement of certain specified milestones in accordance with the terms and subject to the conditions of a contingent value rights agreement (the “CVR Agreement”), dated as of September 25, 2023, by and among Parent, Purchaser, Computershare Inc. and Computershare Trust Company, N.A. (the Cash Consideration plus one CVR, together, the “Offer Consideration”).

The foregoing description of the CVR Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the CVR Agreement, a copy of which is filed as Exhibit 2.2 hereto, and is incorporated herein by reference.

The Offer expired as scheduled at one minute after 11:59 p.m., Eastern Time on September 22, 2023 (such date and time, the “Expiration Time”) and was not extended. Computershare Trust Company, N.A., in its capacity as depositary and paying agent for the Offer (the “Depositary and Paying Agent”), has advised Purchaser that, as of the Expiration Time, 19,797,530 shares of Common Stock had been validly tendered and not validly withdrawn pursuant to the Offer, which, together with the shares of Common Stock owned by Purchaser and its affiliates, represent, approximately 86.12% of the issued and outstanding shares of Common Stock. The number of shares of Common Stock tendered satisfied the condition to the Offer that there be validly tendered and not validly withdrawn shares of Common Stock that, considered together with all other shares (if any) owned by Purchaser and its affiliates, including Parent, represent one more share than 50% of the total number of shares of Common Stock outstanding at the time of the expiration of the Offer. On September 25, 2023, Purchaser accepted for payment all shares of Common Stock validly tendered and not validly withdrawn pursuant to the Offer.

Following the consummation of the Offer, pursuant to the terms and conditions of the Merger Agreement, in accordance with Section 251(h) of the General Corporation Law of the State of Delaware (the “DGCL”) and without a meeting or a vote of the Company’s stockholders, on September 25, 2023, Purchaser was merged with and into the Company (the “Merger”), with the Company surviving such Merger as a wholly owned subsidiary of Parent.

Pursuant to the terms of the Merger Agreement, as of the effective time of the Merger (the “Effective Time”), by virtue of the Merger and without any action on the part of the holders thereof, each share of Common Stock issued and outstanding immediately prior to the Effective Time (other than (i) shares of Common Stock that were owned by the Company or held in the treasury of the Company, (ii) shares of Common Stock then held by Parent or Purchaser, and (iii) shares of Common Stock then held by any wholly owned subsidiary of Parent (other than Purchaser) or any wholly owned subsidiary of the Company) were converted automatically into and thereafter represent only the right to receive the Offer Consideration.

In addition, pursuant to the Merger Agreement, at the Effective Time, each outstanding compensatory option to purchase shares of Common Stock of the Company (each a “Company Option”) vested in full and received the following treatment:

- each Company Option with an exercise price per share that was less than the amount of the Cash Consideration (each a “Tranche 1 Option”) was cancelled and exchanged for (A) an amount in cash equal to the product of (x) the total number of shares subject to such Tranche 1 Option immediately prior to the

Effective Time multiplied by (y) the excess of the amount of the Cash Consideration over the applicable exercise price per share of such Tranche 1 Option, and (B) one CVR with respect to each share subject to such Tranche 1 Option as of immediately prior to the Effective Time;

- each Company Option with an exercise price per share that was equal to or greater than the amount of the Cash Consideration and less than the sum of the amount of the Cash Consideration and the amount of the DB-OTO Milestone Payment (as defined in the CVR Agreement) (each a “Tranche 2 Option”) and each Company Option with an exercise price per share that was equal to or greater than the sum of the amount of the Cash Consideration and the amount of the DB-OTO Milestone Payment and less than the sum of the amount of the Cash Consideration, the amount of the DB-OTO Milestone Payment and the amount of the Registration Study Milestone Payment (as defined in the CVR Agreement) (each a “Tranche 3 Option”) and, collectively with each Tranche 1 Option and Tranche 2 Option, the “Specified Options”) were cancelled and exchanged for one CVR with respect to each share subject to such Specified Option as of immediately prior to the Effective Time; and
- each Company Option other than a Specified Option, whether or not vested, was cancelled with no consideration payable in respect thereof.

Notwithstanding the foregoing, pursuant to the CVR Agreement:

- in the case of any CVR received in respect of a Tranche 2 Option, the DB-OTO Milestone Payment will equal the excess of \$6.00 over the exercise price per share with respect to such Tranche 2 Option and the Registration Study Milestone Payment will equal \$1.50 per CVR; and
- in the case of any CVR received in respect of a Tranche 3 Option, the Registration Study Milestone Payment will equal the excess of \$7.50 over the exercise price per share with respect to such Tranche 3 Option (and no payment will be made upon the achievement of the DB-OTO Milestone).

In addition, pursuant to the Merger Agreement, at the Effective Time, each outstanding restricted stock unit of the Company (each a “Company RSU”), whether or not vested, was cancelled and exchanged for the right to receive (i) a cash payment equal to (x) the total numbers of shares subject to such Company RSU immediately prior to the Effective Time multiplied by (y) the Cash Consideration and (ii) one CVR with respect to each share subject to such Company RSU as of immediately prior to the Effective Time.

The foregoing description of the Offer, the Merger and the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which was filed as Exhibit 2.1 to the Current Report on Form 8-K filed by the Company with the SEC on August 9, 2023 and is incorporated herein by reference.

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

As described in the Introductory Note above, on September 25, 2023, Purchaser irrevocably accepted for payment all shares of Common Stock validly tendered and not validly withdrawn pursuant to the Offer on or prior to the Expiration Time. On September 25, 2023, the Merger was completed pursuant to Section 251(h) of the DGCL, with no vote of the Company’s stockholders required. Upon the consummation of the Merger, the Company became a wholly owned subsidiary of Parent.

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

**Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing**

On September 25, 2023, the Company notified The Nasdaq Global Select Market (“Nasdaq”) of the consummation of the Merger and requested that Nasdaq (i) halt trading in the shares of Common Stock, (ii) suspend trading of and delist the shares of Common Stock and (iii) file with the SEC a notification of removal from listing and/or registration on Form 25 to effect the delisting of all shares of Common Stock from Nasdaq and the deregistration of such shares of Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). In addition, the Company intends to file a certification and notice of termination of registration on Form 15 with the SEC requesting the termination of registration of the Common Stock under Section 12(g) of the Exchange Act and the suspension of the Company’s reporting obligations under Sections 13 and 15(d) of the Exchange Act.

**Item 3.03. Material Modification to Rights of Security Holders**

The information set forth in the Introductory Note and Items 2.01, 3.01, 5.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

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

As a result of the completion of the Merger, a change in control of the Company occurred, and the Company became a wholly owned subsidiary of Parent. The Cash Consideration was funded through Parent’s cash on hand.

The information set forth in the Introductory Note and Items 2.01 and 5.02 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

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

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated herein by reference.

In accordance with the terms of the Merger Agreement, (i) each of William Carson, Alison Finger, Matthew Kapusta, Kevin McLaughlin, Saraswathy Nochur and Laurence Reid resigned from his or her respective positions as a member of the Company’s board of directors and all committees thereof, effective as of the Effective Time and (ii) Nouhad Hussein, the sole director of the Purchaser immediately prior to the Effective Time, became the sole director of the Company, in each case, as of the Effective Time. The director resignations were tendered in connection with the Merger and were not a result of any disagreement between the Company and the directors on any matter relating to the Company’s operations, policies or practices.

Effective immediately following completion of the Merger, all of the incumbent officers of the Company, as of immediately prior to the effectiveness of the Merger, were removed as officers of the Company. Following the Effective Time, the officers of the Company are as follows: Nouhad Hussein, Managing Director, Robert E. Landry, Chief Financial Officer, Joseph J. LaRosa, Secretary, and Leonard N. Brooks, Treasurer.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

Pursuant to the terms of the Merger Agreement, at the effective time of the Merger, the Company’s certificate of incorporation and bylaws were each amended and restated in their entirety. Copies of the amended and restated certificate of incorporation and amended and restated bylaws are attached as Exhibit 3.1 and Exhibit 3.2, respectively, to this Current Report on Form 8-K, and are incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits

| <u>Exhibit No.</u> | <u>Description</u>   |
|--------------------|--|
| 2.1*               | <a href="#"><u>Agreement and Plan of Merger, dated as of August 8, 2023, by and among Decibel Therapeutics, Inc., Regeneron Pharmaceuticals, Inc., and Symphony Acquisition Sub, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on August 9, 2023).</u></a> |
| 2.2                | <a href="#"><u>Contingent Value Rights Agreement, dated as of September 25, 2023, by and among Regeneron Pharmaceuticals, Inc., Symphony Acquisition Sub, Inc., Computershare Inc., and Computershare Trust Company, N.A.</u></a>  |
| 3.1                | <a href="#"><u>Amended and Restated Certificate of Incorporation of Decibel Therapeutics, Inc.</u></a>   |
| 3.2                | <a href="#"><u>Amended and Restated Bylaws of Decibel Therapeutics, Inc.</u></a>   |
| 104                | Cover Page Interactive Data File (embedded within the Inline XBRL document).   |

\* Schedules and similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby agrees to supplementally furnish to the SEC upon request any omitted schedule or similar attachment to Exhibit 2.1.

**SIGNATURES**

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

DECIBEL THERAPEUTICS, INC.

Date: September 25, 2023

By: /s/ Nouhad Husseini

Name: Nouhad Husseini

Title: Managing Director

## CONTINGENT VALUE RIGHTS AGREEMENT

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of September 25, 2023 (this “Agreement”), is entered into by and among Regeneron Pharmaceuticals, Inc., a New York Corporation (“Parent”), Symphony Acquisition Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“Purchaser”), and Computershare Inc., a Delaware corporation (“Computershare”), and its affiliate, Computershare Trust Company, N.A., a federally chartered trust company (collectively, as “Rights Agent”).

### PREAMBLE

WHEREAS, Decibel Therapeutics, Inc., a Delaware corporation (the “Company” or, following the Merger, the “Surviving Corporation”), Parent and Purchaser, have entered into an Agreement and Plan of Merger, dated as of August 8, 2023 (as it may be amended from time to time, the “Merger Agreement”), pursuant to which (a) Parent has agreed to cause Purchaser to commence a tender offer (the “Offer”) to acquire all of the outstanding shares of common stock, par value \$0.001 per share, of the Company (the “Shares”), other than the Excluded Shares (as defined in the Merger Agreement) and the Converted Shares (as defined in the Merger Agreement), (b) Purchaser will, following consummation or termination of the Offer (other than in connection with a termination of the Merger Agreement), be merged with and into the Company (the “Merger”), with the Company continuing as the surviving corporation in the Merger and (c) the Company shall become a wholly owned subsidiary of Parent;

WHEREAS, pursuant to the Merger Agreement, and in accordance with the terms and conditions thereof, in each of the Offer and the Merger, Parent has agreed to provide Holders (as defined below) the right to receive up to two (2) contingent cash payments upon the terms and subject to the conditions of this Agreement and of the Merger Agreement without interest and subject to reduction for any applicable withholding Taxes; and

WHEREAS, pursuant to this Agreement, the maximum potential amount payable per CVR (as defined below) is \$3.50 in cash, without interest and subject to reduction for any applicable withholding Taxes.

NOW, THEREFORE, in consideration of the premises and the consummation of the transactions referred to above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually covenanted and agreed, for the proportionate benefit of all Holders (as defined below), as follows:

### ARTICLE 1

#### DEFINITIONS

##### Section 1.01. Definitions.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. The following terms shall have the meanings ascribed to them as follows:

“Acting Holder(s)” means any Holder or Holders of at least 50% of the outstanding CVRs as set forth on the CVR Register.

“Carve-Out Transaction” means any transaction (including a sale of assets, merger, sale of stock or other equity interests, or exclusive licensing transaction) pursuant to which all or substantially all of the rights, property and assets (including Intellectual Property and Material Contracts) necessary for the development and approval of DB-OTO are sold, exclusively licensed or otherwise transferred, directly or indirectly, to, or acquired by, directly or indirectly, a Person other than Parent or any of its Affiliates. For clarification, each of (i) ordinary course licensing, collaboration or distribution arrangements in which less than exclusive worldwide rights are granted for purposes of developing or commercializing DB-OTO and (ii) any Change of Control shall not constitute a Carve-Out Transaction.

“Change of Control” means (a) a sale or other disposition of all or substantially all of the assets of Parent on a consolidated basis (other than to any Subsidiary (direct or indirect) of Parent), (b) a merger or consolidation involving Parent in which Parent is not the surviving entity, and (c) any other transaction involving Parent in which Parent is the surviving or continuing entity but in which the stockholders of Parent immediately prior to such transaction (as stockholders of Parent) own less than 50% of Parent’s voting power immediately after the transaction.

“Clinical Trial” means any research study in which one or more human subjects are assigned to one or more interventions (which may include placebo or other control), including the Phase 1/2 Clinical Trial, any Phase III Clinical Trial or any Registration Enabling Trial, in each case, including an equivalent human clinical trial conducted in a country other than the United States.

“Commercially Reasonable Efforts” means a level of efforts that is consistent with the general practice followed by Parent in the relevant jurisdictions in pursuing development and approval of other pharmaceutical compounds, products or therapies owned by it, or to which it has exclusive rights, which are of similar scientific and commercial potential at a similar stage in their development or product life, taking into account all relevant factors, including the prevalence and incidence of the applicable disease or condition, safety, tolerability, efficacy, product profile, anticipated regulatory authority approved labeling, supply chain management considerations, the competitiveness of other products of Parent and third parties in development and in the marketplace, proprietary position (including with respect to patent or regulatory exclusivity), the projected cost, the regulatory structure and requirements involved (including with respect to Clinical Trial enrollment), and expected profitability (including pricing and reimbursement status achieved or expected to be achieved), and, in each case, other relevant technical, scientific, strategic, commercial, legal, regulatory or medical factors (without limiting Parent and Purchaser’s ability to allocate their respective resources in accordance with their respective development and commercial priorities). It is understood and agreed that, depending on the relevant facts and circumstances, Commercially Reasonable Efforts may not require Parent to test, develop, pursue, manufacture, make regulatory filings or seek regulatory approvals with respect to, or otherwise advance, DB-OTO. Any Milestone Payments payable under this Agreement may not be taken into account in determining Commercially Reasonable Efforts.

Notwithstanding anything to the contrary herein, including but not limited to the foregoing and Section 4.03, “Commercially Reasonable Efforts” shall not require: (i) opening any new sites for Clinical Trials beyond those having been opened or expressly planned to be opened pursuant to the Company’s development plans shared with Parent as of August 8, 2023; or (ii) initiating any additional Clinical Trials beyond the Phase 1/2 Clinical Trial.

“CVRs” means the rights of Holders to receive contingent cash payments pursuant to the Merger Agreement and this Agreement.

“DB-OTO” means an AAV-based dual-vector gene therapy product candidate designed to express Otoferlin that is in development by the Company for the treatment of congenital, monogenic hearing loss.

The “DB-OTO Milestone” shall be deemed achieved upon the occurrence of the fifth (5th) human participant being administered after the date of the Merger Agreement with DB-OTO in any Clinical Trial; provided, that such occurrence is prior to the end of the DB-OTO Milestone Period.

“DB-OTO Milestone Payment” means, if the DB-OTO Milestone is achieved prior to the end of the DB-OTO Milestone Period, \$2.00 in cash, per CVR, without interest and subject to reduction for any applicable withholding Taxes; provided that (i) in the case of any CVR received by a Holder in respect of a Tranche 2 Option, the DB-OTO Milestone Payment means the excess of \$6.00 over the exercise price per Share with respect to such Tranche 2 Option and (ii) notwithstanding the achievement of the DB-OTO Milestone, in no event shall the DB-OTO Milestone Payment be made with respect to any CVR received by a Holder in respect of a Tranche 3 Option. For the avoidance of doubt, the DB-OTO Milestone Payment shall only be due once, if at all.

“DB-OTO Milestone Period” means the period commencing on the Closing Date and ending on the earlier of (i) the Termination and (ii) at 11:59 P.M., Eastern Time on December 31, 2024.

“DTC” means The Depository Trust Company or any successor thereto.

“Equity Award CVR” means a CVR received by a Holder in respect of a Tranche 1 Option, Tranche 2 Option, Tranche 3 Option or Company RSU.

“Governmental Body” shall mean any applicable: (a) nation, state, commonwealth, province, territory, county, municipality, district or other applicable legal jurisdiction; (b) federal, state, local, municipal, foreign, international, multinational, supranational or other government; or (c) governmental authority of any nature including any governmental division, unit, department, agency, commission, instrumentality, official or body and any court, arbitrator or other tribunal.

“Holder” means, at the relevant time, a Person in whose name a CVR is registered in the CVR Register.

“IND” means an Investigational New Drug Application filed with the U.S. Food and Drug Administration (“FDA”) pursuant to 21 C.F.R. § 312 before the commencement of Clinical Trials, including all amendments and supplements to such application, or any equivalent filing with any Regulatory Authority outside the United States.



“Initiated” (or “Initiation”) means, with respect to a Clinical Trial, the occurrence of the first dosing of the first human subject in such Clinical Trial.

“Legal Requirement” shall mean any federal, state, local, municipal, foreign or other law, statute, constitution, ordinance, common law, code, order, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (or under the authority of NASDAQ or another stock exchange).

“Marketing Approval” means an approval of the applicable Regulatory Authority necessary for the marketing and sale of a product, but excluding any IND or Pricing Approval.

“Milestone(s)” means each of the DB-OTO Milestone and the Registration Study Milestone.

“Milestone Payment” means, as applicable, (a) the DB-OTO Milestone Payment or (b) the Registration Study Milestone Payment.

“Milestone Period” means each of the DB-OTO Milestone Period and the Registration Study Milestone Period.

“Officer’s Certificate” means a certificate (a) signed by an authorized officer of Parent, in his or her capacity as such, and (b) delivered to the Rights Agent.

“Permitted Transfer” means a transfer of one or more CVRs (a) upon death by will or intestacy; (b) by instrument to an inter vivos or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; (c) made pursuant to a court order; (d) made by operation of law (including a consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (e) in the case of CVRs payable to a nominee, from a nominee to a beneficial owner (and, if applicable, through an intermediary) or from such nominee to another nominee for the same beneficial owner, in each case as allowable by the Depository Trust Company; (f) if the Holder is a partnership or limited liability company, a distribution by the transferring partnership or limited liability company to its partners or members, as applicable (provided that such distribution does not subject the CVRs to a requirement of registration under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended); or (g) as provided in Section 2.06.

“Phase 1/2 Clinical Trial” means the Clinical Trial with identifier NCT05788536, titled “A Study of DB-OTO, an AAV Based Gene Therapy, in Children/Infants With Hearing Loss Due to Otoferlin Mutations (CHORD).”

“Phase III Clinical Trial” means a human Clinical Trial that would satisfy the requirements of 21 C.F.R. 312.21(c) (as amended or any replacement thereof) or any equivalent human clinical trial conducted for a country other than the United States.

“Pricing Approval” means such approval, agreement, determination or decision establishing prices that can be charged to consumers or will be reimbursed by Governmental Bodies in a country where Governmental Bodies of such country approve or determine pricing for pharmaceutical products for reimbursement or otherwise.

“Registration Enabling Trial” means a Clinical Trial for DB-OTO (a) the results of which, together with other data and information concerning such product, are intended to or do establish that such product is safe and effective for its intended use; (b) that forms the primary basis (alone or with one or more additional Registration Enabling Trials) of an effectiveness claim in support of a Marketing Approval for such product; and (c) that (i) meets the criteria for a Phase III Clinical Trial (or the equivalent under the rules of the EMA, the U.K. Medicines and Healthcare Products Regulatory Agency (“MHRA”) or the applicable national Regulatory Authority in any of Germany, France, Italy or Spain (the FDA, the EMA, the MHRA, and such other Regulatory Authorities, collectively, the “Specified Regulatory Authorities”)) at the time such Clinical Trial is Initiated or (ii) is acknowledged in writing by any of the Specified Regulatory Authorities to satisfy clauses (a) and (b).

The “Registration Study Milestone” shall be deemed achieved upon the earlier to occur of (a) the Initiation after the date hereof of a Registration Enabling Trial that satisfies clauses (a)-(c) of the definition thereof at the time of such Initiation (or, if any of such clauses (a)-(c) is not satisfied at the time of such Initiation, at such subsequent time that clauses (a), (b), and (c)(ii) have been satisfied) or (b) the receipt of acceptance for review of (i) a biologics license application by the FDA, (ii) a marketing authorization application by the European Medicines Agency (“EMA”), (iii) a marketing authorization application by the MHRA or (iv) an equivalent application by the applicable national Regulatory Authority in any of Germany, France, Italy or Spain, in each case for DB-OTO; provided, that (x) such earlier occurrence is during the Registration Study Milestone Period and (y) the Registration Study Milestone shall not be deemed achieved unless the DB-OTO Milestone shall have been previously achieved prior to the end of the DB-OTO Milestone Period.

“Registration Study Milestone Payment” means, if the Registration Study Milestone is achieved during the Registration Study Milestone Period, \$1.50 in cash, per CVR, without interest and subject to reduction for any applicable withholding Taxes; provided that, in the case of any CVR received by a Holder in respect of a Tranche 3 Option, the Registration Study Milestone Payment means the excess of \$7.50 over the exercise price per Share with respect to such Tranche 3 Option. For the avoidance of doubt, the Registration Study Milestone Payment shall only be due once, if at all.

“Registration Study Milestone Period” means the period commencing on the Closing Date and ending on the earlier of (i) the Termination and (ii) at 11:59 P.M., Eastern Time on December 31, 2028.

“Regulatory Authority” means any federal, national, multinational, state, provincial or local regulatory agency, department, bureau or other governmental entity anywhere in the world with authority over the development, manufacture or commercialization of DB-OTO. The term “Regulatory Authority” includes the FDA, the EMA and the MHRA.

“Rights Agent” means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have become such pursuant to the applicable provisions of this Agreement, and thereafter “Rights Agent” shall mean such successor Rights Agent.

## ARTICLE 2

### CONTINGENT VALUE RIGHTS

#### Section 2.01. Holders of CVRs; Appointment of Rights Agent.

(a) As provided in the Merger Agreement and subject to the terms and conditions therein, each Holder shall be entitled to one CVR for (i) each Share outstanding immediately prior to the Effective Time that is converted into the right to receive the Merger Consideration pursuant to the Merger Agreement, (ii) each Share underlying a Company RSU that is outstanding immediately prior to the Effective Time that becomes entitled to a payment pursuant to Section 2.8(b) of the Merger Agreement, and (iii) each Share underlying a Company Option that is outstanding immediately prior to the Effective Time that becomes entitled to a payment pursuant to Section 2.8(a)(ii)-(iii) of the Merger Agreement. Notwithstanding any provision of this Agreement to the contrary, if elected by Parent, amounts payable to current or former employees of the Company pursuant to this Agreement in respect of an Equity Award CVR may be made through Parent’s or the Surviving Corporation’s or an Affiliate’s payroll system or any successor payroll system and otherwise in accordance with the terms of this Agreement.

(b) Parent hereby appoints the Rights Agent to act as rights agent for Parent in accordance with the express terms and conditions set forth in this Agreement (and no implied terms and conditions), and the Rights Agent hereby accepts such appointment.

#### Section 2.02. Nontransferable.

CVRs may not be sold, assigned, transferred, pledged, encumbered or transferred or disposed of in any other manner, in whole or in part, other than pursuant to a Permitted Transfer. Any attempted sale, assignment, transfer, pledge, encumbrance or disposition of CVRs, in whole or in part, in violation of this Section 2.02 shall be void *ab initio* and of no effect.

#### Section 2.03. No Certificate; Registration; Registration of Transfer; Change of Address.

(a) CVRs will be issued in book-entry form only and shall not be evidenced by a certificate or other instrument.

(b) Subject to the delivery of information and instructions by Parent to the Rights Agent in form and substance reasonably acceptable to the Rights Agent, the Rights Agent shall keep a register (the “CVR Register”) for the purposes of (i) identifying the Holders of CVRs and (ii) registering CVRs and Permitted Transfers thereof. The CVR Register shall set forth the name and address of each Holder, the number of CVRs held by such Holder and Tax Identification Number of each Holder and, with respect to each Holder of any CVR received in respect of any Tranche 2 Option or Tranche 3 Option, the exercise price of such Tranche 2 Option or Tranche 3 Option.

(c) Without limiting the restriction on transferability set forth in Section 2.02, every request made to transfer a CVR must be in writing and accompanied by a written instrument of transfer and other requested documentation in form reasonably satisfactory to the Rights Agent, including a guaranty of signature by an “eligible guarantor institution” that is a member or participant in the Securities Transfer Agents Medallion Program, duly executed by the registered Holder or Holders thereof, or by the duly appointed legal representative, personal representative or survivor of such Holder or Holders, setting forth in reasonable detail the circumstances relating to the transfer demonstrating that such proposed transfer is a Permitted Transfer. Upon receipt of such

written notice, the Rights Agent shall, subject to its reasonable determination that the transfer instrument is in proper form and the transfer is a Permitted Transfer and otherwise complies with the other terms and conditions of this Agreement, register the transfer of the applicable CVRs in the CVR Register. All duly transferred CVRs registered in the CVR Register shall be the valid obligations of Parent, evidencing the same right, and entitling the transferee to the same benefits and rights under this Agreement, as those held by the transferor. No transfer of a CVR shall be valid until registered in the CVR Register in accordance with this Agreement. Any transfer or assignment of CVRs shall be without charge (other than the cost of any documentary, recordation, registration, transfer, stamp or other similar Tax) to the applicable Holder. As a condition of such transfer, Parent, Purchaser and the Rights Agent may require a transferring Holder or its transferee to pay, including to the applicable Governmental Body, any documentary, recordation, registration, transfer, stamp or other similar Tax or governmental charge that is imposed in connection with any such transfer. The Rights Agent shall have no duty or obligation to take any action under any section of this Agreement that requires the payment of such applicable Taxes or charges unless and until the Rights Agent is reasonably satisfied that all such Taxes or charges have been paid or that such Taxes or charges are not applicable.

(d) A Holder may make a written request to the Rights Agent to change such Holder's address of record in the CVR Register. Such written request must be duly executed by such Holder. Upon receipt of such written notice, the Rights Agent is hereby authorized to, and shall promptly, record the change of address in the CVR Register.

#### Section 2.04. Payment Procedures.

(a) If the DB-OTO Milestone is achieved at any time prior to the end of the DB-OTO Milestone Period, or the Registration Study Milestone is achieved at any time during the Registration Study Milestone Period, then on a date that is within twenty (20) Business Days after such achievement (the "Milestone Payment Date"), (A) Parent shall deliver to the Rights Agent a written notice (the "Milestone Notice") indicating which Milestone was attained and a certificate of Parent certifying the date of the achievement of the Milestone and that the Holders are entitled to receive the applicable Milestone Payment and (B) Parent shall deliver to the Rights Agent cash, by wire transfer of immediately available funds to an account specified by the Rights Agent, equal to the aggregate amount necessary to pay the applicable Milestone Payment payable to the Holders, along with any letter of instruction reasonably required by the Rights Agent; provided that Parent may, in its sole discretion, elect to pay any Milestone Payment with respect to any Equity Award CVRs through the Surviving Corporation's or an Affiliate's payroll system or any successor payroll system (such election, a "Self-Pay Election") and not provide the Rights Agent with any funds with respect to such Equity Award CVRs.

(b) The Rights Agent shall promptly, and in no event later than fifteen (15) Business Days after receipt of a Milestone Notice and cash, by wire transfer of immediately available funds, equal to the aggregate amount necessary to pay the applicable Milestone Payment payable to all Holders pursuant to Section 2.04(a) as well as any letter of instruction reasonably required by the Rights Agent, send each Holder at its address set forth in the CVR Register a copy of any certificate delivered pursuant to this Section 2.04. If in such certificate Parent certifies that a Milestone Payment is payable to the Holders, then, at the time the Rights Agent sends a copy of such certificate to the Holders, the Rights Agent shall also pay the applicable Milestone Payment to each of the Holders (other than in respect of any Equity Award CVRs in the event of a Self-Pay Election) (the amount which each Holder is entitled to receive, subject to Section 2.04(c), will be equal to the aggregate applicable Milestone Payments due in respect of the applicable CVRs held by such Holder, as reflected on the CVR Register), which payment shall be by check mailed to the address of each Holder as set forth in the CVR Register as of the close of business on the last Business Day prior to the applicable Milestone Payment Date. In the event of a Self-Pay Election, Parent shall pay, or cause to be paid, the applicable Milestone Payments due in respect of Equity Award CVRs to the applicable Holders (the amount which each Holder is entitled to receive, subject to Section 2.04(c), will be equal to the aggregate applicable Milestone Payments due in respect of the applicable Equity Award CVRs as reflected on the CVR Register) as promptly as practicable after such applicable Milestone Payment becomes due and payable under this Agreement; provided that any such amounts that constitute nonqualified deferred compensation subject to Section 409A of the Code shall be paid at the earliest time permitted under the terms of the applicable award that would not result in a tax or penalty under Section 409A of the Code. Without limiting the generality of the foregoing, any payment made pursuant to a Self-Pay Election with respect to a Company Option that is an incentive stock option (within the meaning of Section 422 of the Code) shall be subject to Tax reporting and withholding in accordance with applicable Legal Requirements.

(c) Parent, and any other applicable withholding agent, shall be entitled to deduct and withhold, or cause the Rights Agent to deduct or withhold, from each Milestone Payment otherwise payable pursuant to this Agreement, such amounts as each is required to deduct and withhold with respect to the making of such payment under any applicable Legal Requirement relating to Taxes. To the extent that amounts are so deducted and withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made. Prior to making any such tax deduction or withholding or causing any such tax deduction or withholding to be made with respect to any Holder (other than amounts due to Holders in respect of Equity Award CVRs in the event of a Self-Pay Election), Parent shall instruct the Rights Agent to, and upon receipt of such instruction the Rights Agent shall, provide a reasonable opportunity for such Holders to timely provide duly executed Internal Revenue Service Forms W-9 or W-8, as applicable, or any other appropriate forms, in order to

eliminate or reduce such withholding. The Rights Agent shall promptly and timely remit, or cause to be remitted, any amounts deducted or withheld in respect of Taxes to the appropriate Governmental Entity. The Rights Agent shall have no responsibilities with respect to tax withholding, reporting or payment except as set forth herein, as specifically instructed by Parent, or as required by applicable Legal Requirements.

(d) Any portion of the funds held by the Rights Agent in connection with this Agreement which remain undistributed to the Holders six months after the applicable Milestone Payment Date shall be delivered by the Rights Agent to Parent, upon demand, and any Holder shall thereafter look only to Parent for payment of such Milestone Payment. In addition to and not in limitation of any other indemnity obligation herein, Parent agrees to indemnify and hold harmless the Rights Agent with respect to any liability, penalty, cost or expense the Rights Agent may incur or be subject to in connection with so transferring such property to Parent.

(e) If any Milestone Payment (or portion thereof) remains unclaimed by a Holder twenty-four (24) months after the applicable Milestone Payment Date (or immediately prior to such earlier date on which such Milestone Payment would otherwise escheat to or become the property of any Governmental Body under applicable Legal Requirements), any such Milestone Payment (or portion thereof) shall, to the extent permitted by applicable Legal Requirements, become the property of Parent, free and clear of all claims or interest of any Person previously entitled thereto. Neither Parent nor the Rights Agent shall be liable to any Person in respect of a Milestone Payment delivered to a public official pursuant to any applicable abandoned property, escheat or similar legal requirement under applicable Legal Requirements.

#### Section 2.05. No Voting, Dividends or Interest; No Equity or Ownership Interest.

(a) CVRs shall not have any voting or dividend rights, and interest shall not accrue on any amounts payable in respect of CVRs.

(b) CVRs shall not represent any equity or ownership interest in Purchaser or Parent, any constituent company to the Merger or any of their respective Affiliates. It is hereby acknowledged and agreed that a CVR shall not constitute a security of Parent, Purchaser or any of their respective Affiliates.

(c) No joint venture, partnership or other fiduciary relationship is created hereby or by the CVRs, which represent only contractual obligations of Parent, and none of Parent, Purchaser, or any of their respective Affiliates, nor their respective directors and officers, owes any fiduciary or implied duty of any type (including any duty of loyalty or care) to any Holder.

#### Section 2.06. Ability to Abandon CVR.

A Holder may at any time, at such Holder's option, abandon all of such Holder's remaining rights in a CVR by transferring such CVR to Parent without consideration therefor. Nothing in this Agreement shall prohibit Parent or any of its Affiliates from offering to acquire or acquiring any CVRs from the Holders, in private transactions or otherwise, in its sole discretion. Any CVRs acquired by Parent or any of its controlled Affiliates (including Purchaser) shall be automatically deemed extinguished and no longer outstanding or entitled to further Milestone Payments for purposes of this Agreement, with the Rights Agent being promptly notified in writing by the Company of such acquisition and cancellation.

#### Section 2.07. Holding of Funds.

All funds received by Rights Agent under this Agreement that are to be distributed or applied by the Rights Agent in the performance of services hereunder (the "Funds") shall be held by Computershare, as agent for Parent, and deposited in one or more bank accounts to be maintained by Computershare in its name as agent for Parent. Until paid or distributed in accordance with this Agreement, the Funds shall be deposited in one or more bank accounts to be maintained by Computershare in its name as agent for Parent. Until paid or distributed pursuant to this Agreement, Computershare may hold or invest the Funds through such accounts in: (i) bank accounts with commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade 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.), (ii) funds backed by obligations of, or guaranteed by, the United States of America, or (iii) United States government or United States treasury money market funds having a rating in the highest investment category granted by a recognized credit rating agency at the time of acquisition, or a combination of the foregoing, and, in any such case, no such instrument shall have a maturity exceeding three (3) months, provided that no such investment shall have maturities that could prevent or delay payments to be made pursuant to this Agreement. Computershare will only draw upon the Funds in such account(s) as required from time to time in order to make prompt payment of the Milestone Payments, or return any unused Funds to Parent, in each case in accordance with the terms of this Agreement. Neither Parent nor Purchaser shall have any responsibility or liability for any diminution of the Funds that may result from any deposit or investment made by Computershare in accordance with this Article 2, Section 2.07, except for any losses resulting from a default by any bank, financial institution or other third party. Computershare may from time to time receive interest, dividends or other earnings in connection with such deposits. Rights Agent shall not be obligated to pay such interest, dividends or earnings to Parent, any holder or any other party.

ARTICLE 3

THE RIGHTS AGENT

Section 3.01. Certain Duties and Responsibilities.

(a) The Rights Agent shall not have any liability for any actions taken or not taken in connection with this Agreement, except to the extent such liability arises as a result of the willful misconduct, bad faith, fraud or gross negligence of the Rights Agent (in each case as determined by a final non-appealable judgment of court of competent jurisdiction). Notwithstanding anything in this Agreement to the contrary, any liability of the Rights Agent under this Agreement will be limited to the amount of annual fees paid by Parent to the Rights Agent in connection with this Agreement (but not including reimbursable expenses and other charges) during the twelve (12) months immediately preceding the event for which recovery from the Rights Agent is being sought; provided, that, such liability cap shall not apply in the case of the Rights Agent's own willful misconduct, fraud or bad faith (each as determined by a final non-appealable judgment of a court of competent jurisdiction). Anything to the contrary notwithstanding, in no event will the Rights Agent be liable for special, punitive, indirect, incidental or consequential loss or damages of any kind whatsoever (including, without limitation, lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damages, and regardless of the form of action.

(b) The Rights Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Holder with respect to any action or default by any person or entity, 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 Parent or Purchaser, provided that this Section 3.01 shall not affect the Rights Agent's obligation to make payments in accordance with and subject to Section 2.04. If requested by the Acting Holders, the Rights Agent may (but shall not be required to) enforce all rights of action under this Agreement and any related claim, action, suit, audit, investigation or proceeding instituted by the Rights Agent may be brought in its name as the Rights Agent and any recovery in connection therewith will be for the proportionate benefit of all the Holders, as their respective rights or interests may appear on the CVR Register.

Section 3.02. Certain Rights of Rights Agent.

(a) The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Rights Agent.

(b) The Rights Agent may rely and shall be protected and held harmless by Parent in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it in the absence of bad faith to be genuine and to have been signed or presented by the proper party or parties.

(c) Whenever the Rights Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting to take any action hereunder, the Rights Agent may rely upon an Officer's Certificate, which certificate shall be full authorization and protection to the Rights Agent, and the Rights Agent, in the absence of bad faith, fraud, gross negligence or willful misconduct (each as determined by a final non-appealable judgment of a court of competent jurisdiction) on its part, shall not incur any liability and shall be held harmless by the Company for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such Officer's Certificate.

(d) The Rights Agent may engage and consult with counsel of its reasonable selection and the advice or opinion of such outside counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in the absence of bad faith and in reliance thereon.

(e) Any permissive rights of the Rights Agent hereunder shall not be construed as a duty.

(f) The Rights Agent shall not be required to give any note or surety in respect of the execution of such powers or otherwise under this Agreement.

(g) Parent agrees to indemnify the Rights Agent for, and to hold the Rights Agent harmless from and against, any loss, liability, damage, judgment, fine, penalty, cost or expense (each, a "Loss") suffered or incurred by the Rights Agent and arising out of or in connection with the Rights Agent's performance of its obligations under this Agreement, including the reasonable and documented out-of-pocket costs and expenses of defending the Rights Agent against any claims, charges, demands, actions or suits arising out of or in connection with the execution, acceptance, administration, exercise and performance of its duties under this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly, or enforcing its rights hereunder, except to the extent such Loss has been determined by a final non-appealable decision of a court of competent jurisdiction to have resulted from the Rights Agent's gross negligence, fraud, bad faith or willful misconduct.

(h) In addition to the indemnification provided under Section 3.02(g), Parent agrees (i) to pay the fees of the Rights Agent in connection with the Rights Agent's performance of its obligations hereunder, as set forth on the fee schedule (the "Fee Schedule") mutually agreed upon by the parties and incorporated herein by reference, and (ii) to reimburse the Rights Agent promptly upon demand for all reasonable and documented out-of-pocket expenses and other reasonable and documented disbursements actually incurred by the Rights Agent in the preparation, delivery, negotiation, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder, including all Taxes (other than income, receipt, franchise or similar Taxes) and governmental charges in accordance with the Fee Schedule.

(i) No provision of this Agreement shall require the Rights 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 or powers if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(j) The Rights Agent shall have no responsibility to Purchaser, Parent, any holders of CVRs, any holders of shares of Common Stock or any other Person for interest or earnings on any moneys held by the Rights Agent pursuant to this Agreement.

(k) The Rights Agent shall not be subject to, nor be required to comply with, or determine if any Person has complied with, the Merger Agreement or any other agreement between or among Purchaser, Parent or Holders, 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.

(l) Subject to applicable Legal Requirement, (i) the Rights Agent and any shareholder, affiliate, director, officer or employee of the Rights Agent may buy, sell or deal in any securities of Purchaser or Parent or become peculiarly interested in any transaction in which such parties may be interested, or contract with or lend money to such parties or otherwise act as fully and freely as though it were not the Rights Agent under this Agreement, and (ii) nothing herein will preclude the Rights Agent from acting in any other capacity for Purchaser, Parent or for any other Person.

(m) In the event the Rights Agent reasonably believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Rights Agent hereunder, the Rights Agent shall, as soon as practicable, provide notice to Parent, and the Rights Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Purchaser, Parent or any Holder or any other Person for refraining from taking such action, unless the Rights Agent receives written instructions from Parent or such Holder or other Person which eliminate such ambiguity or uncertainty to the reasonable satisfaction of the Rights Agent;

(n) The Rights 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 attorney or agents and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorney or agents or for any loss to Purchaser or Parent resulting from any such act, default, neglect or misconduct, absent gross negligence, fraud, bad faith or willful misconduct (each as determined by a final non-appealable judgment of a court of competent jurisdiction) in the selection or continued employment thereof.

(o) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by Purchaser or Parent, as applicable, only, in each case, other than the Rights Agent's representations, warranties and statements under this Agreement.

(p) The Rights Agent shall act hereunder solely as agent for Parent and shall not assume any obligations or relationship of agency or trust with any of the owners or holders of the CVRs. The Rights Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Holders with respect to any action or default by Purchaser or Parent, 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 Purchaser or Parent.

(q) The Rights Agent may rely on and be fully authorized and protected in acting or failing to act upon (a) 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 (b) 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.

(r) The Rights Agent shall not be liable or responsible for any failure of Purchaser or Parent to comply with any of its obligations relating to any registration statement filed with the Securities and Exchange Commission or this Agreement, including without limitation obligations under applicable regulation or law.

(s) The Rights Agent will not be deemed to have knowledge of any event of which it was supposed to receive notice hereunder but has not received written notice of such event, and the Rights Agent will not incur any liability for failing to take action in connection therewith, in each case, unless and until it has received such notice in writing.

(t) The Rights Agent will have no liability and shall be held harmless by Parent in respect of the validity of this Agreement and the execution and delivery hereof (except the due execution and delivery hereof by the Rights Agent and the enforceability of this Agreement against the Rights Agent assuming the due execution and delivery hereof by Parent), nor shall it be responsible for any breach by Parent of any covenant or condition contained in this Agreement.

(u) The obligations of Purchaser and Parent and the rights of the Rights Agent under this Section 3.02, Section 3.01 and Section 2.04 shall survive the expiration of the CVRs and the termination of this Agreement and the resignation, replacement or removal of the Rights Agent.

#### Section 3.03. Resignation and Removal; Appointment of Successor.

(a) The Rights Agent may resign at any time by giving written notice thereof to Parent and the Holders specifying a date when such resignation shall take effect, which notice shall be sent at least 30 days prior to the date so specified, and such resignation will be effective on the date so specified.

(b) Parent shall have the right to remove the Rights Agent at any time by specifying a date when such removal shall take effect. Notice of such removal shall be given by Parent to the Rights Agent, which notice shall be sent at least 60 days prior to the date so specified.

(c) If the Rights Agent shall resign, be removed or become incapable of acting, Parent shall promptly appoint a qualified successor Rights Agent. Notwithstanding the foregoing, if Parent 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 Rights Agent, then any Holder may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. The successor Rights Agent so appointed shall, forthwith upon its acceptance of such appointment in accordance with this Section 3.03(c) and Section 3.04, become the Rights Agent for all purposes hereunder.

(d) Parent shall give notice, or cause the Rights Agent to give notice, of each resignation or removal of the Rights Agent and each appointment of a successor Rights Agent by mailing written notice of such event by first-class mail, postage prepaid, to the Holders as their names and addresses appear in the CVR Register. Each notice shall include the name and address of the successor Rights Agent. If Parent fails to send, or cause to be sent, such notice within 10 Business Days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent shall cause the notice to be mailed at the expense of Parent.

(e) Notwithstanding anything to the contrary in this Section 3.03, unless consented to in writing by the Acting Holders, Parent shall not appoint as a successor Rights Agent any Person that is not a transfer agent of national reputation or the corporate trust department of a commercial bank.

(f) The Rights Agent will reasonably cooperate with Parent and any successor Rights Agent in connection with the transition of the duties and responsibilities of the Rights Agent to the successor Rights Agent, including the transfer of all relevant data, including the CVR Register, to the successor Rights Agent, but such predecessor Rights Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing.

#### Section 3.04. Acceptance of Appointment by Successor.

Every successor Rights Agent appointed hereunder shall, at or prior to such appointment, execute, acknowledge and deliver to Parent and to the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the Rights Agent; provided that upon the request of Parent or the successor Rights Agent, such resigning or removed Rights Agent shall execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of such resigning or removed Rights Agent, except such rights which survive its resignation or removal under the terms hereunder.

## ARTICLE 4

### COVENANTS

#### Section 4.01. List of Holders.

Parent shall furnish or cause to be furnished to the Rights Agent the names and addresses of the Holders (other than with respect to Company RSUs or Company Options) within thirty (30) Business Days following the Closing Date in a form reasonably satisfactory to the Rights Agent and received from the Surviving Corporation's transfer agent (or other agent performing similar services for the Surviving Corporation) and, with respect to Equity Award CVRs, as set forth in the books and record of the Company as of the Effective Time.

#### Section 4.02. Payment of Milestone Payments.

Parent shall duly and promptly deposit with the Rights Agent for payment to the Holders (or, in respect of any Equity Award CVRs in the event of a Self-Pay Election, pay or cause to be paid as contemplated by the penultimate sentence of Section 2.04(b)) the Milestone Payments, if any, in the manner provided for in Section 2.04 and in accordance with the terms of this Agreement.

#### Section 4.03. Additional Covenants.

(a) Following the Closing and until the end of the DB-OTO Milestone Period, Parent shall use Commercially Reasonable Efforts to achieve the DB-OTO Milestone; it being understood, for the avoidance of doubt, that (i) use of Commercially Reasonable Efforts does not guarantee that Parent will achieve the DB-OTO Milestone by a specific date or at all and (ii) there is no Commercially Reasonable Efforts obligation with respect to the Registration Study Milestone.

(b) In the event that either Milestone has not yet been achieved and the Termination has not occurred, and Parent desires to consummate a Change of Control prior to the end of the Milestone Period for such Milestone, Parent or Purchaser, as applicable depending upon the structure of the Change of Control, will cause the Person acquiring Parent to assume Parent's and Purchaser's (as applicable depending upon the structure of the Change of Control) obligations, duties and covenants under this Agreement (including, for the avoidance of doubt, Section 6.14).

## ARTICLE 5

### AMENDMENTS

#### Section 5.01. Amendments Without Consent of Holders or Rights Agent.

(a) Parent, at any time or from time to time, may unilaterally enter into one or more amendments hereto for any of the following purposes, without the consent of any of the Holders, so long as, in the cases of clauses (iii), (iv) and (vi), such amendments do not, individually or in the aggregate, adversely affect the interests of the Holders:

- (i) to evidence the appointment of another Person as a successor Rights Agent and the assumption by any successor Rights Agent of the covenants and obligations of the Rights Agent herein in accordance with the provisions hereof;
- (ii) to evidence the succession of another Person to Parent or Purchaser and the assumption by any such successor of the covenants of Parent or Purchaser herein as provided in Section 6.05;
- (iii) to add to the covenants of Parent or Purchaser such further covenants, restrictions, conditions or provisions as Parent and Purchaser shall determine to be for the protection of the Holders;
- (iv) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement;
- (v) as may be necessary or appropriate to ensure that CVRs are not subject to registration under the Securities Act or the Exchange Act (or similar registration or prospectus requirements under securities laws outside the United States); or
- (vi) any other amendments hereto for the purposes of adding, eliminating or changing any provisions of this Agreement.



(b) Promptly after the execution by Parent and Purchaser of any amendment pursuant to the provisions of this Section 5.01, Purchaser shall mail (or cause the Rights Agent to mail) a notice thereof by first class mail to the Holders at their addresses as set forth on the CVR Register, setting forth in general terms the substance of such amendment.

Section 5.02. Amendments with Consent of Holders.

(a) In addition to any amendments to this Agreement that may be made by Parent and Purchaser without the consent of any Holder pursuant to Section 5.01, with the consent of the Acting Holders, whether evidenced in writing or taken at a meeting of the Holders, Parent, Purchaser and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is adverse to the interests of the Holders.

(b) Promptly after the execution by Parent, Purchaser and the Rights Agent of any amendment pursuant to the provisions of this Section 5.02, Purchaser shall mail (or cause the Rights Agent to mail) a notice thereof by first class mail to the Holders at their addresses as set forth on the CVR Register, setting forth in general terms the substance of such amendment.

Section 5.03. Execution of Amendments.

Prior to executing any amendment permitted by this Article 5, the Rights Agent shall be entitled to receive, and shall be fully protected in relying upon, a certificate of an officer of the Parent stating that the execution of such amendment is authorized or permitted by this Agreement. Notwithstanding anything in this Agreement to the contrary, the Rights Agent is not obligated to enter into any such amendment unless it does not affect the Rights Agent's own rights, immunities, liabilities, duties or obligations under this Agreement or otherwise. Each amendment to this Agreement shall be evidenced by a writing signed by each of the Rights Agent, Parent and Purchaser.

Section 5.04. Effect of Amendments.

Upon the execution of any amendment under this Article 5, this Agreement shall be modified in accordance therewith, such amendment shall form a part of this Agreement for all purposes and every Holder shall be bound thereby. No supplement or amendment to this Agreement shall be effective unless duly executed by the Rights Agent.

## ARTICLE 6

### MISCELLANEOUS

Section 6.01. Notices to Rights Agent, Parent, and Purchaser.

All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon receipt, if delivered personally, (b) after deposit in the mail, if sent by registered or certified mail, (c) after deposit with an overnight courier, if sent by overnight courier, (d) upon transmission and confirmation of receipt, if sent by facsimile or email transmission prior to 6:00 p.m., local time, in the place of receipt, or (e) on the next Business Day following transmission and confirmation of receipt, if sent by facsimile or email transmission after 6:00 p.m., local time, in the place of receipt; provided that the notice or other communication is sent to the address, facsimile number or email address set forth beneath the name of such party below (or to such other address, facsimile number or email address as such party shall have specified in a written notice to the other parties),

if to the Rights Agent, to:

Computershare Trust Company, N.A.  
Computershare Inc.  
150 Royall Street  
Canton, MA 02021

if to Parent and/or Purchaser:

Regeneron Pharmaceuticals, Inc.  
777 Old Saw Mill River Road  
Tarrytown, New York 10591  
Attention: Joseph J. LaRosa  
Executive Vice President, General Counsel and Secretary

Email: joseph.larosa@regeneron.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019  
Attention: Andrew R. Brownstein  
Victor Goldfeld  
Email: ARBrownstein@wlrk.com  
VGoldfeld@wlrk.com

or to such other address as the Person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

#### Section 6.02. Notice to Holders.

All notices, requests and communications required to be given to the Holders shall be given (unless otherwise herein expressly provided) in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his, her or its address set forth in the CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to the Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

#### Section 6.03. Entire Agreement.

As between Purchaser, Parent and the Rights Agent, this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, notwithstanding the reference to any other agreement herein, and supersedes all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter of this Agreement. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement will govern and be controlling.

#### Section 6.04. Carve-Out Transactions.

(a) Prior to the end of the Registration Study Milestone Period, Parent shall not, and shall not permit any of its Subsidiaries to, enter into a Carve-Out Transaction unless, prior to such Carve-Out Transaction, (x) Parent determines in good faith that, following such Carve-Out Transaction, the acquirer or other surviving entity, as applicable, is reasonably capable of making due and punctual payment of the Milestone Payments; and (y) the acquirer or other surviving entity, as applicable, expressly assumes in writing the due and punctual payment of such amounts if, as and when payable with respect to the CVRs and the performance of all of Parent's and Purchaser's obligations, duties and covenants under this Agreement, subject to the limitations expressly set forth herein.

(b) Upon the consummation of any Carve-Out Transaction in accordance with this Section 6.04, the acquirer or other surviving entity, as applicable, shall succeed to, and be substituted for, and may exercise every right and power of, Parent and Purchaser under this Agreement with the same effect as if such Person had been named as Parent and Purchaser herein, provided that Parent and Purchaser shall remain secondarily liable for the performance of the respective obligations under this Agreement of Parent and Purchaser.

#### Section 6.05. Successors and Assigns.

Each of Parent and Purchaser may assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests and obligations hereunder to one or more its Affiliates (that are direct or indirect Subsidiaries of Parent) (each, an "Assignee") and any such Assignee may thereafter assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests and obligations hereunder to one or more additional Assignees (as defined in the foregoing parenthetical); provided, however, that in connection with any assignment to an Assignee, Parent and Purchaser shall remain primarily liable for the performance of the respective obligations under this Agreement of Parent and Purchaser. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns. Except for assignments pursuant to Section 6.15, the Rights Agent may not assign this Agreement without Parent's consent. Except in connection with a Carve-Out Transaction or any assignment to an Assignee pursuant to this Section 6.05, neither Parent nor Purchaser may assign this Agreement without the prior written consent of the Acting Holders. Any attempted assignment of this Agreement or any of such rights in violation of this Section 6.05 shall be void *ab initio* and of no effect. Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent

shall be a party, or any Person succeeding to the stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 3.03(c). The purchase of all or substantially all of the Rights Agent's assets employed in the performance of transfer agent activities shall be deemed a merger or consolidation for purposes of this Section 6.05.

#### Section 6.06. Benefits of Agreement.

Nothing in this Agreement, express or implied, shall give to any Person (other than the parties hereto, the Holders and their respective permitted successors and assigns hereunder, subject to the limitations set forth herein) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto, the Holders and their respective permitted successors and assigns. The Holders shall have no rights hereunder except as are expressly set forth herein. Without limitation of the rights of the Rights Agent set forth herein, the Acting Holders will have the sole right, on behalf of all Holders, to institute any action or proceeding with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights (provided that the foregoing shall not limit the ability of an individual Holder to seek a payment due from the applicable party pursuant to Section 2.04(b) solely to the extent such payment has been finally determined to be due and payable under this Agreement and has not been paid when due). Acting Holders acting pursuant to the preceding sentence on behalf of all Holders shall have no liability to the other Holders for such actions.

#### Section 6.07. Governing Law.

This Agreement, and any dispute arising out of, relating to or in connection with this Agreement shall be governed by and construed in accordance with the Legal Requirements of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Legal Requirements of any jurisdiction other than the State of Delaware.

#### Section 6.08. Jurisdiction.

In any action or proceeding between any of the parties hereto arising out of or relating to this Agreement or any of the transactions contemplated hereby, each of the parties hereto (a) consents to submit itself to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or, solely if such court lacks subject matter jurisdiction, the United States District Court sitting in New Castle County in the State of Delaware, with respect to any dispute arising out of, relating to or in connection with this Agreement or the transactions contemplated hereby, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action arising out of, relating to or in connection with this Agreement or the transactions contemplated hereby, in any court other than any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any Legal Proceeding arising out of this Agreement or the transactions contemplated hereby in the Court of Chancery of the State of Delaware or in any Federal court located in the State of Delaware, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such Legal Proceeding brought in any such court has been brought in an inconvenient forum. Each of the parties hereto hereby agrees that service of any process, summons, notice or document if given in accordance with Section 6.01 shall be effective service of process for any proceeding arising out of, relating to or in connection with this Agreement or the transactions contemplated hereby; *provided* that the foregoing shall not affect the right of any party to serve legal process in any other manner permitted by applicable Legal Requirements.

#### Section 6.09. WAIVER OF JURY TRIAL.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATION OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### Section 6.10. Severability.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Legal Requirement, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, and the application of such term or other provision to Persons or circumstances other than those as to which it is determined to be invalid, illegal or incapable of being enforced, will not be impaired or otherwise affected and will continue to be valid and enforceable to the fullest extent permitted by applicable Legal Requirement. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that this Agreement be effected as originally contemplated to the fullest extent possible; provided, however, that if an excluded provision shall affect the rights, immunities, liabilities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately upon written Notice to Parent.

#### Section 6.11. Counterparts; Effectiveness.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

#### Section 6.12. Termination.

This Agreement shall be terminated and of no force or effect and, except for the liability to or of the Rights Agent, as provided in Section 3.02, the parties hereto shall have no liability hereunder, upon the earliest to occur of (a) the payment of the Registration Study Milestone Payment; (b) the failure to achieve (i) the DB-OTO Milestone prior to the end of the DB-OTO Milestone Period or (ii) the Registration Study Milestone prior to the end of the Registration Milestone Period; and (c) the delivery of a written agreement of termination duly executed by Parent, Purchaser and the Acting Holders (the earliest of such times (a), (b), and (c), the "Termination"). For the avoidance of doubt, the right of any Holder to receive any Milestone Payment, and any covenants and obligations of Parent and Purchaser (other than pursuant to Section 2.04(g)), shall be irrevocably terminated and extinguished if the DB-OTO Milestone is not achieved before the end of the DB-OTO Milestone Period or the Termination, whichever is earlier. Notwithstanding the foregoing, no Termination shall affect any rights or obligations accrued prior to the effective date of such Termination or Section 6.01, Section 6.02, Section 6.03, Section 6.06, Section 6.07, Section 6.08, Section 6.09, Section 6.10, Section 6.11, or Section 6.13.

#### Section 6.13. Construction.

(a) The words "hereof," "herein," "hereby," "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section and paragraph references are to the articles, sections and paragraphs of this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation." The words describing the singular number shall include the plural and vice versa, words denoting either gender shall include both genders and words denoting natural persons shall include all Persons and vice versa. The phrases "the date of this Agreement," "the date hereof," "of even date herewith" and terms of similar import, shall be deemed to refer to the date set forth in the preamble to this Agreement. Any reference in this Agreement to a date or time shall be deemed to be such date or time in New York City, unless otherwise specified. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day. The parties and the Company have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and the Company and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any provision of this Agreement.

(b) The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 6.14. Obligation of Parent and Purchaser.

Purchaser and the Surviving Corporation shall ensure that Parent duly performs, satisfies and discharges each of the covenants, obligations and liabilities applicable to Parent under this Agreement. Parent shall ensure that Purchaser and the Surviving Corporation duly perform, satisfy and discharge each of the covenants, obligations and liabilities applicable to Purchaser or the Surviving Corporation under this Agreement, and Parent shall be jointly and severally liable with Purchaser and the Surviving Corporation for the performance and satisfaction of each of said covenants, obligations and liabilities. References to Purchaser herein shall be deemed to be references to the Surviving Corporation from and after the Effective Time.

Section 6.15. Merger or Consolidation or Change of Name of Rights Agent.

Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 3.03. The purchase of all or substantially all of the Rights Agent's assets employed in the performance of transfer agent activities shall be deemed a merger or consolidation for purposes of this Section 6.15.

Section 6.16. Further Assurance by Company.

Parent agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required and requested by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

Section 6.17. Force Majeure.

Notwithstanding anything to the contrary contained herein, no party to this Agreement will be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, epidemic, pandemic, terrorist acts, 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, war, or civil unrest.

Section 6.18. Entire Agreement.

This Agreement, together with the Fee Schedule, contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes 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.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

**REGENERON  
PHARMACEUTICALS, INC.**

By: /s/ Nouhad Hussein  
Name: Nouhad Hussein  
Title: Senior Vice President, Business Development and  
Corporate Strategy

**SYMPHONY ACQUISITION  
SUB, INC.**

By: /s/ Nouhad Hussein  
Name: Nouhad Hussein  
Title: Managing Director

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

*On behalf of both entities*

By: /s/ Collin Ekeogu  
Name: Collin Ekeogu  
Title: Manager, Corporate Actions

*[Signature Page to Contingent Value Rights Agreement]*

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
DECIBEL THERAPEUTICS, INC.**

**ARTICLE I**

The name of the corporation is Decibel Therapeutics, Inc. (the "Corporation").

**ARTICLE II**

The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is the Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware 19801. The name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

**ARTICLE III**

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under the DGCL.

**ARTICLE IV**

Section 1 The Corporation shall be authorized to issue 1,000 shares of capital stock, all of which 1,000 shares shall be shares of common stock, par value \$0.01 per share (the "Common Stock").

Section 2 Except as otherwise provided by law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes. Each share of the Common Stock shall have one vote and the Common Stock shall vote together as a single class.

**ARTICLE V**

Any one or more directors may be removed, with or without cause, by the vote or written consent of the holders of a majority of the issued and outstanding shares of capital stock of the Corporation entitled to be voted in the election of directors.

**ARTICLE VI**

In furtherance and not in limitation of those powers conferred by the DGCL, the board of directors of the Corporation is expressly authorized and empowered to make, alter and repeal the by-laws of the Corporation (the "By-Laws") to the fullest extent permitted by the provisions of the DGCL.

## ARTICLE VII

Meetings of the stockholders shall be held at such place, within or without the State of Delaware as may be designated by, or in the manner provided in, the By-Laws or, if not so designated, at the registered office of the Corporation in the State of Delaware. Elections of directors need not be by written ballot unless and to the extent that the By-Laws so provide.

## ARTICLE VIII

The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereinafter prescribed by law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

## ARTICLE IX

Section 1 The personal liability of the directors and officers of the Corporation are hereby eliminated to the fullest extent permitted by the provisions of paragraph (7) of subsection (b) of § 102 of the DGCL, as the same may be amended and supplemented.

Section 2 The Corporation shall, to the fullest extent permitted by the provisions of § 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 3 Any repeal or modification of the clauses in this Article IX shall be prospective only and shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director or officer of the Corporation with respect to any acts or omissions of such director, officer, agent or other person occurring prior to, such repeal or modification.

Section 4 A right to indemnification or to advancement of expenses arising under Article SEVENTH or Article EIGHTH of the certificate of incorporation of the Corporation as in effect immediately prior to the effectiveness of this Amended and Restated Certificate of Incorporation shall not be eliminated or impaired by this Amended and Restated Certificate of Incorporation with respect to an act or omission by a director or officer occurring prior to such effectiveness.



IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf this 25<sup>th</sup> day of September, 2023.

DECIBEL THERAPEUTICS, INC.

By: /s/ Laurence Reid  
Name: Laurence Reid, Ph.D.  
Title: President and Chief Executive Officer

*[Signature Page to Amended and Restated Certificate of Incorporation of Decibel Therapeutics, Inc.]*

**AMENDED AND RESTATED**  
**BY-LAWS**  
**of**  
**DECIBEL THERAPEUTICS, INC.**  
dated as of September 25, 2023

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## **ARTICLE I**

### **OFFICES**

SECTION 1. REGISTERED OFFICE – The address, including street, number, city, and county, of the registered office of Decibel Therapeutics, Inc. (the “Corporation”) in the State of Delaware is the Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware 19801; and the name of the registered agent of the corporation in the State of Delaware at such address is Corporation Trust Company.

SECTION 2. OTHER OFFICES – The Corporation may have other offices, either within or without the State of Delaware, at such place or places as the Board of Directors may from time to time select or the business of the Corporation may require.

## **ARTICLE II**

### **MEETINGS OF STOCKHOLDERS**

SECTION 1. ANNUAL MEETINGS – Annual meetings of stockholders for the election of directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. If the Board of Directors fails so to determine the time, date and place of meeting, the annual meeting of stockholders shall be held at the registered office of the Corporation on the first Tuesday in May. If the date of the annual meeting shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

SECTION 2. SPECIAL MEETINGS – Special meetings of the stockholders for any purpose or purposes may be called by the Chairman, the Managing Director or the Secretary, or by resolution of the Board of Directors.

SECTION 3. VOTING – Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation of the Corporation and these By-Laws may vote in person or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. All elections for directors shall be decided by plurality vote; all other questions shall be decided by majority vote except as otherwise provided by the Certificate of Incorporation or the laws of the State of Delaware.

A complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is entitled to be present.

SECTION 4. QUORUM – Except as otherwise required by law, by the Certificate of Incorporation of the Corporation or by these By-Laws, the presence, in person or by proxy, of stockholders holding shares constituting a majority of the voting power of the Corporation shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

SECTION 5. NOTICE OF MEETINGS – Written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the stockholders entitled to vote thereat.

SECTION 6. ACTION WITHOUT MEETING – Unless otherwise provided by the Certificate of Incorporation of the Corporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

### **ARTICLE III**

#### **DIRECTORS**

SECTION 1. NUMBER AND TERM – The business and affairs of the Corporation shall be managed under the direction of a Board of Directors which shall consist of not less than one person. The exact number of directors shall initially be one and may thereafter be fixed from time to time by the Board of Directors. Directors shall be elected at the annual meeting of stockholders and each director shall be elected to serve until his or her successor shall be elected and shall qualify. A director need not be a stockholder.

SECTION 2. RESIGNATIONS – Any director may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chairman, the Managing Director or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 3. VACANCIES – If the office of any director becomes vacant, the remaining directors in the office, though less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his or her successor shall be duly chosen. If the office of any director becomes vacant and there are no remaining directors, the stockholders, by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation, at a special meeting called for such purpose, may appoint any qualified person to fill such vacancy.

SECTION 4. REMOVAL – Except as hereinafter provided, any director or directors may be removed either for or without cause at any time by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of directors, at an annual meeting or a special meeting called for the purpose, and the vacancy thus created may be filled, at such meeting, by the affirmative vote of holders of shares constituting a majority of the voting power of the Corporation.

SECTION 5. COMMITTEES – The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more directors of the Corporation.

Any such committee, to the extent provided in the resolution of the Board of Directors, or in these By-Laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation.

SECTION 6. MEETINGS – The newly elected director(s) may hold their first meeting for the purpose of organization and the transaction of business, if a quorum be present, immediately after the annual meeting of the stockholders; or the time and place of such meeting may be fixed by consent of all the Directors.

Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by resolution of the Board of Directors.

Special meetings of the Board of Directors may be called by the Chairman or the Managing Director or by the Secretary on the written request of any director, on at least one day's notice to each director (except that notice to any director may be waived in writing by such director) and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the notice of the meeting.

Unless otherwise restricted by the Certificate of Incorporation of the Corporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in any meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

SECTION 7. QUORUM – A majority of the Directors shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned. The vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Certificate of Incorporation of the Corporation or these By-Laws shall require the vote of a greater number.

SECTION 8. COMPENSATION – Directors shall not receive any stated salary for their services as directors or as members of committees, but by resolution of the Board of Directors a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

SECTION 9. ACTION WITHOUT MEETING – Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the Board of Directors or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such committee.

## **ARTICLE IV**

### **OFFICERS**

SECTION 1. OFFICERS – The officers of the Corporation shall be a Managing Director and a Secretary, all of whom shall be elected by the Board of Directors and shall hold office until their successors are duly elected and qualified. In addition, the Board of Directors may elect a Chief Financial Officer, Treasurer and such Vice Presidents, Assistant Secretaries and Assistant Treasurers as it may deem proper. The Board of Directors may appoint such other officers and agents as it may deem advisable, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

SECTION 2. MANAGING DIRECTOR – The Managing Director shall be the Chief Operating Officer of the Corporation. He or she shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation.

SECTION 3. VICE PRESIDENTS – Vice Presidents, if any, shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the Board of Directors.

SECTION 4. CHIEF FINANCIAL OFFICER – The Chief Financial Officer, if any, shall have such powers and shall perform such duties as shall be assigned to them by the Board of Directors.



SECTION 5. TREASURER – The Treasurer shall have the custody of the Corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. He or she shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, the Chairman or the Managing Director, taking proper vouchers for such disbursements. He or she shall render to the Chairman, the Managing Director and Board of Directors at the regular meetings of the Board of Directors, or whenever they may request it, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he or she shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe. If there is no Treasurer appointed by the Board of Directors of the Corporation, the duties of Treasurer shall be vested in the Chief Financial Officer.

SECTION 6. SECRETARY – The Secretary shall give, or cause to be given, notice of all meetings of stockholders and of the Board of Directors and all other notices required by law or by these By-Laws, and in case of his or her absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman or the Managing Director, or by the Board of Directors, upon whose request the meeting is called as provided in these By-Laws. He or she shall record all the proceedings of the meetings of the Board of Directors, any committees thereof and the stockholders of the Corporation in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him or her by the Board of Directors, the Chairman or the Managing Director.

SECTION 7. ASSISTANT TREASURERS AND ASSISTANT SECRETARIES – Assistant Treasurers and Assistant Secretaries, if any, shall be elected and shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the Board of Directors.

## **ARTICLE V**

### **MISCELLANEOUS**

SECTION 1. CERTIFICATES OF STOCK – Each stockholder shall be entitled to a certificate of stock certifying the number of shares owned by such stockholder in the Corporation. Certificates of stock of the Corporation shall be of such form and device as the Board of Directors may from time to time determine. If authorized by the Board of Directors, the Corporation may issue some or all of the shares of stock of the Corporation without certificates.

SECTION 2. LOST CERTIFICATES – A new certificate of stock may be issued in the place of any certificate theretofore issued by the Corporation, alleged to have been lost or destroyed, and the Board of Directors may, in its discretion, require the owner of the lost or destroyed certificate, or such owner's legal representatives, to give the Corporation a bond, in such sum as they may direct, not exceeding double the value of the stock, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss of any such certificate, or the issuance of any such new certificate.

SECTION 3. TRANSFER OF SHARES – The shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock and transfer books and ledgers, or to such other person as the Board of Directors may designate, by whom they shall be cancelled, and new certificates shall thereupon be issued. A record shall be made of each transfer and whenever a transfer shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

SECTION 4. STOCKHOLDERS RECORD DATE – In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board of Directors is required by law, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 5. DIVIDENDS – Dividends upon the capital stock of the Corporation shall in the discretion of the Board of Directors from time to time be declared by the Board of Directors out of funds legally available therefor after setting aside of proper reserves.

SECTION 6. FISCAL YEAR – The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 7. CHECKS – All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or agent or agents, of the Corporation, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 8. NOTICE AND WAIVER OF NOTICE – Whenever any notice is required to be given under these By-Laws, personal notice is not required unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his or her address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by law. Whenever any notice is required to be given under the provisions of any law, or under the provisions of the Certificate of Incorporation of the Corporation or of these By-Laws, a waiver thereof, in writing and signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice.

SECTION 9. CORPORATE SEAL – The corporate seal shall have inscribed thereon the name of the Corporation and the words “Corporate Seal, Delaware.”

## ARTICLE VI

### INDEMNIFICATION

SECTION 1. DIRECTORS AND OFFICERS – The Corporation shall indemnify its directors and officers to the extent not prohibited by the Delaware General Corporation Law (the “DGCL”) or any other applicable law; provided, however, that the Corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the Corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Corporation, (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

SECTION 2. EMPLOYEES AND OTHER AGENTS – The Corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

SECTION 3. EXPENSES – The Corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another Corporation, partnership, joint

venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding; provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this section or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this section, no advance shall be made by the Corporation to an officer of the Corporation (except by reason of the fact that such officer is or was a director of the Corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation.

**SECTION 4. ENFORCEMENT** – Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the director or officer. Any right to indemnification or advances granted by this section to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the Corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the Corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the Corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the Corporation) for advances, the Corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because the officer or director has met the applicable standard of

conduct set forth in the DGCL or any other applicable law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this section or otherwise shall be on the Corporation.

SECTION 5. NON-EXCLUSIVITY OF RIGHTS – The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

SECTION 6. SURVIVAL OF RIGHTS – The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

SECTION 7. INSURANCE – To the fullest extent permitted by the DGCL or any other applicable law, the Corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this section.

SECTION 8. AMENDMENTS – Any repeal or modification of this section shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the Corporation.

SECTION 9. SAVING CLAUSE – If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this section that shall not have been invalidated, or by any other applicable law. If this section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the Corporation shall indemnify each director and officer to the full extent under any other applicable law.

SECTION 10. CERTAIN DEFINITIONS – For the purposes of this Bylaw, the following definitions shall apply:

(a) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration

and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(b) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(c) The term the “Corporation” shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving Corporation as he would have with respect to such constituent Corporation if its separate existence had continued.

(d) References to a “director,” “officer,” “employee,” or “agent” of the Corporation shall include, without limitation, situations where such person is serving at the request of the Corporation as, respectively, a director, officer, employee, trustee or agent of another Corporation, partnership, joint venture, trust or other enterprise.

(e) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this section.

## **ARTICLE VII**

### **AMENDMENTS**

These By-Laws may be altered, amended or repealed at any annual meeting of the stockholders (or at any special meeting thereof if notice of such proposed alteration, amendment or repeal to be considered is contained in the notice of such special meeting) by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation. Except as otherwise provided in the Certificate of Incorporation of the Corporation, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present alter, amend or repeal these By-Laws, or enact such other By-Laws as in their judgment may be advisable for the regulation and conduct of the affairs of the Corporation.