

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): January 25, 2023

ORCHESTRA BIOMED HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-39421
(Commission File Number)

92-2038755
(IRS Employer
Identification No.)

150 Union Square Drive
New Hope, Pennsylvania 18938
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (215) 862-5797

Health Sciences Acquisitions Corporation 2
40 10th Avenue, Floor 7
New York, New York 10014
(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.0001 per share	OBIO	The Nasdaq Stock Market LLC

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

Emerging growth company

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

INTRODUCTORY NOTE

Unless the context otherwise requires, “New Orchestra” and the “Company” refer to Orchestra BioMed Holdings, Inc., a Delaware corporation (f/k/a Health Sciences Acquisitions Corporation 2), and its consolidated subsidiaries following the Closing (as defined below). Unless the context otherwise requires, references to “HSAC2” refer to Health Sciences Acquisitions Corporation 2, a Cayman Islands exempted company, prior to the Closing, references to “Domesticated HSAC” refer to Orchestra BioMed Holdings, Inc., a Delaware corporation (f/k/a Health Sciences Acquisitions Corporation 2) after the Domestication (as defined below) and prior to the Closing, and references to “Orchestra” refer to Orchestra BioMed, Inc. prior to the Closing. All references herein to the “Board” refer to the board of directors of New Orchestra.

Terms used in this Current Report on Form 8-K (this “Current Report”) but not defined herein, or for which definitions are not otherwise incorporated by reference herein, shall have the meaning given to such terms in the Proxy Statement/Prospectus (as defined below) in the section titled “*Frequently Used Terms*” beginning on page 6 thereof, and such definitions are incorporated herein by reference.

Domestication and Business Combination Transaction

As previously announced, HSAC2 previously entered into an agreement and plan of merger, dated as of July 4, 2022 (as amended by Amendment No. 1 to Agreement and Plan of Merger, dated July 21, 2022, and Amendment No. 2 to Agreement and Plan of Merger, dated November 21, 2022, the “Merger Agreement”), by and among HSAC2, HSAC Olympus Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of HSAC2 (“Merger Sub”), and Orchestra.

On January 25, 2023, as contemplated by the Merger Agreement and described in the section titled “*Proposal 2—The Domestication Proposal*” of the final prospectus and definitive proxy statement, dated December 16, 2022 (the “Proxy Statement/Prospectus”) and filed with the Securities and Exchange Commission (the “SEC”) on December 16, 2022, HSAC2 filed a notice of deregistration with the Cayman Islands Registrar of Companies, together with the necessary accompanying documents, and filed a certificate of corporate domestication and a certificate of incorporation with the Secretary of State of Delaware, pursuant to which HSAC2 was domesticated and continued as a Delaware corporation, under the name of “Orchestra BioMed Holdings, Inc.” (the “Domestication”).

As a result of, and upon the effective time of the Domestication, among other things, (i) each issued and outstanding ordinary share, par value \$0.0001 per share, of HSAC2 (the “HSAC2 Ordinary Shares”) converted automatically, on a one-for-one basis, into one share of HSAC2 common stock, par value \$0.0001 per share (“HSAC2 Common Stock”); and (ii) each issued and outstanding warrant to purchase HSAC2 Ordinary Shares converted automatically into a warrant to acquire one share of HSAC2 Common Stock.

As previously reported on the Current Report on Form 8-K filed with the SEC on January 24, 2023, HSAC2 held an extraordinary general meeting of its shareholders (the “Meeting”), at which the HSAC2 shareholders approved, among other matters, the Domestication and the Merger Agreement as described in the Proxy Statement/Prospectus.

On January 26, 2023 (the “Closing Date”), as contemplated by the Merger Agreement and described in the section of the Proxy Statement/Prospectus titled “*Proposal 1—The Business Combination Proposal*,” New Orchestra consummated the merger transaction contemplated by the Merger Agreement (the “Closing”), whereby Merger Sub merged with and into Orchestra, the separate corporate existence of Merger Sub ceasing and Orchestra being the surviving corporation and a wholly owned subsidiary of New Orchestra (the “Merger” and, together with the Domestication, the “Business Combination”). We refer to HSAC2 Common Stock, after giving effect to the Business Combination, as “New Orchestra Common Stock.”

Upon the Closing of the Merger, based on a ratio (the “Exchange Ratio”) of 0.465 shares of HSAC2 Common Stock for each whole share of Orchestra common stock, par value \$0.0001 per share (the “Orchestra Common Stock”), 20,191,338 shares of New Orchestra Common Stock were issued to Orchestra stockholders (exclusive of the additional shares subject to earnout discussed below in this paragraph) and 5,523,834 shares of New Orchestra Common Stock were reserved for issuance pursuant to the Orchestra stock options and warrants converted into New Orchestra stock options and warrants in the Merger.

The foregoing description of the Business Combination does not purport to be complete and is qualified in its entirety by the full text of the Merger Agreement, which is attached hereto as Exhibits 2.1, 2.2 and 2.3, respectively, and are incorporated herein by reference.

HSAC2 Shareholder Support Agreement and Forfeiture

As described in the Proxy Statement/Prospectus, simultaneously with the execution of the Merger Agreement, HSAC2 and Orchestra entered into a parent support agreement with HSAC 2 Holdings, LLC (the “Sponsor”) and certain other HSAC2 shareholders (as amended and restated on November 21, 2022, the “Parent Support Agreement”) pursuant to which the Sponsor and such HSAC2 shareholders agreed, among other things, (a) to appear at any general meetings called to approve the Merger or any proposal to extend the period of time HSAC2 is afforded under its organizational documents and its prospectus to consummate an initial business combination, (b) not to redeem their shares or any other equity securities of HSAC2 now or in future acquired or beneficially owned, (c) to vote such shares and equity securities (i) in favor of the Domestication, the Merger and related transactions (except that any such additional equity securities acquired, including the 1,000,000 Forward Purchase Shares and any Backstop Purchases, would not be voted in favor of approving the Business Combination), (ii) in favor of any proposal to extend the period of time HSAC2 is afforded under its organizational documents and its prospectus to consummate an initial business combination, and (iii) against any change in the business, management or board of HSAC2 contrary to the Merger Agreement and against any other proposal reasonably expected to breach, prevent or impede the Merger, and (d) to waive anti-dilution and similar rights with respect to such shares, whether under the HSAC2 amended and restated memorandum and articles of association, applicable law, or a contract regarding the Merger and related transactions with HSAC2.

In addition, the Sponsor agreed that 25% or 1,000,000 shares of its New Orchestra Common Stock received in the Domestication will be forfeited to New Orchestra on the first business day following the fifth anniversary of the Closing unless, as to 500,000 shares, the volume-weighted average price of the New Orchestra Common Stock is greater than or equal to \$15.00 per share over any 20 trading days within any 30-trading day period (the “Initial Milestone Event”), and as to the remaining 500,000 shares, the volume-weighted average price of the New Orchestra Common Stock is greater than or equal to \$20.00 per share over any 20 trading days within any 30-trading day period (the “Final Milestone Event”). Further, the Sponsor and HSAC2’s other initial shareholders prior to HSAC2’s initial public offering (the “IPO”) have agreed to subject (i) the 4,000,000 shares of New Orchestra Common Stock to be received in the Domestication in exchange for the 4,000,000 HSAC2 Ordinary Shares issued to HSAC2’s initial shareholders prior to the IPO (the “Insider Shares”) and (ii) the 450,000 shares of New Orchestra Common Stock to be received in the Domestication in exchange for 450,000 HSAC2 Ordinary Shares purchased in a private placement simultaneously with the IPO (the “Private Shares”) to a lock-up for up to 12 months following the Closing, and the Sponsor forfeited 50% of its 1,500,000 warrants in HSAC2 purchased upon consummation of the IPO (the “Private Warrants”), comprising 750,000 Private Warrants, for no consideration, immediately prior to the Closing (the “Sponsor Forfeiture”). Pursuant to the terms of the Merger Agreement, immediately following the Sponsor Forfeiture and prior to the Closing, HSAC2 issued 750,000 warrants to purchase New Orchestra Common Stock to eleven specified employees and directors of Orchestra. These new warrants have substantially similar terms to the forfeited Private Warrants, except that they will become exercisable between 24 and 36 months after the Closing.

The foregoing description of the Parent Support Agreement does not purport to be complete and is qualified in its entirety by the full text of the Parent Support Agreement, which is attached hereto as Exhibit 10.3 and is incorporated herein by reference.

Orchestra Stockholder Support Agreement

As described in the Proxy Statement/Prospectus, simultaneously with the execution of the Merger Agreement, HSAC2 and Orchestra entered into a support agreement with certain Orchestra stockholders, including Medtronic (the “Orchestra Support Agreement”), pursuant to which such stockholders have agreed (a) to appear at any stockholder meetings called to approve the Merger, (b) to vote such shares and equity securities (i) in favor of the Merger and related transactions, (ii) against any change in the business, management or board of Orchestra contrary to the Merger Agreement and (iii) against any other proposal reasonably expected to breach, prevent or impede the Merger.

The foregoing description of the Orchestra Support Agreement does not purport to be complete and is qualified in its entirety by the full text of the Orchestra Support Agreement, which is attached hereto as Exhibit 10.4 and is incorporated herein by reference.

Earnout

In connection with the Business Combination, existing Orchestra stockholders also had the opportunity to elect to participate in an earnout (the “Earnout”) pursuant to which each such electing stockholder (an “Earnout Participant”) may receive a portion of additional contingent consideration of up to 8,000,000 shares of New Orchestra Common Stock in the aggregate (“Earnout Consideration”). Approximately 91% of Orchestra stockholders elected to participate in the Earnout. Each Earnout Participant agreed to extend their applicable lock-up period from 6 months to 12 months, pursuant to an Earnout Election Agreement and such Earnout Participants will collectively be entitled to receive: (i) 4,000,000 shares of the Earnout Consideration, in the aggregate (“Initial Earnout Shares”), in the event that, from the time beginning immediately after the Closing until the fifth anniversary of the Closing Date (the “Earnout Period”), the Initial Milestone Event (as defined below) occurs; and (ii) an additional 4,000,000 shares of the Earnout Consideration, in the aggregate (“Final Earnout Shares” and, together with the Initial Earnout Shares, the “Earnout Shares”), in the event that, during the Earnout Period, the Final Milestone Event occurs.

The foregoing description of the Earnout does not purport to be complete and is qualified in its entirety by the full text of the Earnout Election Agreement, a form of which is attached hereto as Exhibit 10.5 and is incorporated herein by reference.

Forward Purchase Agreements

As described in the Proxy Statement/Prospectus, simultaneously with the execution of the Merger Agreement, HSAC2 and Orchestra entered into separate forward purchase agreements (each, as amended, a “Forward Purchase Agreement” and, together, the “Forward Purchase Agreements”) with certain funds managed by RTW Investments, LP (the “RTW Funds”) and Covidien Group S.à.r.l., an affiliate of Medtronic plc (“Medtronic” and the RTW Funds, each a “Purchasing Party”), pursuant to which each of the Purchasing Parties agreed to purchase \$10 million of HSAC2 Ordinary Shares from HSAC2 immediately prior to the Domestication (as defined below), less the dollar amount of HSAC2 Ordinary Shares holding redemption rights that the Purchasing Party acquires and holds until immediately prior to the Domestication (such HSAC2 Ordinary Shares either purchased from HSAC2 or acquired and held until immediately prior to the Domestication, the “Forward Purchase Shares”).

The RTW Funds completed their purchases of HSAC2 Ordinary Shares under their Forward Purchase Agreement on or before July 22, 2022. Medtronic completed approximately \$9.9 million of purchases of HSAC2 Ordinary Shares under its Forward Purchase Agreement on or before January 20, 2023. Medtronic subsequently completed \$0.1 million in purchases of HSAC2 Ordinary Shares and/or New Orchestra Common Stock on or before January 30, 2023.

The foregoing description of the Forward Purchase Agreements does not purport to be complete and is qualified in its entirety by the full text of the Forward Purchase Agreements, which are attached hereto as Exhibits 10.23, 10.24 and 10.25, respectively, and are incorporated herein by reference.

Backstop Agreement

As described in the Proxy Statement/Prospectus, simultaneously with the execution of the Merger Agreement and Forward Purchase Agreements, HSAC2, Orchestra and the RTW Funds entered into a Backstop Agreement (the “Backstop Agreement”), pursuant to which the RTW Funds, jointly and severally, agreed to purchase such number of HSAC2 Ordinary Shares at a price of \$10.00 per share to the extent that the amount of cash remaining in HSAC2’s working capital and trust account as of immediately prior to the closing of the Merger is less than \$60 million (the “Minimum Available Cash Condition”) (which calculation excludes amounts received pursuant to Medtronic’s Forward Purchase Agreement or are otherwise held in HSAC2’s trust account established pursuant to our IPO (the “Trust Account”) in respect of Medtronic’s Forward Purchase Shares, but is inclusive of amounts received pursuant to the RTW Funds’ Forward Purchase Agreement and otherwise held in the Trust Account in respect of the RTW Funds’ Forward Purchase Shares (the “Sponsor Commitment”).

Pursuant to the Backstop Agreement, the RTW Funds purchased 1,808,512 HSAC2 Ordinary Shares on January 25, 2023, immediately prior to the Domestication.

The foregoing description of the Backstop Agreement does not purport to be complete and is qualified in its entirety by the full text of the Backstop Agreement, which is attached hereto as Exhibits 10.26 and 10.27 and is incorporated herein by reference.

Item 1.01. Entry into a Material Definitive Agreement.

Amended and Restated Registration Rights and Lock-Up Agreement

In connection with the Closing, on January 26, 2023, New Orchestra, the RTW Funds and certain existing shareholders of HSAC2 and stockholders of Orchestra entered into an amended and restated registration rights and lock-up agreement (the “Registration Rights Agreement”) with respect to the resale of shares of New Orchestra held or acquired by such stockholders two business days prior to the filing of a registration statement with the SEC or a pre-effective amendment thereto, and including any shares issuable on conversion of preferred stock, Earnout Consideration and shares acquired under the Forward Purchase Agreements and the Backstop Agreements.

The Registration Rights Agreement amends and restates the registration rights agreement that HSAC2 entered into as of August 3, 2020 in connection with its initial public offering. Subject to the Lock-Up described below, New Orchestra will file a registration statement to register the public resale of the shares as soon as reasonably practicable, but in any event within 120 calendar days following the Closing. In addition, subject to certain requirements and customary conditions, including with regard to the number of requests that may be made and when, such stockholders may request to sell all or any portion of their registrable securities in an underwritten offering so long as the total offering price is reasonably expected to exceed, in the aggregate, \$25 million. In addition, the stockholders party to the Registration Rights Agreement will have certain “piggy-back” registration rights that require New Orchestra to include such securities in registration statements that New Orchestra otherwise files, subject to certain requirements and customary conditions. The Registration Rights Agreement does not contain liquidated damages provisions or other cash settlement provisions resulting from delays in registering the New Orchestra’s securities. New Orchestra will bear the expenses incurred in connection with the filing of any such registration statements. The Registration Rights Agreement contains customary indemnification provisions.

Pursuant to the Registration Rights Agreement, the signatories thereto have agreed, subject to certain customary exceptions, not to (i) sell, assign, offer to sell, contract or agree to sell, grant any option to purchase or otherwise dispose of or agree to dispose of, directly or indirectly, any shares subject to lock-up, (ii) establish or increase a put equivalent position or liquidation with respect to or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, with respect to any Lock-up Shares (as defined below), (iii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Lock-up Shares, or (iv) publicly announce an intention to effect any of the foregoing during the Lock-up Period (as defined below). The shares subject to lock-up are any shares of New Orchestra Common Stock or any security convertible into or exercisable or exchanged for New Orchestra Common Stock beneficially owned or owned of record by such Holder (“Lock-up Shares”), and the term “Lock-Up Period” means the period from the Closing until the earlier of: (1)(a) 12 months after the Closing with respect to the (i) 4,000,000 shares of New Orchestra Common Stock issued in the Domestication in exchange for 4,000,000 of HSAC2 Ordinary Shares that were issued to HSAC2’s initial shareholders prior to its initial public offering, (ii) 450,000 shares of New Orchestra Common Stock issued in the Domestication in exchange for 450,000 of HSAC2 Ordinary Shares that were issued in a private placement simultaneously with HSAC2’s initial public offering and (iii) any shares of New Orchestra Common Stock or any security convertible into or exchangeable for New Orchestra Common Stock beneficially owned or owned of record by RTW Investments, LP and its affiliates as of the Closing Date, and (b) six (6) months after the Closing with respect to all other Holders and New Orchestra Common Stock and (2) the date on which New Orchestra completes a liquidation, merger, stock exchange, reorganization or other similar transaction that results in all of the New Orchestra stockholders having the right to exchange their shares of New Orchestra Common Stock for cash, securities or other property.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the Registration Rights Agreement, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

Indemnification Agreements

On the Closing Date, New Orchestra entered into indemnification agreements with each of its directors and executive officers.

Each indemnification agreement provides for indemnification and advancements by New Orchestra of certain expenses and costs relating to claims, suits or proceedings arising from each director or executive officer's service to New Orchestra, or, at New Orchestra's request, service to other entities, as officers or directors to the maximum extent permitted by applicable law.

The foregoing description of the indemnification agreements does not purport to be complete and is qualified in its entirety by the terms and conditions of the indemnification agreements, a form of which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The disclosure set forth under "*Introductory Note—Domestication and Business Combination Transaction*" above is incorporated into this Item 2.01 by reference.

FORM 10 INFORMATION

Item 2.01(f) of Form 8-K states that if the predecessor registrant was a "shell company" (as such term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as HSAC2 was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. Accordingly, the Company, as the successor registrant to HSAC2 following the consummation of the Business Combination, is providing the information below that would be included in a Form 10 if the Company were to file a Form 10. Please note that the information provided below relates to the Company as the combined company after the consummation of the Business Combination unless otherwise specifically indicated or the context otherwise requires.

Forward-Looking Statements.

Certain statements contained in this Current Report and in the documents incorporated herein by reference may constitute "forward-looking statements" for purposes of federal securities laws. Such statements can be identified by the fact that they do not relate strictly to historical or current facts. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words "anticipate," "believe," "contemplate," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "will," "would" and similar expressions (including the negative of any of the foregoing) may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements in this Current Report may include, for example, but are not limited to, statements about:

- New Orchestra's ability to raise financing in the future;
- New Orchestra's ability to realize the anticipated benefits of the Business Combination;
- the attraction and retention of qualified directors, officers, employees and key personnel of New Orchestra;

- New Orchestra’s ability and/or the ability of third-party vendors and partners to manufacture its product candidates;
- New Orchestra’s ability to source critical components or materials for the manufacture of its product candidates;
- New Orchestra’s ability to achieve and sustain profitability;
- New Orchestra’s ability to achieve its projected development and commercialization goals;
- the rate of progress, costs and results of New Orchestra’s clinical studies and research and development activities;
- market acceptance of New Orchestra’s product candidates, if approved;
- New Orchestra’s ability to compete successfully with larger companies in a highly competitive industry;
- changes in New Orchestra’s operating results which make future operations results difficult to predict;
- existing loan and security agreement covenants that may restrict business and financing activities;
- serious adverse events, undesirable side effects that could halt the clinical development, regulatory approval or certification, of New Orchestra’s product candidates;
- New Orchestra’s ability to manage growth or control costs related to growth;
- economic conditions that may adversely affect New Orchestra’s business, financial condition and stock price;
- New Orchestra’s reliance on third parties to drive successful marketing and sale of its initial product candidates;
- New Orchestra’s reliance on third parties to manufacture and provide important materials and components for its products and product candidates;
- New Orchestra and its competitor’s abilities to obtain necessary regulatory approvals and certifications for its product candidates in an uncomplicated and inexpensive manner;
- New Orchestra’s ability to maintain compliance with regulatory and post-marketing requirements;
- adverse medical events, failure or malfunctions in connection with New Orchestra’s product candidates and possible subjection to regulatory sanctions;
- healthcare costs containment pressures and legislative or administrative reforms which affect coverage and reimbursement practices of third-party payors;
- New Orchestra’s ability to protect or enforce its intellectual property, unpatented trade secrets, know-how and other proprietary technology;
- New Orchestra’s ability to obtain necessary intellectual property rights from third parties;
- New Orchestra’s ability to protect its trademarks, trade names and build its names recognition;
- the ability to maintain the listing of the New Orchestra Common Stock on The Nasdaq Stock Market LLC (“Nasdaq”); and
- New Orchestra Common Stock’s potential liquidity and trading.

These forward-looking statements are based on current expectations and beliefs concerning future developments and their potential effects. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading “*Risk Factors*” in the Proxy Statement/Prospectus. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Some of these risks and uncertainties may in the future be amplified by the COVID-19 outbreak, and there may be additional risks that we consider immaterial or which are unknown. It is not possible to predict or identify all such risks. Readers are cautioned not to place undue reliance on forward-looking statements because of the risks and uncertainties related to them and to the risk factors. We do not undertake any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

Business

The business of HSAC2 prior to the Business Combination is described in the Proxy Statement/Prospectus in the section titled “*Business of HSAC2*” and that information is incorporated herein by reference. The business of New Orchestra is described in the Proxy Statement/Prospectus in the section titled “*Business of Orchestra*” and that information is incorporated herein by reference.

Risk Factors

The risk factors related to New Orchestra’s business and operations are set forth in the Proxy Statement/Prospectus in the section titled “*Risk Factors*” and that information is incorporated herein by reference.

Financial Information

The information set forth under Item 9.01 of this Current Report is incorporated herein by reference.

Management’s Discussion and Analysis of Financial Condition and Results of Operations

Management’s discussion and analysis of the financial condition and results of operations prior to the Business Combination is included in (a) the Company’s Management’s Discussion and Analysis of Financial Condition and Results of Operations beginning on page 310 of the Proxy Statement/Prospectus in the section titled “*Orchestra’s Management’s Discussion and Analysis of Financial Condition and Results of Operations*” are incorporated herein by reference and (b) HSAC2’s Management’s Discussion and Analysis of Financial Condition and Results of Operations beginning on page 213 of the Proxy Statement/Prospectus in the section titled “*Management’s Discussion and Analysis of Financial Condition and Results of Operations of HSAC2*” are incorporated herein by reference.

Facilities

The disclosure contained in the Proxy Statement/Prospectus in the section titled “*Business of Orchestra—Facilities*” is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information known to the Company regarding the beneficial ownership of New Orchestra Common Stock and voting power as of the Closing Date by:

- each person who is a named executive officer or director of New Orchestra;
- all executive officers and directors of New Orchestra as a group; and
- each person who is a beneficial owner of more than 5% of New Orchestra common stock.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days. Unless otherwise indicated, the Company believes that all persons named in the table below have sole voting and investment power with respect to the voting securities beneficially owned by them.

The beneficial ownership of New Orchestra Common Stock is based on 31,614,079 shares of such common stock outstanding as of January 26, 2023, immediately following the consummation of the Business Combination.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	% of Class
<i>Directors and named executive officers of New Orchestra⁽¹⁾</i>		
David P. Hochman ⁽²⁾	734,407	2.3%
Darren R. Sherman ⁽³⁾	673,964	2.1%
Yuval Mika, Ph.D. ⁽⁴⁾	250,106	*
Jason Aryeh ⁽⁵⁾	73,825	*
Pamela Y. Connealy ⁽⁶⁾	15,758	*
Eric S. Fain, M.D. ⁽⁷⁾	47,058	*
Eric A. Rose, M.D. ⁽⁸⁾	27,900	*
Geoffrey W. Smith ⁽⁹⁾	1,713,297	5.4%
All directors and executive officers of New Orchestra following as a group (nine individuals)	3,611,533	10.8%
<i>Five Percent Holders of New Orchestra:</i>		
HSAC 2 Holdings, LLC ⁽¹⁰⁾	5,110,956	15.8%
Entities associated with RTW Investments, LP ⁽¹¹⁾	5,118,512	16.2%
Medtronic ⁽¹²⁾	4,992,588	15.8%
Perceptive Life Sciences Master Fund ⁽¹³⁾	1,850,976	5.8%

* Less than one percent.

- (1) Unless otherwise indicated, the business address of each of the following individuals is 150 Union Square Drive, New Hope, PA 18938.
- (2) Consists of (i) 127,336 shares held directly by Mr. Hochman, of which 123,476 shares Mr. Hochman has the right to acquire dispositive power upon the settlement of restricted common stock awards as of or within 60 days, (ii) 422 shares over which Mr. Hochman has the right to acquire dispositive power upon exercise of warrants exercisable as of or within 60 days; (iii) 551,757 shares over which Mr. Hochman has the right to acquire dispositive power upon exercise of options exercisable as of or within 60 days; (iv) 51,342 shares held by the DPH 2008 Trust, over which Mr. Hochman has sole voting and dispositive power; (v) 3,140 shares held by the NSH 2008 Family Trust (the "NSH Trust"), over which Mr. Hochman has sole voting and dispositive power; and (vi) 410 shares over which the NSH Trust has the right to acquire dispositive power upon the exercise of warrants exercisable as of or within 60 days.
- (3) Consists of (i) 68,819 shares held directly by Mr. Sherman, of which 62,716 are restricted common stock awards that are fully vested; and (ii) 605,145 shares over which Mr. Sherman has the right to acquire dispositive power upon the exercise of options exercisable as of or within 60 days.
- (4) Consists of (i) 29,628 shares over which Mr. Mika has the right to acquire dispositive power upon the settlement of restricted common stock awards as of or within 60 days; and (ii) 220,478 shares over which Mr. Mika has the right to acquire dispositive power upon the exercise of options exercisable as of or within 60 days.

- (5) Consists of (i) 48,250 shares held directly by Mr. Aryeh; and (ii) 25,575 shares over which Mr. Aryeh has the right to acquire dispositive power upon the exercise of options exercisable as of or within 60 days.
- (6) Consists of 15,758 shares over which Ms. Connealy has the right to acquire dispositive power upon the exercise of options exercisable as of or within 60 days.
- (7) Consists of (i) 18,577 shares held by the Fain Living Trust (the “Fain Trust”), over which Mr. Fain has sole voting and dispositive power; (ii) 25,575 shares over which the Fain Trust has the right to acquire dispositive power upon the exercise of options exercisable as of or within 60 days; and (iii) 2,906 shares over which the Fain Trust has the right to acquire dispositive power upon the exercise of warrants exercisable as of or within 60 days.
- (8) Consists of (i) 25,575 shares over which Mr. Rose has the right to acquire dispositive power upon the exercise of options exercisable as of or within 60 days; and (ii) 2,325 shares over which Mr. Rose has the right to acquire dispositive power upon exercise of warrants exercisable as of or within 60 days.
- (9) Consists of (i) 25,575 shares over which Mr. Smith has the right to acquire dispositive power upon the exercise of options exercisable as of or within 60 days; (ii) 1,049,224 shares held by Ascent Biomedical Ventures II, L.P. (“ABV II”), (iii) 136,097 shares over which ABV II has the right to acquire dispositive power upon the exercise of warrants exercisable as of or within 60 days; (iv) 256,623 shares held by Ascent Biomedical Ventures Synecor, LP (“ABV Synecor”); (v) 519 shares over which ABV Synecor has the right to acquire dispositive power upon the exercise of warrants exercisable as of or within 60 days; (vi) 201,319 shares held by Ascent Biomedical Ventures II NY, LP (“ABV II NY”); and (vii) 43,940 shares over which ABV II NY has the right to acquire dispositive power upon the exercise of warrants exercisable as of or within 60 days. ABV, LLC serves as general partner to ABV II, ABV Synecor and ABV II NY. Mr. Smith is a managing member of ABV, LLC. As such, Mr. Smith may be deemed to have voting and dispositive power over the shares held by ABV II, ABV Synecor and ABV II NY.
- (10) The Sponsor is governed by a board of directors consisting of three directors: Roderick Wong, Naveen Yalamanchi, and Alice Lee. Each director has one vote, and the approval of a majority of the directors is required to approve an action of the Sponsor. Under the so-called “rule of three,” if voting and dispositive decisions regarding an entity’s securities are made by three or more individuals, and a voting or dispositive decision requires the approval of a majority of those individuals, then none of the individuals is deemed a beneficial owner of the entity’s securities. Based upon the foregoing analysis, no director of the Sponsor exercises voting or dispositive control over any of the shares held by the Sponsor, even those in which he or she directly holds a pecuniary interest. Accordingly, none of them will be deemed to have or share beneficial ownership of the shares held by the Sponsor.
- (11) Includes (i) 2,097,373 shares of New Orchestra Common Stock held by RTW Innovation Master Fund, Ltd.; (ii) 2,518,780 shares of New Orchestra Common Stock held by RTW Master Fund, Ltd.; and (iii) 502,359 shares of New Orchestra Common Stock held by RTW Venture Fund Limited. Roderick Wong, the former Chief Executive Officer of HSAC2, serves as the Managing Partner and Chief Investment Officer of RTW Investments, LP. Both he and RTW Investments, LP may be deemed the beneficial owner of the shares held by the RTW Funds and each disclaims beneficial ownership except to the extent of their pecuniary interest in the holders.
- (12) Consists of 4,992,588 shares held directly by Covidien Group S.à.r.l. The principal address of Covidien Group S.à.r.l. is c/o Medtronic, Inc., Operational Headquarters, 710 Medtronic Parkway, Minneapolis, MN 55432-5604.
- (13) Consists of (i) 1,781,226 shares held directly by Perceptive Life Sciences Master Fund, Ltd. (“Perceptive”) and (ii) 69,750 shares over which Perceptive has the right to acquire dispositive power upon the exercise of warrants exercisable as of or within 60 days. Perceptive Advisors LLC (“Perceptive Advisors”) serves as the investment manager to the Perceptive and may be deemed to beneficially own such shares. Joseph Edelman is the managing member of Perceptive Advisors and may be deemed to have voting and dispositive power over the shares held by Perceptive. The principal business address of the Perceptive is 51 Astor Place, 10th Floor, New York, NY 10003.

Directors and Executive Officers

The Company's directors and executive officers, composition of the committees of the Board and information with respect to the independence of the Board after the consummation of the Business Combination are described in the Proxy Statement/Prospectus in the section titled "*Management after the Business Combination*" and that information is incorporated herein by reference.

Executive Compensation

A description of the compensation of the named executive officers of HSAC2 before the consummation of the Business Combination, the named executive officers of Orchestra before the consummation of the Business Compensation and the named executive officers of New Orchestra after the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the sections titled "*Executive Officers and Directors of HSAC2—Executive Compensation*," "*Executive and Director Compensation of Orchestra*," and "*Management After the Business Combination*," respectively, and that information is incorporated herein by reference.

Reference is made to the disclosure set forth below in Item 5.02 of this Current Report under the headings "Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan" and "New Employment Agreements" which is incorporated herein by reference.

Director Compensation

A description of the compensation of the directors of HSAC2 before the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled "*Executive Officers and Directors of HSAC2—Executive Compensation*," and that information is incorporated herein by reference.

A description of the compensation of the directors of Orchestra before the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled "*Executive and Director Compensation of Orchestra*," and that information is incorporated herein by reference.

On January 26, 2023, the Compensation Committee of the Board adopted the Orchestra Biomed Holdings, Inc. Non-Employee Director Compensation Policy (the "New Orchestra Non-Employee Director Compensation Policy"), which is attached hereto as Exhibit and is incorporated herein by reference.

Certain Relationships and Related Party Transactions

Certain relationships and related party transactions of HSAC2 and the Company are described in the Proxy Statement/Prospectus in the section titled "*Certain Relationships and Related Transactions*" and that information is incorporated herein by reference.

Legal Proceedings

Information about legal proceedings is set forth in the section of the Proxy Statement/Prospectus "*Business of Orchestra—Legal Proceedings*" and such information is incorporated herein by reference.

Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

Information about the ticker symbol, number of stockholders and dividends for HSAC2's securities is set forth in the Proxy Statement/Prospectus in the section titled "*Ticker Symbol, Market Price and Dividend Policy*" and such information is incorporated herein by reference.

Immediately following the Closing, there were 568 holders of record of New Orchestra Common Stock and 296 holders of record of New Orchestra Warrants to purchase New Orchestra Common Stock.

New Orchestra's common stock began trading on January 27, 2023 under the symbol "OBIO".

New Orchestra has not paid any cash dividends on shares of its common stock to date. The payment of cash dividends in the future will be dependent upon its revenues and earnings, if any, capital requirements and general financial condition. The payment of any dividends will be within the discretion of the Board. It is the present intention of the Board to retain all earnings, if any, for use in our business operations and, accordingly, the Board does not anticipate declaring any dividends in the foreseeable future. Further, if we incur any indebtedness, our ability to declare dividends may be limited by restrictive covenants we may agree to in connection therewith.

Reference is made to the disclosure described in the Proxy Statement/Prospectus in the section titled "*Proposal 8—The Equity Incentive Plan Proposal*," which is incorporated herein by reference. The Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan (the "Equity Incentive Plan") was approved by HSAC2 shareholders at the Meeting.

Recent Sales of Unregistered Securities

Reference is made to the disclosure set forth below under Item 3.02 of this Current Report concerning the issuance and sale by the Company of certain unregistered securities, which is incorporated herein by reference.

Description of Registrant's Securities to Be Registered

The description of New Orchestra's securities is contained in the Proxy Statement/Prospectus in the section titled "*Description of Securities after the Business Combination*" and that information is incorporated herein by reference.

Immediately following the Closing, there were 31,614,079 shares of New Orchestra Common Stock issued and outstanding, held of record by 568 holders and 3,075,936 New Orchestra Warrants outstanding held of record by 296 holders. Such amounts do not include DTC participants or beneficial owners holding shares through nominee names.

Indemnification of Directors and Officers

Information about indemnification of the Company's directors and officers is set forth in the Proxy Statement/Prospectus in the section titled "*Management after the Business Combination—Limitation of Liability and Indemnification of Directors and Officers*" and that information is incorporated herein by reference. In connection with the Business Combination, New Orchestra entered into indemnification agreements with each of its directors and executive officers as of the Closing Date. The description of the indemnification agreements set forth above under Item 1.01 of this Current Report is incorporated herein by reference.

Financial Statements and Exhibits

The information set forth under Item 9.01 of this Current Report is incorporated herein by reference.

Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

The information set forth under Item 4.01 of this Current Report is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The disclosure set forth in the section titled “*Introductory Note—Backstop Agreement*” of this Current Report above is incorporated herein by reference.

The securities issued in connection with the Backstop Agreement were not registered under the Securities Act of 1933, as amended (the “Securities Act”) in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act.

Item 3.03. Material Modification to Rights of Security Holders.

In connection with the Domestication, HSAC2 filed a certificate of incorporation with the Secretary of State of the State of Delaware. The material terms of the certificate of incorporation and the general effect upon the rights of holders of HSAC2’s capital stock are discussed in the Proxy Statement/Prospectus in the sections titled “*Proposal 2—The Domestication Proposal*” and “*Proposal 5—The Advisory Governance Proposals*,” which are incorporated by reference herein.

As disclosed below in Item 8.01, in accordance with Rule 12g-3(a) under the Securities Exchange Act, New Orchestra is the successor issuer to HSAC2 and has succeeded to the attributes of HSAC2 as the registrant. In addition, the shares of New Orchestra Common Stock, as the successor to HSAC2, are deemed to be registered under Section 12(b) of the Exchange Act.

Certificate of Incorporation of New Orchestra and Bylaws of New Orchestra

Upon the effectiveness of the Domestication, HSAC2’s memorandum and articles of association in effect immediately prior to the Domestication were replaced with a certificate of incorporation and bylaws of Domesticated HSAC2, which continued in effect through the Closing. The certificate of incorporation of Domesticated HSAC2 became the certificate of incorporation of New Orchestra (the “Charter”). The bylaws of Domesticated HSAC2 became the bylaws of New Orchestra (the “Bylaws”). Copies of the Charter and the Bylaws are attached hereto as Exhibit 3.1 and Exhibit 3.2 hereto, respectively, and are incorporated herein by reference.

The material terms of each and the Charter and the Bylaws and the general effect upon the rights of holders of New Orchestra’s capital stock are included in the Proxy Statement/Prospectus under the sections titled “*Proposal 2—The Domestication Proposal*,” “*Proposal 3—The Charter Approval Proposal*,” “*Proposal 4—The Bylaws Proposal*” and “*Description of Securities after the Business Combination*,” which are incorporated herein by reference.

Item 4.01. Changes in Registrant’s Certifying Accountant.

Dismissal of independent registered public accounting firm

Effective upon the Closing, on January 26, 2023, the Board dismissed WithumSmith+Brown, PC (“Withum”), which served as HSAC2’s independent registered public accounting firm prior to the Business Combination.

The report of Withum on the financial statements of HSAC2 as of December 31, 2022 and 2021 did not contain an adverse opinion or a disclaimer of opinion, and was not qualified or modified as to uncertainty, audit scope or accounting principles except for an explanatory paragraph in such report regarding substantial doubt about HSAC2’s ability to continue as a going concern. During the fiscal years ended December 31, 2022 and 2021 and the subsequent interim period through January 26, 2023, there were no disagreements (as defined in Item 304(a)(1)(iv) of Regulation S-K) with Withum on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures, which disagreements, if not resolved to the satisfaction of Withum, would have caused Withum to make reference to the subject matter of the disagreements in its reports covering such periods. In addition, no “reportable events,” as defined in Item 304(a)(1)(v) of Regulation S-K, occurred within the period of Withum’s engagement and the subsequent interim period preceding Withum’s dismissal, other than the material weakness over financial reporting as a result of the Amended Form 10-K for the year ended December 31, 2021 filed with the SEC on March 31, 2022.

The Company provided Withum with a copy of the disclosures made pursuant to this Item 4.01 prior to the filing of this Current Report and requested that Withum furnish a letter addressed to the SEC dated January 31, 2023, which is filed as Exhibit 16.1 to this Current Report, stating whether it agrees with such disclosures, and, if not, stating the respects in which it does not agree.

Appointment of Ernst & Young LLP

Effective upon the Closing, the Board approved the engagement of Ernst & Young LLP (“EY”) as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2023, subject to the execution of an engagement letter. EY served as the independent registered public accounting firm for Orchestra prior to the Business Combination.

During the years ended December 31, 2021 and 2022 and the subsequent interim period through January 25, 2023, neither the Company nor anyone on its behalf consulted with EY regarding (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company’s financial statements, and no written report or oral advice was provided to the Company that EY concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing or financial reporting issue, or (ii) any matter that was the subject of a disagreement within the meaning of Item 304(a)(1)(iv) of Regulation S-K or any reportable event within the meaning of Item 304(a)(1)(v) of Regulation S-K.

Item 5.01. Changes in Control of Registrant.

Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled “*Proposal 1—The Business Combination Proposal*,” which is incorporated herein by reference. Further reference is made to the information contained in Item 2.01 to this Current Report, which is incorporated herein by reference.

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

The information contained in the sections titled “*Form 10 Information—Directors and Executive Officers*,” “*Form 10 Information—Executive Compensation*,” “*Form 10 Information—Director Compensation*,” “*Form 10 Information—Certain Relationships and Related Transactions*” and “*Form 10 Information—Indemnification of Directors and Officers*” in Item 2.01 to this Current Report is incorporated herein by reference.

Effective as of the Closing, the following people were appointed as directors of the Company:

- Class I directors: Eric A. Rose, M.D. and Jason Aryeh;
- Class II directors: Pamela Y. Connealy and Geoffrey W. Smith; and
- Class III directors: David P. Hochman, Darren R. Sherman and Eric S. Fain, M.D.

Effective as of the Closing, the executive officers of the Company are:

- David P. Hochman, Chief Executive Officer;
- Darren R. Sherman, President and Chief Operating Officer;
- Yuval Mika, Ph.D., General Manager and Chief Technology Officer, Bioelectronic Therapies; and
- Michael D. Kaswan, Chief Financial Officer.

Reference is made to the disclosure described in the Proxy Statement/Prospectus in the section titled “*Management after the Business Combination*” for biographical information about each of the directors and officers following the Business Combination, which is incorporated herein by reference.

Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan

On January 26, 2023, the Equity Incentive Plan became effective. The Equity Incentive Plan is described in greater detail in the section of the Proxy Statement/Prospectus titled “*Proposal 8—The Equity Incentive Plan Proposal*,” which is incorporated herein by reference.

The foregoing description of the Equity Incentive Plan, including the description in the Proxy Statement/Prospectus referenced above, does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Equity Incentive Plan, which is included herein as Exhibit 10.7 and is incorporated herein by reference.

New Employment Agreements

On January 26, 2023, Orchestra entered into employment agreements with each of David P. Hochman and Darren R. Sherman that governs the terms of their employment with Orchestra. The agreements provide that Mr. Hochman shall serve as Chief Executive Officer and Orchestra BioMed Founder and Mr. Sherman shall serve as President, Chief Operating Officer, and Orchestra BioMed Founder. Employment under the agreements is “at will” although Mr. Hochman and Mr. Sherman may be entitled to severance upon certain terminations as described below. Pursuant to the agreements, the executives receive annual base salary (\$595,000 for Mr. Hochman and \$495,000 for Mr. Sherman). In addition to this base compensation, the executives are each eligible to receive a discretionary annual bonus during each fiscal year of his employment with a target amount of 80% of base salary, with the performance metrics and goals required to receive such amount to be determined by the Orchestra Board in consultation with Orchestra’s Chief Executive Officer. The agreements also provide for a future grant of equity compensation (the “Equity Grant”) to each of the executives, to be made as soon as reasonably practicable following the beginning of Orchestra’s first open trading window, so that the executive’s long-term equity holdings in Orchestra are at least 4.6% of Orchestra’s common stock in the case of Mr. Hochman and 4.3% in the case of Mr. Sherman. These percentages assume the future grant is in the form of options with a four-year vesting schedule commencing as of the Closing Date. However, the agreements contemplate that if instead the award is restricted stock units, the number of covered shares of Orchestra common stock will be reduced by a ratio based on two shares covered by restricted stock units being equal to three shares covered by stock options and that the award will vest over a to-be-agreed vesting schedule over a minimum of three years.

Board Membership Provisions under Messrs. Hochman and Sherman’s Employment Agreements

The employment agreements provide that so long as each of Messrs. Hochman and Sherman remain in their current positions (Chief Executive Officer for Mr. Hochman and President and Chief Operating Officer for Mr. Sherman), Orchestra shall nominate each of them to serve as a member of the Orchestra Board. Messrs. Hochman and Sherman’s service as a member of the Orchestra Board shall end upon certain specified events, including the termination of their employment and the expiration of their then current term if not reelected by Orchestra’s stockholders.

Termination and Severance Provisions under Messrs. Hochman and Sherman's Employment Agreements

With respect to the each of Messrs. Hochman and Sherman, if Orchestra terminates his employment without Cause (as defined below), if he voluntarily resigns with Good Reason (as defined below), or in the event of his death, and subject to an effective release of claims, Orchestra will pay or provide him or his estate with continued base salary plus target bonus for 12 months. In addition, in the event of a termination without Cause or resignation for Good Reason, and subject to an effective of release of claims, Orchestra will pay or provide the executive with (i) if he validly elects to continue his healthcare coverage under applicable law, reimbursement of the applicable premium for up to 12 months, (ii) an extended stock option post-termination exercise period of up to 12 months, and (iii) all equity award held by the executive granted prior to the Closing Date will vest to the same extent such awards would have vested had the executive provided an additional 12 months of services. If the termination without Cause or resignation for Good Reason occurs within the period beginning three months prior to a change in control and ending 12 months following a change in control, then, subject to an effective release of claims, the continued base salary and target bonus component of severance specified under clause (i) shall be increased to 150% of annual base salary and target bonus, and (ii) all unvested equity awards held by the executive shall vest in full.

In addition, upon any termination of employment, each of Messrs. Hochman and Sherman shall be entitled to payment of accrued, but unpaid, base salary and reimbursement of previously and properly incurred business expenses.

Other Change in Control Provisions Not Part of Severance

The employment agreements provide that if a change in control occurs and the acquirer or surviving corporation refuses to assume or substitute for the executive's outstanding equity awards, the equity awards shall vest in full as of the date immediately preceding the change in control.

Definition of Cause under the Employment Agreements

"Cause" means each of:

- executive's breach of any of his obligations under the restrictive covenants section of his employment agreement;
- executive's breach of any of his obligations under his employment agreement (other than the restrictive covenants section of his agreement), which, to the extent curable, has not been cured within 30 days after the executive has been provided written notice of such breach;
- executive being convicted of, or pleading guilty or nolo contendere to, or being indicted for, any felony or any misdemeanor involving theft, fraud, dishonesty or moral turpitude; or
- fraud or embezzlement against Orchestra.

Definition of Good Reason under the Employment Agreements

"Good Reason" means each of:

- any change in the executive's position, title or reporting relationship with Orchestra that diminishes in any material respect the executive's authority, duties, or responsibilities; provided, however, that a change in authority, duties, or responsibilities due to Orchestra becoming a division, subsidiary, or other similar part of a larger organization shall not by itself constitute Good Reason;

- any material reduction in the executive’s base compensation;
- the relocation of the executive’s principal office or principal place of employment by more than fifty miles;
- or a material breach of the employment agreement by Orchestra;

provided, however, that the executive must provide written notice within 60 days of the occurrence of the potential Good Reason trigger; if curable, Orchestra must fail to cure the potential Good Reason trigger within 60 days of receipt of notice, and the executive must resign within 60 days following the expiration of the 60-day cure period.

Golden Parachute Provisions

The employment agreements contain customary golden parachute provisions providing that if, in connection with a change of control, amounts would constitute “parachute payments” under Section 280G of the Internal Revenue Code of 1986, as amended, and be subject to an excise tax under Section 4999 of the Internal Revenue Code of 1986, amounts will either be (i) reduced, or (ii) paid in full, whichever results in the greater after tax amount to the executive.

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

The disclosure set forth in Item 3.03 of this Current Report is incorporated in this Item 5.03 by reference.

Item 5.05. Amendments to the Registrant’s Code of Ethics, or Waiver of a Provision of the Code of Ethics.

In connection with the Closing, on January 26, 2023, the Board approved and adopted a new Code of Business Conduct and Ethics applicable to all employees, officers and directors of the Company. A copy of the code is available in the Investors section of the Company’s website at www.orchestrabiomed.com.

Item 5.06. Change in Shell Company Status.

As a result of the Business Combination, the Company ceased to be a shell company upon the closing of the Business Combination. The material terms of the Business Combination are described in the sections titled “*Proposal 1 – The Business Combination Proposal*” of the Proxy Statement/Prospectus, and are incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On January 27, 2023, the Company issued a press release announcing the consummation of the Business Combination, and the listing of its common stock on Nasdaq. The press release is filed as Exhibit 99.1 to this Current Report and is incorporated herein by reference. The foregoing (including Exhibit 99.1) is being furnished pursuant to Item 7.01 and will not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor will it be deemed to be incorporated by reference in any filing under the Securities Act or the Exchange Act.

Item 8.01. Other Events.

By operation of Rule 12g-3(a) under the Exchange Act, the Company is the successor issuer to HSAC2 and has succeeded to the attributes of HSAC2 as the registrant, including HSAC2's SEC file number (001-39421) and CIK Code (0001814114). The Company's common stock is deemed to be registered under Section 12(b) of the Exchange Act, and the Company will hereafter file reports and other information with the SEC using HSAC2's SEC file number (001-39421).

The Company's common stock is listed for trading on Nasdaq under the symbol "OBIO," and the CUSIP number relating to the Company's common stock is 68572M 106.

Holders of HSAC2 shares who have filed reports under the Exchange Act with respect to those shares should indicate in their next filing, or any amendment to a prior filing, filed on or after the Closing Date that the Company is the successor to HSAC2.

Item 9.01. Financial Statements and Exhibits.

(a) Financial statements of businesses acquired.

The unaudited condensed consolidated financial statements of HSAC2 as of and for the three and nine months ended September 30, 2022 and 2021, and the related notes thereto beginning on page F-18 of the Proxy Statement/Prospectus, are incorporated herein by reference. These unaudited condensed consolidated financial statements should be read in conjunction with the historical audited financial statements of HSAC2 from May 25, 2020 (inception) through December 31, 2020 and the year ended December 31, 2021 and the related notes included in the Proxy Statement/Prospectus beginning on page F-2 thereof, which are incorporated herein by reference.

The unaudited consolidated financial statements of Orchestra as of and for the nine months ended September 30, 2022 and 2021 and the related notes included in the Proxy Statement/Prospectus beginning on page F-66 thereof are incorporated by reference herein. These unaudited consolidated financial statements should be read in conjunction with the historical audited financial statements of Orchestra for the years ended December 31, 2021 and 2020 and the related notes included in the Proxy Statement/Prospectus beginning on page F-36 thereof, which are incorporated herein by reference.

(b) Pro forma financial information.

The unaudited pro forma condensed combined financial information as of September 30, 2022 and for the nine months ended September 30, 2022 and the year ended December 31, 2021 is attached hereto as Exhibit 99.5 and is incorporated herein by reference.

(d) Exhibits.

Exhibit Number	Description
2.1#	<u>Agreement and Plan of Merger dated as of July 4, 2022 by and among Health Sciences Acquisitions Corporation 2, HSAC Olympus Merger Sub, Inc., and Orchestra BioMed, Inc. (incorporated by reference to Annex A-1 of Amendment No. 4 of HSAC2's Form S-4 (File No. 333-266660), filed with the SEC on December 12, 2022).</u>
2.2#	<u>Amendment No. 1 to Agreement and Plan of Merger dated as of July 21, 2022 by and among Health Sciences Acquisitions Corporation 2, HSAC Olympus Merger Sub, Inc., and Orchestra BioMed, Inc. (incorporated by reference to Annex A-2 of Amendment No. 4 of HSAC2's Form S-4 (File No. 333-266660), filed with the SEC on December 12, 2022).</u>
2.3#	<u>Amendment No. 2 to Agreement and Plan of Merger dated as of November 21, 2022 by and among Health Sciences Acquisitions Corporation 2, HSAC Olympus Merger Sub, Inc., and Orchestra BioMed, Inc. (incorporated by reference to Annex A-3 of Amendment No. 4 of HSAC2's Form S-4 (File No. 333-266660), filed with the SEC on December 12, 2022).</u>
3.1+	<u>Certificate of Incorporation of Orchestra BioMed Holdings, Inc.</u>
3.2+	<u>Bylaws of Orchestra BioMed Holdings, Inc.</u>
4.1	<u>Form of Common Stock Warrant, issued by Orchestra BioMed, Inc. in the Formation Mergers in exchange for Caliber, BackBeat and FreeHold warrants (incorporated by reference to Exhibit 4.4 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.2	<u>Form of Amendment to Common Stock Warrant, issued by Orchestra BioMed, Inc. in the Formation Mergers in exchange for Caliber, BackBeat and FreeHold warrants (incorporated by reference to Exhibit 4.5 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.3	<u>Form of Amended and Restated Common Stock Warrant, issued by Orchestra BioMed, Inc. to designees of Aegis Capital Corp. (incorporated by reference to Exhibit 4.6 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.4	<u>Form of Special Advisory Common Stock Warrant, issued by Orchestra BioMed, Inc. to its strategic advisers, dated May 31, 2018 (incorporated by reference to Exhibit 4.7 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.5	<u>Form of Amendment to Special Advisory Common Stock Warrant, issued by Orchestra BioMed, Inc. to its strategic advisers (incorporated by reference to Exhibit 4.8 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.6	<u>Form of Common Stock Warrant, issued by Orchestra BioMed, Inc. to SLD Capital Corp., dated August 13, 2018 (incorporated by reference to Exhibit 4.9 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.7	<u>Form of Amendment to Common Stock Warrant, issued by Orchestra BioMed, Inc. to SLD Capital Corp. (incorporated by reference to Exhibit 4.10 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.8	<u>Investors' Rights Agreement, by and among Orchestra BioMed, Inc. and the investors listed on Schedule A thereto, dated May 31, 2018 (incorporated by reference to Exhibit 4.11 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.9	<u>Form of Subscription Agreement for shares of Orchestra BioMed, Inc. Series B-1 Preferred Stock (incorporated by reference to Exhibit 4.12 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.10	<u>Common Stock Warrant, issued by Orchestra BioMed, Inc. to Silicon Valley Bank, dated December 10, 2019 (incorporated by reference to Exhibit 4.13 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.11	<u>Common Stock Warrant, issued by Orchestra BioMed, Inc. to Avenue Venture Opportunities Fund, L.P., dated June 3, 2022 (incorporated by reference to Exhibit 4.14 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.12	<u>Common Stock Warrant, issued by Orchestra BioMed, Inc. to Avenue Venture Opportunities Fund II, L.P., dated June 3, 2022 (incorporated by reference to Exhibit 4.15 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.13	<u>Form of New Orchestra Common Stock Warrant issued pursuant to the Parent Support Agreement (incorporated by reference to Exhibit 4.16 of HSAC2's Form S-4 (File No. 333-266660)).</u>
4.14+	<u>Amended & Restated Warrant issued to HSAC 2 Holdings, LLC, dated January 26, 2023.</u>

- 10.1+ [Amended and Restated Registration Rights and Lock-Up Agreement, by and among Health Sciences Acquisitions Corporation 2, equityholders thereof and certain stockholders of Orchestra BioMed, Inc.](#)
- 10.2*+ [Form of Indemnification Agreement of Orchestra BioMed Holdings, Inc.](#)
- 10.3 [Amended and Restated Parent Support Agreement dated as of November 21, 2022 by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc., HSAC 2 Holdings, LLC, Alice Lee, Stephanie A. Sirota, Pedro Granadillo, Stuart Peltz, Michael Brophy, and Carsten Boess \(incorporated by reference to Exhibit 10.16 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.4 [Orchestra Support Agreement dated as of July 4, 2022 by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc., and Covidien Group S.À.R.L. \(incorporated by reference to Exhibit 10.5 to HSAC2's Current Report on Form 8-K filed with the SEC on July 5, 2022\).](#)
- 10.5 [Form of Earnout Election Agreement, by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc. and the securityholders thereto \(incorporated by reference to Exhibit 10.7 to HSAC2's Current Report on Form 8-K filed with the SEC on July 5, 2022\).](#)
- 10.6* [Orchestra BioMed, Inc. 2018 Stock Incentive Plan \(incorporated by reference to Exhibit 10.19 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.7*+ [Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan.](#)
- 10.8*+ [Form of Stock Option Grant Notice and Stock Option Agreement under the Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan.](#)
- 10.9*+ [Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan.](#)
- 10.10^ [Commercial Lease, by and between Caliber Therapeutics, Inc. and Union Square, L.P. for facilities at 150 and 140 Union Square Drive, New Hope, Pennsylvania, dated December 14, 2009 and amended June 22, 2010, February 1, 2011, September 18, 2012, January 15, 2015, January 20, 2017, August 8, 2017, and January 29, 2019 \(incorporated by reference to Exhibit 10.23 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.11 [Agreement of Lease, by and between Orchestra BioMed, Inc. and ESRT One Grand Central Place, L.L.C. for facilities at Room/Suite 2430, One Grand Central Place, 60 East 42nd Street, New York, New York, dated November 5, 2019 \(incorporated by reference to Exhibit 10.24 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.12 [Irrevocable Standby Letter of Credit, issued by Silicon Valley Bank to Orchestra BioMed, Inc. for the benefit of ERST One Grand Central Place, L.L.C., dated October 28, 2019 and amended September 20, 2022 \(incorporated by reference to Exhibit 10.25 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.13 [License Agreement, by and between MOTUS GI Holdings, Inc. and Orchestra BioMed, Inc. for facilities at Suite 310, 1301 East Broward Boulevard, Fort Lauderdale, Florida, dated January 22, 2020 \(incorporated by reference to Exhibit 10.26 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.14 [Amendment to License Agreement, by and between MOTUS GI Holdings, Inc. and Orchestra BioMed, Inc., dated May 1, 2022 \(incorporated by reference to Exhibit 10.27 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.15^ [Exclusive License and Collaboration Agreement, by and among Orchestra BioMed, Inc., BackBeat Medical, LLC, and Medtronic, Inc. dated June 30, 2022 \(incorporated by reference to Exhibit 10.28 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)
- 10.16^ [Distribution Agreement, by and among Orchestra BioMed, Inc., Terumo Corporation and Terumo Medical Corporation, dated June 13, 2019 \(incorporated by reference to Exhibit 10.29 of HSAC2's Form S-4 \(File No. 333-266660\)\).](#)

10.17	<u>Loan and Security Agreement, by and among Orchestra BioMed, Inc., Avenue Venture Opportunities Fund II, L.P., and Avenue Venture Opportunities Fund II, L.P., dated June 3, 2022 (incorporated by reference to Exhibit 10.30 of HSAC2's Form S-4 (File No. 333-266660)).</u>
10.18	<u>Stock Purchase Agreement, by and among Orchestra BioMed, Inc., Orchestra Medical Ventures, LLC and Accelerated Technologies, Inc., dated December 20, 2019 (incorporated by reference to Exhibit 10.31 of HSAC2's Form S-4 (File No. 333-266660)).</u>
10.19*+#	<u>Employment Agreement, by and between Orchestra BioMed Holdings, Inc. and David P. Hochman, dated January 26, 2023.</u>
10.20*+#	<u>Employment Agreement, by and between Orchestra BioMed Holdings, Inc. and Darren R. Sherman, dated January 26, 2023.</u>
10.21*	<u>Employment Agreement, by and between Orchestra BioMed, Inc. and Yuval Mika, dated May 31, 2018 (incorporated by reference to Exhibit 10.34 of HSAC2's Form S-4 (File No. 333-266660)).</u>
10.22*	<u>Offer Letter, by and between Orchestra BioMed, Inc. and Michael D. Kaswan, dated January 9, 2022 (incorporated by reference to Exhibit 10.35 of HSAC2's Form S-4 (File No. 333-266660)).</u>
10.23	<u>Forward Purchase Agreement dated as of July 4, 2022, by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc., and Covidien Group S.à.r.l. (incorporated by reference to Exhibit 10.1 to HSAC2's Current Report on Form 8-K filed with the SEC on July 5, 2022).</u>
10.24	<u>Forward Purchase Agreement dated as of July 4, 2022, by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc., and RTW Master Fund, Ltd., RTW Innovation Master Fund, Ltd., and RTW Venture Fund Limited (incorporated by reference to Exhibit 10.2 to HSAC2's Current Report on Form 8-K filed with the SEC on July 5, 2022).</u>
10.25	<u>Amendment No. 1 to Forward Purchase Agreement dated as of October 21, 2022, by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc., and RTW Master Fund, Ltd., RTW Innovation Master Fund, Ltd., and RTW Venture Fund Limited (incorporated by reference to Exhibit 10.1 to HSAC2's Current Report on Form 8-K filed with the SEC on October 21, 2022).</u>
10.26	<u>Backstop Agreement dated as of July 4, 2022, by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc., RTW Master Fund, Ltd., RTW Innovation Master Fund, Ltd., and RTW Venture Fund Limited (incorporated by reference to Exhibit 10.3 to HSAC2's Current Report on Form 8-K filed with the SEC on July 5, 2022).</u>
10.27	<u>Amendment No. 1 to Backstop Agreement dated as of October 21, 2022, by and among Health Sciences Acquisitions Corporation 2, Orchestra BioMed, Inc., RTW Master Fund, Ltd., RTW Innovation Master Fund, Ltd., and RTW Venture Fund Limited (incorporated by reference to Exhibit 10.2 to HSAC2's Current Report on Form 8-K filed with the SEC on October 21, 2022).</u>
16.1+	<u>Letter from WithumSmith+Brown, PC to the SEC, dated January 31, 2023.</u>
21.1+	<u>List of Subsidiaries.</u>
99.1+	<u>Press Release, dated January 27, 2023.</u>
99.2+	<u>Unaudited pro forma condensed combined financial information and the accompanying notes as of and for the nine months ended September 30, 2022 and for the year December 31, 2021.</u>
104+	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

+ Filed herewith.

* Indicates a management contract or compensatory plan.

^ Certain identified information has been omitted pursuant to Item 601(b)(10) of Regulation S-K because such information is both (i) not material and (ii) information that the Registrant treats as private or confidential. The Registrant hereby undertakes to furnish supplemental copies of the unredacted exhibit upon request by the SEC.

Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601. The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

SIGNATURES

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

ORCHESTRA BIOMED HOLDINGS, INC.

By: /s/ David P. Hochman

Name: David P. Hochman

Title: Chief Executive Officer

Date: January 31, 2023

**CERTIFICATE OF INCORPORATION
OF
ORCHESTRA BIOMED HOLDINGS, INC.**

I.

The name of the corporation is Orchestra BioMed Holdings, Inc. (hereinafter called the “**Corporation**”).

II.

The address of the registered office of the Corporation in the State of Delaware is 850 New Burton Road, Suite 201, the City of Dover, County of Kent 19904, and the name of the registered agent of the Corporation in the State of Delaware at such address is Cogency Global Inc.

III.

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (“**DGCL**”).

The Corporation is being incorporated in connection with the domestication of Health Sciences Acquisitions Corporation 2, a Cayman Islands exempted company (“**HSAC2**”), to a Delaware corporation, which domestication is being effected in connection with the transactions contemplated by that certain Agreement and Plan of Merger entered into by HSAC2, HSAC Olympus Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of HSAC2, and Orchestra BioMed, Inc., a Delaware corporation, on July 4, 2022, as amended, and this Certificate of Incorporation (as amended and/or restated from time to time, including pursuant to any Preferred Stock Designation (as defined below), this “Certificate of Incorporation”) is being filed simultaneously with a certificate of domestication effecting such domestication.

IV.

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, “Common Stock,” and “Preferred Stock.” The total number of shares that the Corporation is authorized to issue is 350,000,000 shares, 340,000,000 shares of which shall be Common Stock (the “**Common Stock**”), and 10,000,000 shares of which shall be Preferred Stock (the “**Preferred Stock**”). The Common Stock shall have a par value of \$0.0001 per share, and the Preferred Stock shall have a par value of \$0.0001 per share.

B. The Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such designations and powers, preferences, privileges and rights, and qualifications, limitations and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors as hereafter prescribed (a “**Preferred Stock Designation**”). Subject to any limitation prescribed by law and the rights of any series of the Preferred Stock then outstanding, if any, authority is hereby expressly granted to and vested in the Board of Directors to authorize the issuance of all or any of the shares of the Preferred Stock in one or more series, and, with respect to each series of Preferred Stock, to fix the number of shares and state by the Preferred Stock Designation, the designations, powers, preferences, privileges and relative participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase (but not above the authorized number of shares of Preferred Stock) or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issuance of shares of that series.

C. The number of authorized shares of Preferred Stock, or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of stock of the Corporation entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, or Common Stock, irrespective of the provisions of Section 242(b)(2) of the DGCL, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation filed with respect to any series of Preferred Stock.

D. Except as provided above, the designations, powers, preferences, privileges and relative participating, optional, or other rights, and qualifications, limitations, or restrictions of the Common Stock are as follows:

1. Rights Relating to Dividends, Subdivisions and Combinations. Subject to the prior rights of holders of all classes and series of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors. Any dividends paid to the holders of shares of Common Stock shall be paid pro rata, on an equal priority, pari passu basis, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of the applicable class of Common Stock treated adversely, voting separately as a class.

2. Voting Rights.

(a) Except as otherwise required by law or this Certificate of Incorporation (the “*Certificate of Incorporation*”) (including any Preferred Stock Designation), at any annual or special meeting of the stockholders of the Corporation, holders of the Common Stock shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders.

(b) Except as otherwise required by law or the Certificate of Incorporation (including any Preferred Stock Designation), the holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of the Common Stock are entitled to vote.

(c) Except as otherwise required by applicable law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or applicable law.

3. Liquidation Rights.

In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, upon the completion of the distributions required with respect to each series of Preferred Stock that may then be outstanding, the remaining assets of the Corporation legally available for distribution to stockholders shall be distributed on an equal priority, pro rata basis to the holders of Common Stock, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock; provided, however, for the avoidance of doubt, compensation pursuant to any employment, consulting, severance or other compensatory arrangement to be paid to or received by a person who is also a holder of Common Stock does not constitute consideration or a “distribution to stockholders” in respect of the Common Stock.

V.

A. The liability of the directors or officers of the Corporation for monetary damages for breach of fiduciary duty as a director or officer shall be eliminated to the fullest extent authorized under applicable law, provided that this provision shall not eliminate or limit the liability of:

1. a director or officer for any breach of the director’s or officer’s duty of loyalty to the Corporation or its stockholders;
2. a director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
3. a director under Section 174 of the DGCL;
4. a director or officer for any transaction from which the director or officer derived an improper personal benefit; or
5. an officer in any action by or in the right of the Corporation.

Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director or officer of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

B. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and other agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law.

C. If applicable law is amended after approval by the stockholders of this Article V to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer to the Corporation shall be eliminated or limited to the fullest extent permitted by applicable law as so amended. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

D. All references in this Article V to an “officer” shall mean a person who:

1. is or was the president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, controller, treasurer or chief accounting officer of the Corporation at any time during the course of conduct alleged in the action or proceeding to be wrongful;
2. is or was identified in the Corporation’s public filings with the United States Securities and Exchange Commission because such person is or was one of the most highly compensated executive officers of the Corporation at any time during the course of conduct alleged in the action or proceeding to be wrongful; or
3. has, by written agreement with the Corporation, consented to be identified as an officer for purposes of this Article V.

VI.

A. Unless the Corporation consents in writing to the selection of an alternative forum, (a) the Court of Chancery (the “*Chancery Court*”) of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action, suit or proceeding brought on behalf of the Corporation, (ii) any action, suit or proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer or stockholder of the Corporation to the Corporation or to the Corporation’s stockholders, (iii) any action, suit or proceeding arising pursuant to any provision of the DGCL or the bylaws of the Corporation or this Certificate of Incorporation (as either may be amended from time to time) or (iv) any action, suit or proceeding asserting a claim against the Corporation governed by the internal affairs doctrine; and (b) subject to the preceding provisions of this Article VI, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended (the “*Securities Act*”). If any action the subject matter of which is within the scope of clause (a) of the immediately preceding sentence is filed in a court other than the courts in the State of Delaware (a “*Foreign Action*”) in the name of any stockholder, such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of clause (a) of the immediately preceding sentence and (y) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

B. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article VI. Notwithstanding the foregoing, the provisions of this Article VI shall not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts of the United States have exclusive jurisdiction.

C. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article VI (including, without limitation, each portion of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

VII.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. Board of Directors.

1. Generally. The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board of Directors. The authorized number of directors which shall constitute the Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

2. Election.

(a) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors as specified in any Preferred Stock Designation, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. Each class shall consist, as nearly as possible, of one-third of the total number of such directors. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following such initial classification of the Board of Directors, the initial term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following such initial classification of the Board of Directors, the initial term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following such initial classification of the Board of Directors, the initial term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

(b) At any time that applicable law prohibits a classified board as described in Section A.2.(a) of this Article VII, all directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

(c) No stockholder entitled to vote at an election for directors may cumulate votes to which such stockholder is entitled unless required by applicable law at the time of such election. During such time or times that applicable law requires cumulative voting, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(d) Notwithstanding the foregoing provisions of this section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

3. Removal of Directors. Subject to any limitations imposed by applicable law, removal shall be as provided in Section 141(k) of the DGCL.

4. Vacancies. Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders and except as otherwise provided by applicable law, be filled only by a majority of the directors then in office, although less than a quorum, or by the sole remaining director, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

B. Stockholder Actions. No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws, and no action shall be taken by the stockholders by written consent. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

C. Bylaws. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws. The stockholders shall also have the power to adopt, amend or repeal the Bylaws; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

VIII.

A. The Corporation reserves the right to amend, alter, change or repeal any provision contained in the Certificate of Incorporation, in the manner now or hereafter prescribed by the DGCL, except as provided in paragraph B. of this Article VIII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of the Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law or by the Certificate of Incorporation or any Preferred Stock Designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, VII and VIII.

IN WITNESS WHEREOF, this Certificate of Incorporation has been executed on this 25th day of January, 2023.

By: /s/ Roderick Wong

Name: Roderick Wong

Title: Incorporator

BYLAWS
OF
ORCHESTRA BIOMED HOLDINGS, INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be as set forth in the certificate of incorporation of the corporation (the “*Certificate of Incorporation*”).

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors of the corporation (the “*Board of Directors*”), and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or as may be necessary or convenient to the business of the corporation.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, “Corporate Seal-Delaware.” Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS’ MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place (if any), either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (the “*DGCL*”). For the avoidance of doubt, the Board of Directors may, in its sole discretion, determine that a meeting of stockholders of the corporation may be held both in a place and by means of remote communication. For any meeting of stockholders to be held by remote communication, the corporation shall (i) implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by remote communication is a stockholder or proxy holder, (ii) implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held at such place, if any, and on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the corporation’s notice of meeting of stockholders. Nominations of persons for election to the Board of Directors and proposals of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation’s notice of meeting of stockholders given by or at the direction of the Board of Directors; (ii) brought specifically by or at the direction of the Board of Directors or a duly authorized committee thereof; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder’s notice provided for in Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation’s notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “*1934 Act*”), and the rules and regulations thereunder before an annual meeting of stockholders).

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting in accordance with Section 5(a) and the procedures below.

(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a), such stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee; (2) the principal occupation or employment of such nominee; (3) the class or series and number of shares of each class or series of capital stock of the corporation that are owned beneficially and of record by such nominee; (4) the date or dates on which such shares were acquired and the investment intent of such acquisition; (5) a statement whether such nominee, if elected, intends to tender, promptly following such person's failure to receive the required vote for election or re-election at the next meeting at which such person would face election or re-election, an irrevocable resignation effective upon acceptance of such resignation by the Board of Directors; and (6) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the corporation's proxy statement and associated proxy card as a nominee of the stockholder and to serving as a director if elected); and (B) the information required by Section 5(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve (i) as an independent director (as such term is used in any applicable stock exchange listing requirements or applicable law) of the corporation or (ii) on any committee or sub-committee of the Board of Directors under any applicable stock exchange listing requirements or applicable law, and that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee. The notice in this paragraph must also be accompanied by (X) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, and such additional information with respect to such proposed nominee as would be required to be provided by the Company pursuant to Schedule 14A if such proposed nominee were a participant in the solicitation of proxies by the Company in connection with such annual or special meeting and (Y) a written representation and agreement (in form provided by the Corporation) that such nominee (i) if elected as director of the Corporation, intends to serve the entire term until the next meeting at which such nominee would face re-election and (ii) consents to being named as a nominee in the Corporation's proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director.

(ii) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14a-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the corporation (the "*Bylaws*"), the language of the proposed amendment), the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 5(b)(iv).

(iii) To be timely, the written notice required by Section 5(b)(i) or 5(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that, subject to the last sentence of this Section 5(b)(iii), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received (A) not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and (B) not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or, if later than the ninetieth (90th) day prior to such annual meeting, the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(iv) The written notice required by Section 5(b)(i) or 5(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "**Proponent**" and collectively, the "**Proponents**"): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class or series and number of shares of each class of capital stock of the corporation that are owned of record and beneficially by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(ii)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of at least 67% of the corporation's voting power of shares entitled to vote on the election of directors (with respect to a notice under Section 5(b)(i)) or to carry such proposal (with respect to a notice under Section 5(b)(ii)); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

(c) A stockholder providing the written notice required by Section 5(b)(i) or 5(b)(ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) Business Days (as defined below) prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) Business Days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) Business Days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two (2) Business Days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) Business Days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything herein to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under Section 5(b)(iii) and there is no public announcement by the corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(e) A person shall not be eligible for election or re-election as a director at the annual meeting unless the person is nominated either in accordance with clause (ii) or clause (iii) of Section 5(a). Except as otherwise required by law, the chairperson of the annual meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(iv)(D) and 5(b)(iv)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nomination or such business may have been solicited or received.

(f) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*; that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a).

(g) For purposes of Sections 5 and 6,

(1) "*affiliates*" and "*associates*" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "*1933 Act*");

(2) "*Business Day*" means any day other than Saturday, Sunday or a day on which banks are closed in New York City, New York.

(3) "*Derivative Transaction*" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial: (A) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation; (B) that otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation; (C) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes; or (D) that provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation, which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member; and

(4) "*public announcement*" shall mean disclosure in a press release reported by the Dow Jones Newswires, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act or by such other means reasonably designed to inform the public or security holders in general of such information.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairperson of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by the Board of Directors.

(b) For a special meeting called pursuant to Section 6(a), the person(s) calling the meeting shall determine the time and place, if any, of the meeting; provided, however, that only the Board of Directors or a duly authorized committee thereof may authorize a meeting solely by means of remote communication. Upon determination of the date, time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7. No business may be transacted at a special meeting otherwise than as specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or a duly authorized committee thereof or (ii) by any stockholder of the corporation who is a stockholder of record or beneficial owner at the time of giving notice provided for in this paragraph, who is entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 5(b)(i) and the information required by Section 5(b)(iv). In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record or beneficial owner may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(i) and the information required by Section 5(b)(iv) shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which the corporation first makes a public announcement of the date of the special meeting at which directors are to be elected. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(d) A person shall not be eligible for election or re-election as a director at the special meeting unless the person is nominated either in accordance with clause (i) or clause (ii) of Section 6(c). Except as otherwise required by law, the chairperson of the special meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in these Bylaws and, if any nomination or business is not in compliance with these Bylaws, to declare that such nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nomination may have been solicited or received.

(e) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors or proposals of other businesses to be considered pursuant to Section 6(c).

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, the record date for determining the stockholders entitled to notice of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's mailing address as it appears on the records of the corporation. If delivered by courier service, notice is given at the earlier of when the notice is received or left at such stockholder's address as it appears on the records of the corporation. If sent via electronic transmission, notice is given when directed to such stockholder's electronic mail address as it appears on the records of the corporation unless the stockholder has notified the corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the DGCL. Notice of the time, place, if any, and purpose of any meeting of stockholders (to the extent required) may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum; Voting. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote at the meeting shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairperson of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat and entitled to vote thereon, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by statute, by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, a majority of the voting power of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute, by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the holders of a majority (plurality, in the case of the election of directors) of voting power of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the person(s) who called the meeting or the chairperson of the meeting, or by the vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote thereon. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, and means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted or acted upon after three (3) years from its date of creation unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; and (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, may apply to the Delaware Court of Chancery for relief as provided in DGCL Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 12. List of Stockholders. The corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number and class of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, 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 principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action without Meeting. Unless otherwise provided in the Certificate of Incorporation, no action shall be taken by the stockholders of the corporation except at an annual or a special meeting of the stockholders called in accordance with these Bylaws, and no action of the stockholders of the corporation may be taken by the stockholders by written consent or electronic transmission.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairperson of the Board of Directors, or, if a chairperson has not been appointed, is absent or refuses to act, the Chief Executive Officer, or, if no Chief Executive Officer is then serving, is absent or refuses to act, the President, or, if the President is absent or refuses to act, a chairperson of the meeting designated by the Board of Directors, or, if the Board of Directors does not designate such chairperson, a chairperson chosen by a majority of the voting power of the stockholders entitled to vote, present in person or by proxy duly authorized, shall act as chairperson. The Chairperson of the Board may appoint the Chief Executive Officer as chairperson of the meeting. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the chairperson of the meeting, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

(c) The corporation shall, in advance of any meeting of stockholders, appoint one (1) or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one (1) or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairperson of the meeting shall appoint one (1) or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspectors shall: (1) ascertain the number of shares outstanding and the voting power of each; (2) determine the shares represented at a meeting and the validity of proxies and ballots; (3) count all votes and ballots; (4) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and (5) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Sections 211(e) or 212(c)(2) of the DGCL, or any information provided pursuant to Sections 211(a)(2)b.(i) or (iii) of the DGCL, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to Section 231(b)(5) of the DGCL shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

ARTICLE IV

DIRECTORS

Section 15. Number and Term of Office. The authorized number of directors of the corporation shall be fixed exclusively from time to time by a resolution adopted by the majority of the Board of Directors. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws, or such vacancies may be filled in accordance with Section 18 herein.

Section 16. Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Classes of Directors. The directors shall be divided into classes as and to the extent provided in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 18. Vacancies. Vacancies on the Board of Directors shall be filled as provided in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the resignation shall be effective at the time of delivery of the resignation to the Secretary.

Section 20. Removal. Subject to the rights of holders of any series of Preferred Stock (as defined in the Certificate of Incorporation) to elect additional directors or remove such directors under specified circumstances, neither the Board of Directors nor any individual director may be removed except in the manner specified in Section 141(k) of the DGCL.

Section 21. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place, if any, within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any date, time and place, if any, within or without the State of Delaware whenever called by the Chairperson of the Board, the Chief Executive Officer or the Board of Directors.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, postage prepaid at least five (5) days before the date of the meeting. Notice of any special meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of any meeting will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the directors currently serving on the Board of Directors (but in no event less than one-third of the total authorized number of directors); *provided, however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, 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 all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission. The consent or consents shall be filed with the minutes of proceedings of the Board of Directors or committee, in the same paper or electronic form as the minutes are maintained.

Section 24. Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors or a committee thereof to which the Board of Directors has delegated such responsibility and authority, including, if so approved, by resolution of the Board of Directors or a committee thereof to which the Board of Directors has delegated such responsibility and authority, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors, 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, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places, if any, as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place, if any, which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any regular or special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such regular or special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those members of the committee present at any meeting at which a quorum is present shall be the act of such committee.

Section 26. Duties of Chairperson of the Board of Directors. The Chairperson of the Board of Directors, if appointed and when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

Section 27. Organization. At every meeting of the directors, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, shall act as secretary of the meeting.

Section 28. Interested Directors. No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE V

OFFICERS

Section 29. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed in the manner required by applicable law or stock exchange rules.

Section 30. Tenure and Duties of Officers.

(a) General. All officers shall be designated and hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, or until their earlier death, resignation, retirement, disqualification or removal from office. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chief Executive Officer. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors (or the Chief Executive Officer, if the Chief Executive Officer and President are not the same person and the Board of Directors has delegated the designation of the President's duties to the Chief Executive Officer) shall designate from time to time.

(d) Duties of Vice Presidents. A Vice President may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant (unless the duties of the President are being filled by the Chief Executive Officer). A Vice President shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary and Assistant Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct the Treasurer, if any, or any Assistant Treasurer, or the controller or any assistant controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each controller and assistant controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(g) Duties of Treasurer and Assistant Treasurer. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President and Chief Financial Officer (if not Treasurer) shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President and Chief Financial Officer may direct any Assistant Treasurer or the controller or any assistant controller to assume and perform the duties of the Treasurer in the absence or disability of the Treasurer, and each Assistant Treasurer and each controller and assistant controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President and Chief Financial Officer shall designate from time to time.

Section 31. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 32. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Chief Executive Officer, or if no Chief Executive Officer is then serving, to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 33. Removal. Any officer may be removed from office at any time, either with or without cause, by the Board of Directors, or by any committee or superior officer upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 34. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by applicable law or these Bylaws, and such execution or signature shall be binding upon the corporation. All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless (i) authorized or ratified by the Board of Directors or (ii) within the agency power of an officer or any designee of any such officer (each, an “*Authorized Employee*”), no officer, agent or employee other than an Authorized Employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 35. Voting of Securities Owned by the Corporation. All stock and other securities and interests of other corporations and entities owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII
SHARES OF STOCK

Section 36. Form and Execution of Certificates.

(a) The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates, if any, for the shares of stock shall be in such form as is consistent with the Certificate of Incorporation and applicable law.

(b) Every holder of stock in the corporation represented by certificate shall be entitled to have a certificate signed by, or in the name of, the corporation by any two (2) authorized officers of the corporation, certifying the number of shares owned by such holder in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Section 37. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 38. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 39. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, 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 shall, subject to applicable law, not be more than sixty (60) nor fewer than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, 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. 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 determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders 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, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 40. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 41. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by any executive officer (as defined in Article XI) or any other officer or person as may be authorized by the Board of Directors; *provided, however*; that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by an executive officer of the corporation or such other officer or person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 42. Declaration of Dividends. Dividends upon the outstanding capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 43. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 44. Fiscal Year. The fiscal year of the corporation shall end on December 31 or on such other date as may otherwise be fixed by resolution of the Board of Directors.

ARTICLE XI
INDEMNIFICATION

Section 45. Indemnification of Directors, Executive Officers, Employees and Other Agents.

(a) Directors and Executive Officers. The corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, any director or officer of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding (as defined below) by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while serving as a director or officer of the corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans (each a “covered person”), against all liability and loss suffered and expenses (including attorneys’ fees, judgments, fines ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such person in connection with any such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 45(d), the corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized in the specific case by the Board.

(b) Other Officers, Employees and Other Agents. The corporation shall have the power to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the Corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director or executive officer of the corporation, or is or was serving at the request of the corporation as a director or executive 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 executive officer in connection with such Proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive 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.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive 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 executive officer. Any right to indemnification or advances granted by this section to a director or executive officer shall be enforceable by or on behalf of the person holding such right in the Court of Chancery of the State of Delaware if (i) the claim for indemnification or advances is denied by the Board of Directors, 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 to the fullest extent permitted by law. 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 executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive 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 reasonably 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 or her 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 he or she 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 executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this section or otherwise shall be on the corporation.

(e) 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 his or her 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.

(f) 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 or executive officer or officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) 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.

(h) Amendments. Any amendment, 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.

(i) 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 executive 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 executive officer to the full extent under any other applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(i) 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.

(ii) 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.

(iii) 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 or she would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “*director*,” “*executive officer*,” “*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, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) 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 “*servicing 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 XII

NOTICES

Section 46. Notices.

(a) Notice to Stockholders. Notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders, including under any agreement or contract with such stockholder, subject to Section 232(e) of the DGCL, any written notice to stockholders given by the corporation under any provision of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the corporation. Notice shall be deemed given pursuant to this Section 45, (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (a) such posting, and (b) the giving of such separate notice; and (3) if by any other form of electronic transmission, when directed to the stockholder. For purposes of these Bylaws, (1) “**Electronic transmission**” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process; (2) “**Electronic mail**” means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information); and (3) “**Electronic mail address**” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part” of the address) and a reference to an internet domain (commonly referred to as the “domain part” of the address), whether or not displayed, to which electronic mail can be sent or delivered.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a) or as otherwise provided in these Bylaws, with notice other than one which is delivered personally to be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 47. Amendments. Subject to the limitations set forth in Section 45(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws. Any adoption, amendment or repeal of the Bylaws by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty- six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS

Section 48. Loans to Officers. Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

ARTICLE XV

BOOKS AND RECORDS

Section 49. Books and Records. The books and records of the corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board of Directors. Any books or records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method; provided, however, that the books and records so kept can be converted into clearly legible paper form within a reasonable time. The corporation shall so convert any books or records so kept upon the request of any person entitled to inspect such records pursuant to the Certificate of Incorporation, these Bylaws or the DGCL.

THIS WARRANT AND THE COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE TRANSFERRED UNTIL (i) A REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”) SHALL HAVE BECOME EFFECTIVE WITH RESPECT THERETO OR (ii) RECEIPT BY THE COMPANY OF AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY TO THE EFFECT THAT REGISTRATION UNDER THE 1933 ACT IS NOT REQUIRED IN CONNECTION WITH SUCH PROPOSED TRANSFER NOR IS SUCH TRANSFER IN VIOLATION OF ANY APPLICABLE STATE SECURITIES LAWS. THIS LEGEND SHALL BE ENDORSED UPON ANY WARRANT ISSUED IN EXCHANGE FOR THIS WARRANT OR ANY COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT.

AMENDED AND RESTATED WARRANT TO PURCHASE

COMMON STOCK

OF

ORCHESTRA BIOMED HOLDINGS, INC.

January 25, 2023

W-08062020-1

This is to Certify That, FOR VALUE RECEIVED, HSAC 2 HOLDINGS, LLC, or its assigns (“Holder”), is entitled to purchase, subject to the provisions of this Amended and Restated Warrant to Purchase 1,500,000 (subject to Section (a) immediately below) fully paid, validly issued and nonassessable shares of Common Stock, par value of \$0.0001 per share (“Common Stock”) of ORCHESTRA BIOMED HOLDINGS, INC., a Delaware Corporation (the “Company”), at a price of \$11.50 per share (this “Warrant”) and supersedes and replaces the original Warrant, dated August 6, 2020, to purchase 1,500,000 fully paid, validly issued and nonassessable ordinary shares, par value \$0.0001 per share (the “Ordinary Shares”) from the Company’s predecessor, Health Sciences Acquisitions Corporation 2, a former Cayman Islands exempted company (the “Predecessor”) at a price of \$11.50 per share. The number of shares of Common Stock to be received upon the exercise of this Warrant and the price to be paid for each share of Common Stock may be adjusted from time to time as hereinafter set forth. The Common Stock deliverable upon such exercise, as adjusted from time to time, are hereinafter sometimes referred to as “Warrant Shares,” and the exercise price for an Ordinary Share in effect at any time, as adjusted from time to time, is hereinafter sometimes referred to as the “Exercise Price.”

(a) EXERCISE OF WARRANT. This Warrant may be exercised in whole or in part at any time on the later of (i) 30 days after the consummation by the Predecessor of its initial merger, share exchange, asset acquisition, share purchase, reorganization or other similar business combination with one or more businesses or entities (the “Business Combination”) (as described more fully in the Registration Statement on Form S-1 (No. 333-239922) as filed with by the Predecessor with the U.S. Securities and Exchange Commission or (ii) 12 months from the closing of the public offering of the Predecessor’s Ordinary Shares, and terminating at 5:00 p.m., New York City time on five years from the consummation of the Business Combination (the “Expiration Date”); provided however, that immediately prior to the closing of the merger contemplated by that certain Agreement and Plan of Merger, dated as of July 4, 2022 (as amended, the “Merger Agreement”) by and among the Predecessor, HSAC Olympus Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Predecessor, and Orchestra BioMed, Inc., a Delaware corporation, and in accordance with that certain Amended and Restated Support Agreement, dated as of November 21, 2022, by and among the Predecessor, Orchestra and the holders set for the therein, without any further action by any other person, Holder shall automatically forfeit for no consideration 750,000 Warrant Shares subject to this Warrant, and this Warrant shall thereafter be exercisable for 750,000 Warrant Shares, as adjusted from time to time. Any portion of this Warrant not exercised on or before the Expiration Date shall become void, and all rights thereunder and all rights in respect thereof under this Agreement shall cease at the close of business on the Expiration Date. The Company in its sole discretion may extend the duration of the Warrants by delaying the Expiration Date; provided, however, that the Company will provide at least twenty (20) days’ prior written notice of any such extension to registered holders of the Warrants and, provided further that any such extension shall be identical in duration among all the Warrants.

(1) This Warrant may be exercised by presentation and surrender hereof to the Company at its principal office with the Purchase Form annexed hereto (the “Purchase Form”) duly executed and accompanied by payment of the Exercise Price for the number of Warrant Shares specified in such Purchase Form (which may take the form of a “cashless exercise” pursuant to Section (a)(2), if so indicated in the Purchase Form).

(2) The Holder shall pay the Exercise Price in immediately available funds; provided, however, that the Holder may, in the Holder’s sole discretion, satisfy its obligation to pay the Exercise Price through a “cashless exercise”, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y(A-B)/A$$

where

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the Fair Market Value (as defined below) of one share of Common Stock on the trading day immediately preceding the date on which Holder elects to exercise this Warrant by means of a “cashless exercise.”

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, “Fair Market Value” means, for any security as of any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed on a national securities exchange, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the trading market on which the Common Stock are then listed as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (b) if the Common Stock are quoted on the OTC Bulletin Board or the OTC Market, the average closing bid price on such market for the five most recently completed trading days, (c) if paragraphs (a) or (b) are not applicable, if an appraiser hired by the Company has provided a report on the fair market value of a shares of Common Stock within the 12-month period preceding the date on which Holder elects to exercise this Warrant by means of a “cashless exercise,” the fair market value of a share of Common Stock as determined by such appraiser, or (d) if none of the foregoing is applicable, the price determined by the Board of Directors of the Company in good faith.

(b) EFFECTIVE TIME OF EXERCISE. Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which the Purchase Form has been delivered to the Company (the “Exercise Date”) as provided in Section (a). At such time, the person or persons in whose name or names any certificates for Warrant Shares shall be issuable upon such exercise as provided in Section (c) below shall be deemed to have become the holder or holders of record of the Warrant Shares represented by such certificates. Notwithstanding the foregoing, if the Holder or any assignee does not enter into the Shareholders’ Agreement within three (3) business days of being requested to do so by the Company, then the exercise of this Warrant will be deemed to not have been effective and void ab initio and the Holder or any assignee shall return any securities received by them pursuant to Section (c) to the Company.

(c) DELIVERY TO HOLDER.

(1) As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within five (5) business days thereafter, the Company will cause to be issued in the name of, and delivered to, the Holder, or as such Holder (upon payment by such Holder of any applicable transfer taxes) may direct:

(A) a certificate or certificates for the number of Warrant Shares to which such Holder shall be entitled, and

(B) in case such exercise is in part only, a new warrant or warrants of like tenor, exercisable for in the aggregate the number of shares of Common Stock equal (giving effect to any adjustment therein) to the number of shares of Common Stock called for on the face of this Warrant minus the number of such shares purchased by the Holder upon such exercise.

(2) To the extent permitted by law and except as provided in this Warrant, the Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any person or entity or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other person or entity of any obligation to the Company or any violation or alleged violation of law by the Holder or any other person or entity, and irrespective of any other circumstance that might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Warrant Shares upon exercise of the Warrant as required pursuant to the terms hereof.

(d) RESERVATION OF SHARES. The Company shall at all times reserve for issuance and/or delivery upon exercise of this Warrant such number of shares of Common Stock (as adjusted pursuant to the terms hereof) as shall be required for issuance and delivery upon exercise of this Warrant. The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be reasonably necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed.

(e) FRACTIONAL SHARES. No fractional shares or scrips representing fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the fair market value of a share of Common Stock.

(f) LOSS OR DESTRUCTION OF WARRANT. Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of reasonably satisfactory indemnification, and upon surrender and cancellation of this Warrant, if mutilated, the Company will execute and deliver a new Warrant of like tenor and date.

(g) RIGHTS OF THE HOLDER. The Holder shall not, by virtue hereof, be entitled to any rights of a shareholder in the Company, either at law or equity, and the rights of the Holder are limited to those expressed in this Warrant and are not enforceable against the Company except to the extent set forth herein.

(h) CERTAIN ADJUSTMENTS. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section (h).

(1) Share Capitalizations and Sub-Divisions. If the Company, at any time while this Warrant is outstanding, (i) declares a share capitalization on its Common Stock or otherwise makes a distribution on any class of shares that is payable in Common Stock, (ii) subdivides its outstanding Common Stock into a larger number of shares, or (iii) combines its outstanding Common Stock into a smaller number of shares, then, in each such case, the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number Common Stock outstanding immediately before such event and the denominator of which shall be the number of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section (h)(1) shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this Section (h)(1) shall become effective immediately after the effective date of such subdivision or combination.

(2) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to Section (h)(1), the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(3) Fundamental Transactions. If, at any time while this Warrant is outstanding (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets or a majority of its Common Stock is acquired by a third party, in each case, in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or a third party that is conducting such an offer pursuant to an agreement or arrangement with the Company) is completed pursuant to which all or substantially all of the holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reorganization or reclassification of the Common Stock or any compulsory share exchange pursuant to which the shares of Common Stock are effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of Common Stock covered by Section (h)(1) above) (in any such case, a "Fundamental Transaction"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant without regard to any limitations on exercise contained herein (the "Alternate Consideration"). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or Person shall assume the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Warrant. The provisions of this Section (h)(3) shall similarly apply to subsequent transactions analogous of a Fundamental Transaction type.

(4) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section (h), the Company at its expense will, at the written request of the Holder, promptly compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other property issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(5) Notices To Warrant Holders. So long as this Warrant shall be outstanding, (i) if the Company shall pay any dividend or make any distribution of cash, securities or other property in respect of its Common Stock or (ii) if the Company shall offer to the holders of Common Stock for subscription or purchase by them any share of any class or any other rights or (iii) if any capital reorganization of the Company, reclassification of the shares of the Company, consolidation or merger of the Company with or into another corporation, sale, lease or transfer of all or substantially all of the property and assets of the Company to another corporation, if the Company authorizes or approves, enters into any agreement contemplating or solicits shareholder approval for any Fundamental Transaction (each as defined below) , or voluntary or involuntary dissolution, liquidation or winding up of the Company shall be effected, then in any such case, the Company shall cause to be mailed to the Holder, at least fifteen days prior the date specified in (x) or (y) below, as the case may be, a notice containing a brief description of the proposed action and stating the date on which (x) a record is to be taken for the purpose of such dividend, distribution or rights, or (y) such reclassification, reorganization, consolidation, merger, conveyance, lease, Fundamental Transaction, sales or issuances, dissolution, liquidation or winding up is to take place and the date, if any is to be fixed, as of which the holders of Common Stock or other securities shall receive cash or other property deliverable upon such reclassification, reorganization, consolidation, merger, conveyance, lease, Fundamental Transaction, sales or issuances, dissolution, liquidation or winding up.

(i) NOTICES. Any notice or request hereunder shall be in writing and may be given only by, and shall be deemed to have been received upon: (a) registered or certified mail, return receipt requested, on the date on which such notice or request is received as indicated in such return receipt; (b) delivery by a nationally recognized overnight courier, one business day after deposit with such courier; or (c) facsimile or other electronic transmission upon telephone or further electronic communication from the recipient acknowledging receipt (whether automatic or manual from recipient) of such facsimile or other electronic transmission. In the case of the Company, such notices and communications shall be addressed to Orchestra BioMed Holdings, Inc., 150 Union Square Drive, New Hope, PA 18938, Attention: Secretary, unless the Company shall notify the Holder that notices and communications should be sent to a different address (or facsimile number or electronic mail address), in which case such notices and communications shall be sent to the address (or facsimile number or electronic mail address) specified by the Company. In the case of the Holder, such notices and communications shall be addressed to its address as set forth in the signature page hereto, unless the Holder shall notify the Company that notices and communications should be sent to a different address (or facsimile number or electronic mail address), in which case such notices and communications shall be sent to the address (or facsimile number or electronic mail address) specified by the Holder.

(j) NO NET-CASH SETTLEMENT. Except as otherwise provided herein, in no event will the Holder be entitled to receive a net-cash settlement or other consideration in lieu of physical settlement in securities.

(k) MODIFICATION OF AGREEMENT. The provisions of this Warrant may from time to time be amended, modified or waived, by the Company and the holder of this Warrant.

(l) CHARGES, TAXES AND EXPENSES. Issuance and delivery of a reasonable number of certificates representing Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or the Warrants in a name other than that of the Holder or an affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

(m) SUCCESSORS AND ASSIGNS. This Warrant and the rights of the Holder hereunder may not be transferred and/or assigned by the Holder in any way whatsoever, and no transaction in respect thereof shall be made, either for consideration or for no consideration. This Warrant may not be assigned by the Company without the written consent of the Holder except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the parties hereto and the Company's successors. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any person or entity other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or the Company's successors.

(n) GOVERNING LAW.

THIS WARRANT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS WARRANT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS WARRANT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE A PARTY FROM OBTAINING JURISDICTION OVER ANOTHER PARTY IN ANY COURT OTHERWISE HAVING JURISDICTION.

EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED HEREIN OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO THE TERMS HEREOF (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY OR ANY HOLDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of the date of this Warrant.

ORCHESTRA BIOMED HOLDINGS, INC.

By: /s/ Roderick Wong, M.D.

Name: Roderick Wong, M.D.

Title: Chairman and Chief Executive Officer

Holder:

Accepted and Agreed:

HSAC 2 HOLDINGS, LLC

By: /s/ Alice Lee

Name: Alice Lee

Title: Director

PURCHASE FORM

Dated _____

- (1) The undersigned hereby irrevocably elects to exercise the within Warrant to the extent of purchasing shares of Common Stock of Orchestra BioMed Holdings, Inc. (or such number of shares of Common Stock or other securities or property to which the undersigned is entitled in lieu thereof or in addition thereto under the provisions of the Warrant).

- (2) _____ (a) The undersigned hereby elects to make payment with the enclosed bank draft, certified check or money order payable to the Company in payment of the exercise price determined under, and on the terms specified in, the Warrant, or

_____ (b) The undersigned hereby elects to make payment on a cashless basis.

- (3) The undersigned hereby irrevocably directs that the said shares be issued and delivered as follows:

Name(s) in Full	Address(es)	Number of Shares of Common Stock (net of any Common Stock used to exercise on a cashless basis	S.S. or IRS #

- (4) If the Warrant was not exercised in full, please check the following: ____

The undersigned hereby irrevocably directs that any remaining portion of the warrant be issued and delivered as follows:

Name(s) in Full	Address(es)	Number of Shares	S.S. or IRS #

Signature of Holder

Print Name

AMENDED AND RESTATED REGISTRATION RIGHTS AND LOCK-UP AGREEMENT

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AND LOCK-UP AGREEMENT (this “*Agreement*”), dated as of January 26, 2022, is made and entered into by and among, (i) Health Sciences Acquisitions Corporation 2, a Delaware corporation (the “*Company*”), (ii) the equityholders designated as Sponsor Equityholders on Schedule A hereto (collectively, the “*Sponsor Equityholders*”); and (iii) certain stockholders of Orchestra BioMed, Inc. designated as Legacy Orchestra Equityholders on Schedule B hereto (the “*Legacy Orchestra Equityholders*” and, together with the Sponsor Equityholders and any person or entity who hereafter becomes a party to this Agreement pursuant to Section 6.2 of this Agreement, the “*Holder*” and each individually a “*Holder*”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Merger Agreement (as defined below).

RECITALS

WHEREAS, the Company and the Sponsor Equityholders are parties to that certain Registration Rights Agreement, entered into as of August 3, 2020 (the “*Prior Agreement*”);

WHEREAS, the Company, HSAC Olympus Merger Sub, Inc., a Delaware corporation (“*Merger Sub*”), and Orchestra BioMed, Inc., a Delaware corporation (“*Legacy Orchestra*”), are party to that certain Agreement and Plan of Merger, dated as of July 4, 2022 (as amended or restated from time to time, the “*Merger Agreement*”), pursuant to which the Company changed its jurisdiction of incorporation from the Cayman Islands to the State of Delaware (the “*Domestication*”) and on the date hereof: (a) Merger Sub will merge (the “*Merger*”) with and into Legacy Orchestra, with Legacy Orchestra surviving the Merger as a wholly owned subsidiary of the Company, and (b) the Company will change its name to “Orchestra BioMed, Inc.”;

WHEREAS, the Legacy Orchestra Equityholders and the Sponsor Equityholders are receiving shares of Common Stock, par value \$0.0001 per share, of the Company (the “*Common Stock*”) on or about the date hereof, pursuant to the Merger Agreement (the “*Merger Shares*”);

WHEREAS, in connection with the consummation of the Merger, the parties to the Prior Agreement desire to amend and restate the Prior Agreement in its entirety as set forth herein, and the parties hereto desire to enter into this Agreement pursuant to which the Company shall grant the Holders certain registration rights with respect to the Registrable Securities (as defined below) on the terms and conditions set forth in this Agreement;

WHEREAS, pursuant to Section 6.7 of the Prior Agreement, no amendment, modification or termination of the Prior Agreement shall be binding upon any party unless executed in writing by such party; and

WHEREAS, all of the parties to the Prior Agreement desire to amend and restate the Prior Agreement in its entirety and enter into this Agreement, pursuant to which the Company shall grant the Holders certain registration rights with respect to certain securities of the Company, as set forth in this Agreement, effective as of the Closing.

NOW, THEREFORE, in consideration of the representations, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the respective meanings set forth below:

“*Adverse Disclosure*” shall mean any public disclosure of material non-public information, which disclosure, in the good faith judgment of the Chief Executive Officer or Chief Financial Officer of the Company, after consultation with counsel to the Company, (i) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in the light of the circumstances under which they were made) not misleading, (ii) would not be required to be made at such time if the Registration Statement were not being filed, declared effective or used, as the case may be, and (iii) the Company has a bona fide business purpose for not making such information public.

“**Backstop Agreement**” shall mean that certain Backstop Agreement, dated as of July 4, 2022 by and among the Company, Orchestra BioMed, Inc. and the purchasing parties signatory thereto.

“**Block Trade**” shall mean an offering and/or sale of Registrable Securities by any Holder on a block trade or underwritten or other coordinated basis (whether firm commitment or otherwise) without substantial marketing efforts prior to pricing, including, without limitation, a same day trade, overnight trade or similar transaction.

“**Board**” shall mean the Board of Directors of the Company.

“**Change in Control**” shall mean any transfer (whether by tender offer, merger, stock purchase, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons of the Company’s voting securities if, after such transfer, such person or group of affiliated persons would hold more than 50% of outstanding voting securities of the Company (or surviving entity) or would otherwise have the power to control the Board or to direct the operations of the Company.

“**Commitment Shares**” shall mean any shares of Common Stock that the Sponsor Equityholders or their respective designees receive in connection with the Domestication or the Closing, including as a result of purchases contemplated by the Sponsor Forward Purchase Agreement (as defined below), the Backstop Agreement, and any other Additional Agreement or any ancillary agreements with Orchestra BioMed, Inc. which designate such shares as Commitment Shares under this Agreement.

“**Covidien Forward Purchase Shares**” shall mean any shares of Common Stock that Covidien Group or its designees receive in connection with the Domestication as a result of purchases contemplated by the Covidien Forward Purchase Agreement.

“**Commission**” shall mean the Securities and Exchange Commission.

“**Earnout Election Agreement**” shall have the meaning given in the Merger Agreement.

“**Earnout Shares**” shall have the meaning given in the Merger Agreement.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as it may be amended from time to time.

“**Forward Purchase Agreements**” shall mean, collectively, that certain Forward Purchase Agreement by and among the Company, Orchestra BioMed, Inc., and certain funds managed by RTW Investments, LP as Purchasing Parties (the “**Sponsor Forward Purchase Agreement**”), and that certain Forward Purchase Agreement by and among the Company, Orchestra BioMed, Inc., and Covidien Group S.à.r.l. (“**Covidien Group**”), an affiliate of Medtronic plc (the “**Covidien Forward Purchase Agreement**”).

“**Founder Shares**” shall mean the 4,000,000 shares of Common Stock of the Company issued to the Company’s initial shareholders in connection with the Domestication upon the conversion of the 4,000,000 ordinary shares, par value \$0.0001 per share of the Company (“**Ordinary Shares**”) issued to such initial shareholders prior to the Company’s initial public offering.

“**Holders**” shall have the meaning given in the Preamble, for so long as such person or entity holds any Registrable Securities.

“**Lock-up Period**” shall have the meaning given in Section 4.1.1.

“**Misstatement**” shall mean an untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or Prospectus, or necessary to make the statements in a Registration Statement or Prospectus (in the case of a Prospectus, in the light of the circumstances under which they were made) not misleading.

“**Permitted Transferees**” shall mean: (a) with respect to any Sponsor Equityholder, any person or entity to whom a Holder of Registrable Securities is permitted to transfer such Registrable Securities prior to the expiration of the Lock-up Period on approval of both the Company and the Sponsor, and (b) any person or entity to whom a Holder of Registrable Securities is permitted to transfer such Registrable Securities prior to the expiration of the Lock-up Period under this Agreement and any other applicable agreement between such Holder and the Company, and to any transferee thereafter.

“**Private Shares**” shall mean the 450,000 shares of Common Stock issued by the Company in connection with the Domestication upon the conversion of Ordinary Shares that were privately purchased simultaneously with the consummation of the Company’s initial public offering.

“**Private Warrants**” shall mean the 1,500,000 warrants to purchase Common Stock issued by the Company in connection with the Domestication upon the conversion of 1,500,000 warrants to purchase Ordinary Shares issued by the Company that were privately purchased simultaneously with the consummation of the Company’s initial public offering.

“**Prospectus**” shall mean the prospectus included in any Registration Statement, as supplemented by any and all prospectus supplements and as amended by any and all post-effective amendments and including all material incorporated by reference in such prospectus.

“**Registrable Security**” shall mean (a) the Merger Shares (b) the Founder Shares, (c) the Private Shares, (c) the Private Warrants and the Common Stock issued or issuable upon the exercise of the Private Warrants, (d) the Working Capital Warrants and any shares of Common Stock issued or issuable upon the exercise of the Working Capital Warrants, (e) the Commitment Shares, (f) the Earnout Shares, (g) the Covidien Forward Purchase Shares, (h) any outstanding share of the Common Stock or any other equity security (including the shares of Common Stock issued or issuable upon the exercise of any other equity security) of the Company held by a Holder as of the date that is two (2) business days in advance of the filing with the Commission of a Registration Statement or a pre-effective amendment thereto, provided such Holder provides the Company with information regarding the amount of such holdings at least two (2) business days in advance of the filing with the Commission of a Registration Statement or a pre-effective amendment thereto, and (i) any other equity security of the Company issued or issuable with respect to any such share of the Common Stock by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation, spin-off, reorganization or similar transaction; *provided, however,* that, as to any particular Registrable Security, such securities shall cease to be Registrable Securities upon the earliest occur of: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (B) such securities shall have been otherwise transferred (other than to a Permitted Transferee), new certificates for such securities not bearing (or book entry positions not subject to) a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of such securities shall not require registration under the Securities Act; (C) such securities shall have ceased to be outstanding; (D) such securities may be sold without registration pursuant to Rule 144 promulgated under the Securities Act (or any successor rule promulgated thereafter by the Commission) (but with no volume or other restrictions or limitations); or (E) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.¹

“**Registration**” shall mean a registration effected by preparing and filing a Registration Statement, Prospectus or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

“**Registration Expenses**” shall mean the out-of-pocket expenses of a Registration, including, without limitation, the following:

(A) all registration and filing fees (including fees with respect to filings required to be made with the Financial Industry Regulatory Authority, Inc.) and any securities exchange on which the Common Stock is then listed;

(B) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);

(C) printing, messenger, telephone and delivery expenses;

(D) reasonable fees and disbursements of counsel for the Company;

(E) reasonable fees and disbursements of all independent registered public accountants of the Company incurred specifically in connection with such Registration;

(F) in an Underwritten Offering, reasonable and documented fees and expenses of one (1) legal counsel selected by the majority-in-interest of the Demanding Holders; and

(G) the costs and expenses of the Company and any of its officers, directors, counsel or other representatives in connection with presentations or meetings undertaken in connection with the offering of the Registrable Securities, including, without limitation, expenses associated with the production of road show slides and graphics and the production and hosting of any electronic road shows, fees and expenses of any consultants engaged in connection with road show presentations, and travel, lodging, transportation, and other expenses of the officers, directors, counsel and other representatives of the Company incurred in connection with any such presentations or meetings.

“**Registration Statement**” shall mean any registration statement filed by the Company with the Commission that covers the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement, and all exhibits to and all material incorporated by reference in such registration statement.

“**Securities Act**” shall mean the Securities Act of 1933, as amended from time to time.

“**Shelf**” shall mean the Form S-1 Shelf, the Form S-3 Shelf or any subsequent Shelf Registration.

“**Shelf Registration**” shall mean a registration of securities pursuant to a Registration Statement filed with the Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act (or any successor rule then in effect).

“**Sponsor**” shall mean HSAC 2 Holdings, LLC.

“**Sponsor Forward Purchase Agreement**” shall have the meaning given in the definition of “Forward Purchase Agreements.”

“**Transfer**” shall mean the (a) the sale or assignment of, offer to sell, contract or agreement to sell, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b).

“**Underwriter**” shall mean a securities dealer who purchases any Registrable Securities as principal in an Underwritten Offering and not as part of such dealer’s market-making activities.

“*Underwritten Registration*” or “*Underwritten Offering*” shall mean a Registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

“*Working Capital Warrants*” shall mean any warrants issued in payment for working capital loans from the Sponsor to the Company, including any warrants issued by the Company in connection with the Domestication upon the conversion of warrants issued in payment for working capital loans from the Sponsor.

ARTICLE II REGISTRATIONS

2.1 Shelf Registration.

2.1.1 Filing. The Company shall as soon as reasonably practicable, but in any event within one hundred and twenty (120) days after the Closing Date, file with the Commission a Registration Statement for a Shelf Registration on Form S-1 (the “*Form S-1 Shelf*”) covering, subject to Section 3.4, the public resale of all of the Registrable Securities (determined as of two (2) business days prior to such filing) on a delayed or continuous basis and shall use its commercially reasonable efforts to cause such Form S-1 Shelf to be declared effective as soon as practicable after the filing thereof, but in no event later than the earlier of (i) the 30th calendar day (or the 90th calendar day if the Commission notifies the Company that it will “review” the Registration Statement) following the filing of the Registration Statement and (ii) the tenth (10th) business day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that the Registration Statement will not be “reviewed” or will not be subject to further review. Such Form S-1 Shelf shall provide for the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. The Company shall maintain a Shelf in accordance with the terms hereof and shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements as may be necessary to keep a Shelf continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Following the filing of a Form S-1 Shelf, the Company shall use its commercially reasonable efforts to convert the Form S-1 Shelf (and any Subsequent Shelf Registration) to a Registration Statement on Form S-3 (the “*Form S-3 Shelf*”) as soon as reasonably practicable after the Company is eligible to use Form S-3. As soon as reasonably practicable following the effective date of a Registration Statement filed pursuant to this Section 2.1.1, but in any event within one (1) business day of such date, the Company shall notify the Holders of the effectiveness of such Registration Statement. The Company’s obligation under this Section 2.1.1 shall, for the avoidance of doubt be subject to Section 3.4 hereto.

2.1.2 Subsequent Shelf Registration. If any Shelf ceases to be effective under the Securities Act for any reason at any time while Registrable Securities are still outstanding, the Company shall, subject to Section 3.4, use its commercially reasonable efforts to as promptly as is reasonably practicable cause such Shelf to again become effective under the Securities Act (including using commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness of such Shelf), and shall use its commercially reasonable efforts to as promptly as is reasonably practicable amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional registration statement as a Shelf Registration (a “*Subsequent Shelf Registration*”) registering the resale of all Registrable Securities (determined as of two (2) business days prior to such filing), and pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. If a Subsequent Shelf Registration is filed, the Company shall use its commercially reasonable efforts to (i) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration shall be an automatic shelf registration statement (as defined in Rule 405 promulgated under the Securities Act) if the Company is a well-known seasoned issuer (as defined in Rule 405 promulgated under the Securities Act) at the most recent applicable eligibility determination date) and (ii) keep such Subsequent Shelf Registration continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Any such Subsequent Shelf Registration shall be on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form. The Company’s obligation under this Section 2.1.2 shall, for the avoidance of doubt be subject to Section 3.4 hereto.

2.1.3 Requests for Underwritten Shelf Takedowns. At any time and from time to time when an effective Shelf is on file with the Commission, any one or more Holder (any Holder being, in such case, a “**Demanding Holder**”) may request to sell all or any portion of their Registrable Securities in an underwritten offering that is registered pursuant to the Shelf (each, an “**Underwritten Shelf Takedown**”); *provided* that the Company shall only be obligated to effect an Underwritten Offering if such offering: (i) shall include Registrable Securities proposed to be sold by the Demanding Holder(s), either individually or together with other Demanding Holders, with a total offering price reasonably expected to exceed, in the aggregate, \$25 million (the “**Minimum Takedown Threshold**”), or (ii) is comprised of all remaining Registrable Securities held by the Demanding Holder. All requests for Underwritten Shelf Takedowns shall be made by giving written notice to the Company, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Offering. Subject to Section 2.3.4, a majority-in-interest of the Demanding Holders shall have the right to select the Underwriters for such offering (which shall consist of one or more reputable nationally recognized investment banks), subject to the Company’s prior approval (which shall not be unreasonably withheld, conditioned or delayed). The Legacy Orchestra Equityholders, on the one hand, and the Sponsor Equityholders, on the other hand, may each demand not more than one (1) Underwritten Shelf Takedown pursuant to this Section 2.1.3 within any nine (9)-month period; *provided, however*, that no Demanding Holder may request an Underwritten Shelf Takedown during the six-month period following the closing of a prior Underwritten Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company may effect any Underwritten Offering pursuant to any then effective Registration Statement, including a Form S-3, that is then available for such offering.

2.1.4 Reduction of Underwritten Offering. If the managing Underwriter or Underwriters in an Underwritten Shelf Takedown, in good faith, advises the Company, the Demanding Holders and Holders requesting piggyback rights pursuant to this Agreement with respect to such Underwritten Shelf Takedown (the “**Requesting Holders**”) (if any) in writing that the dollar amount or number of Registrable Securities that the Demanding Holders and the Requesting Holders (if any) desire to sell, taken together with all other shares of Common Stock or other equity securities that the Company desires to sell and all other shares of Common Stock or other equity securities, if any, as to which a Registration has been requested pursuant to separate written contractual piggyback registration rights entered into after the date hereof held by any other stockholders who desire to sell, exceeds the maximum dollar amount or maximum number of equity securities that can be sold in the Underwritten Offering without materially affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of such securities, as applicable, the “**Maximum Number of Securities**”), then the Company shall include in such Underwritten Offering, as follows: (i) first, the Registrable Securities of the Demanding Holders and the Requesting Holders (if any) (pro rata based on the respective number of Registrable Securities that each Demanding Holder and Requesting Holder (if any) has requested be included in such Underwritten Registration and the aggregate number of Registrable Securities that the Demanding Holders and Requesting Holders have requested be included in such Underwritten Registration (such proportion is referred to herein as “**Pro Rata**”)) that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; and (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Common Stock or other equity securities of other persons or entities that the Company is obligated to register in a Registration pursuant to separate written contractual arrangements entered into after the date hereof with such persons and that can be sold without exceeding the Maximum Number of Securities.

2.1.5 Withdrawal. Prior to the pricing of an Underwritten Shelf Takedown, a majority-in-interest of the Demanding Holders initiating such Underwritten Offering shall have the right to withdraw from a Registration pursuant to such Underwritten Offering for any or no reason whatsoever upon written notification (a “**Withdrawal Notice**”) to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw from such Underwritten Offering; *provided* that any Legacy Orchestra Equityholder or Sponsor Equityholder may elect to have the Company continue an Underwritten Offering if the Minimum Takedown Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Underwritten Offering by the Legacy Orchestra Equityholders and the Sponsor Equityholders. If withdrawn, a demand for an Underwritten Offering shall constitute a demand for an Underwritten Offering by the withdrawing Demanding Holder for purposes of Section 2.1.3, unless either (i) such Demanding Holder has not previously withdrawn any Underwritten Offering or (ii) such Demanding Holder reimburses the Company for all Registration Expenses with respect to such Underwritten Offering (or, if there is more than one Demanding Holder, a *pro rata* portion of such Registration Expenses based on the respective number of Registrable Securities that each Demanding Holder has requested be included in such Underwritten Offering); *provided* that, if a Legacy Orchestra Equityholder or a Sponsor Equityholder elects to continue an Underwritten Offering pursuant to the proviso in the immediately preceding sentence, such Underwritten Offering shall instead count as an Underwritten Offering demanded by such Legacy Orchestra Equityholder or the Sponsor Equityholders, as applicable, for purposes of Section 2.1.3. Following the receipt of any Withdrawal Notice, the Company shall promptly forward such Withdrawal Notice to any other Holders that had elected to participate in such Underwritten Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with an Underwritten Shelf Takedown prior to its withdrawal under this Section 2.1.5, other than if a Demanding Holder elects to pay such Registration Expenses pursuant to clause (ii) of the second sentence of this Section 2.1.5.

2.1.6 Notwithstanding the registration obligations set forth in this Section 2.1, in the event the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly (i) inform each of the Holders and use its commercially reasonable efforts to file amendments to the Registration Statement as required by the Commission and/or (ii) withdraw the Registration Statement and file a new registration statement (a “**New Registration Statement**”), on Form S-3, or if Form S-3 is not then available to the Company for such registration statement, on such other form available to register for resale the Registrable Securities as a secondary offering; *provided, however*, that prior to filing such amendment or New Registration Statement, the Company shall use its commercially reasonable efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with any publicly-available written or oral guidance, comments, requirements or requests of the Commission staff (the “**SEC Guidance**”), including without limitation, the Manual of Publicly Available Telephone Interpretations D.29. Notwithstanding any other provision of this Agreement, if any SEC Guidance sets forth a limitation of the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used commercially reasonable efforts to advocate with the Commission for the registration of all or a greater number of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced on a pro rata basis based on the total number of Registrable Securities held by the Holders, subject to a determination by the Commission that certain Holders must be reduced first based on the number of Registrable Securities held by such Holders. In the event the Company amends the Registration Statement or files a New Registration Statement, as the case may be, under clauses (i) or (ii) above, the Company will use its commercially reasonable efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Registration Statement, as amended, or the New Registration Statement.

2.1.7 Effective Registration. Except with respect to withdrawals covered by Section 2.1.5, a Registration shall not count as a Registration unless and until (i) the Registration Statement has been declared effective by the Commission and (ii) the Company has complied with all of its obligations under this Agreement with respect thereto; *provided, further*, that if, after such Registration Statement has been declared effective, an offering of Registrable Securities is subsequently interfered with by any stop order or injunction of the Commission, federal or state court or any other governmental agency, the Registration Statement with respect to such Registration shall be deemed not to have been declared effective, unless and until (i) such stop order or injunction is removed, rescinded or otherwise terminated, and (ii) a majority-in-interest of the Demanding Holders initiating such Registration thereafter affirmatively elect to continue with such Registration and accordingly notify the Company in writing, but in no event later than five (5) days, of such election; *provided, further*, that the Company shall not be obligated or required to file another Registration Statement until the Registration Statement that has been previously filed with respect to a Registration pursuant to an Underwritten Demand Registration becomes effective or is subsequently terminated.

2.2 Piggyback Registration.

2.2.1 Piggyback Rights. If the Company proposes to file a Registration Statement under the Securities Act with respect to an offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into equity securities, for its own account or for the account of stockholders of the Company (or by the Company and by the stockholders of the Company including, without limitation, pursuant to Section 2.1 hereof), other than a Registration Statement (or any registered offering with respect thereto) (i) filed in connection with any employee stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to the Company’s existing stockholders, (iii) for an offering of debt that is convertible into equity securities of the Company, (iv) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), (v) for a dividend reinvestment plan, or (vi) for a Block Trade, then the Company shall give written notice of such proposed filing to all of the Holders of Registrable Securities as soon as practicable but not less than ten (10) days before the anticipated filing date of such Registration Statement or, in the case of an Underwritten Offering pursuant to a Shelf Registration, the applicable “red herring” prospectus or prospectus supplement used for marketing such offering, which notice shall (A) describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, in such offering, and (B) offer to all of the Holders of Registrable Securities the opportunity to register the sale of such number of Registrable Securities as such Holders may request in writing within five (5) days after receipt of such written notice (such Registration a “**Piggyback Registration**”). Subject to Section 2.2.2, the Company shall, in good faith, cause such Registrable Securities to be included in such Piggyback Registration and, if applicable, shall use commercially reasonable efforts to cause the managing Underwriter or Underwriters of a proposed Underwritten Offering to permit the Registrable Securities requested by the Holders pursuant to this Section 2.2.1 to be included in a Piggyback Registration on the same terms and conditions as any similar securities of the Company included in such registered offering and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All such Holders proposing to distribute their Registrable Securities through an Underwritten Offering under this Section 2.2.1 shall enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwritten Offering by the Company.

2.2.2 Reduction of Piggyback Registration. If the managing Underwriter or Underwriters in an Underwritten Registration that is to be a Piggyback Registration, in good faith, advises the Company and the Holders of Registrable Securities participating in the Piggyback Registration in writing that the dollar amount or number of shares of Common Stock or other equity securities that the Company desires to sell, taken together with (i) the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been demanded pursuant to separate written contractual arrangements with persons or entities other than the Holders of Registrable Securities hereunder, (ii) the Registrable Securities as to which registration has been requested pursuant to Section 2.2 hereof, and (iii) the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual piggyback registration rights of stockholders of the Company other than the Holders of Registrable Securities, exceeds the Maximum Number of Securities, then:

(a) If the Registration or a registered offering is undertaken for the Company's account, the Company shall include in any such Registration or a registered offering (A) first, the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to Section 2.2.1 hereof, Pro Rata, based on the respective number of Registrable Securities that each Holder has so requested to be included in such Registration or such registered offering, which can be sold without exceeding the Maximum Number of Securities; and (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to written contractual piggyback registration rights of stockholders of the Company entered into after the date hereof, other than the Holders of Registrable Securities, which can be sold without exceeding the Maximum Number of Securities;

(b) If the Registration or a registered offering is pursuant to a request by persons or entities other than the Holders of Registrable Securities, then the Company shall include in any such Registration or a registered offering (A) first, the shares of Common Stock or other equity securities, if any, of such requesting persons or entities, other than the Holders of Registrable Securities, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to Section 2.2.1, Pro Rata, based on the respective number of Registrable Securities that each Holder has so requested to be included in such Registration or such registered offering, which can be sold without exceeding the Maximum Number of Securities; (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; and (D) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A), (B) and (C), the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual piggyback registration rights entered into after the date hereof, of persons or entities other than the Holders of Registrable Securities hereunder, which can be sold without exceeding the Maximum Number of Securities; and

(c) If the Registration or registered offering is pursuant to a request by Holder(s) of Registrable Securities pursuant to Section 2.1 hereof, then the Company shall include in any such Registration or registered offering securities in the priority set forth in Section 2.1.4.

2.2.3 Piggyback Registration Withdrawal. Any Holder of Registrable Securities (other than a Demanding Holder, whose right to withdraw from an Underwritten Shelf Takedown, and related obligations, shall be governed by Section 2.1.5) shall have the right to withdraw from a Piggyback Registration for any or no reason whatsoever upon written notification to the Company and the Underwriter or Underwriters (if any) of his, her or its intention to withdraw from such Piggyback Registration prior to the effectiveness of the Registration Statement filed with the Commission with respect to such Piggyback Registration or, in the case of a Piggyback Registration pursuant to a Shelf Registration, the filing of the applicable “red herring” prospectus or prospectus supplement with respect to such Piggyback Registration used for marketing such transaction. Other than with respect to an Underwritten Shelf Takedown by a Demanding Holder pursuant to Section 2.1.3, the Company (whether on its own good faith determination or as the result of a request for withdrawal by persons or entities pursuant to separate written contractual obligations) may withdraw a Registration Statement filed with the Commission in connection with a Piggyback Registration at any time prior to the effectiveness of such Registration Statement or abandon the Underwritten Shelf Takedown in connection with a Piggyback Registration at any time prior to the launch of such Underwritten Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with the Piggyback Registration prior to its withdrawal under this Section 2.2.3.

2.2.4 Unlimited Piggyback Registration Rights. For purposes of clarity, any Piggyback Registration effected pursuant to Section 2.2 hereof shall not be counted as a Registration pursuant to an Underwritten Shelf Takedown effected under Section 2.1 hereof.

2.3 Block Trades.

2.3.1 Notwithstanding the foregoing, at any time and from time to time when an effective Shelf is on file with the Commission and effective, if a Demanding Holder wishes to engage in a Block Trade, (x) with a total offering price reasonably expected to exceed \$75 million in the aggregate or (y) with respect to all remaining Registrable Securities held by the Demanding Holder (the “**Minimum Block Threshold**”), then such Demanding Holder only needs to notify the Company of the Block Trade at least five (5) business days prior to the day such offering is to commence and the Company shall as expeditiously as possible use its commercially reasonable efforts to facilitate such Block Trade; *provided* that the Demanding Holders representing a majority of the Registrable Securities wishing to engage in the Block Trade shall use commercially reasonable efforts to work with the Company and any Underwriters prior to making such request in order to facilitate preparation of the registration statement, prospectus and other offering documentation related to the Block Trade.

2.3.2 Prior to the filing of the applicable “red herring” prospectus or prospectus supplement used in connection with a Block Trade, a majority-in-interest of the Demanding Holders initiating such Block Trade shall have the right to submit a Withdrawal Notice to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw from such Block Trade, *provided* that any other Demanding Holder(s) may elect to have the Company continue a Block Trade if the Minimum Block Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Block Trade by the remaining Demanding Holder(s). Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Block Trade prior to its withdrawal under this Section 2.3.2.

2.3.3 Notwithstanding anything to the contrary in this Agreement, Section 2.2 hereof shall not apply to a Block Trade initiated by a Demanding Holder pursuant to this Agreement.

2.3.4 The Demanding Holder in a Block Trade shall have the right to select the Underwriters for such Block Trade (which shall consist of one or more reputable nationally recognized investment banks).

2.3.5 Each Legacy Orchestra Equityholder and Sponsor Equityholder may demand no more than one (1) Block Trade pursuant to this Section 2.3 in any twelve (12) month period. For the avoidance of doubt, any Block Trade effected pursuant to this Section 2.3 shall not be counted as a demand for an Underwritten Shelf Takedown pursuant to Section 2.1.3 hereof.

ARTICLE III COMPANY PROCEDURES

3.1 General Procedures. If the Company is required to effect the Registration of Registrable Securities pursuant to this Agreement, the Company shall use its best efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended plan of distribution thereof, and pursuant thereto the Company shall, as expeditiously as possible:

3.1.1 prepare and file with the Commission within the time frame required by Section 2.1.1 (to the extent applicable) a Registration Statement with respect to such Registrable Securities and use its reasonable best efforts to cause such Registration Statement to become effective and remain effective, until all Registrable Securities covered by such Registration Statement have been sold or have ceased to be Registrable Securities;

3.1.2 prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement, and such supplements to the Prospectus, as may be reasonably requested by any Holder with Registrable Securities registered on such Registration Statement or any Underwriter of Registrable Securities or as may be required by the rules, regulations or instructions applicable to the registration form used by the Company or by the Securities Act or rules and regulations thereunder to keep the Registration Statement effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or supplement to the Prospectus or have ceased to be Registrable Securities;

3.1.3 at least two (2) business days prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto (or such shorter period of time as may be (a) necessary in order to comply with the Securities Act, the Exchange Act and the rules and regulations promulgated thereunder or (b) advisable in order to reduce the number of days that sales are suspended pursuant to Section 3.4), furnish without charge to the Underwriters, if any, and each Holder of Registrable Securities included in such Registration, and each such Holder's legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the Prospectus included in such Registration Statement (including each preliminary Prospectus), and such other documents as the Underwriters and each Holder of Registrable Securities included in such Registration or the legal counsel for any such Holders may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Holders; *provided*, that the Company shall have no obligation to furnish any documents publicly filed or furnished with the Commission pursuant to the Electronic Data Gathering Analysis and Retrieval System ("*EDGAR*"); and provided further, *provided* that the Company shall provide each Holder and its legal counsel with a reasonable opportunity to review such documents and comment thereon, and the Company shall consider in good faith any comments provided by such Holder or their legal counsel;

3.1.4 prior to any public offering of Registrable Securities, use commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as any Holder of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request (or provide evidence reasonably satisfactory to such Holders and their respective legal counsel that the Registrable Securities are exempt from such registration or qualification) and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; *provided, however*, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

3.1.5 cause all Registrable Securities included in any Registration to be listed on such exchanges or otherwise designated for trading in the same manner as similar securities issued by the Company are then listed or designated;

3.1.6 provide a transfer agent or warrant agent, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

3.1.7 advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceeding for such purpose and promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

3.1.8 notify the Holders at any time when a Prospectus relating to such Registration Statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the Prospectus included in such Registration Statement, as then in effect, includes a Misstatement, and then to correct such Misstatement as set forth in Section 3.4 hereof;

3.1.9 in the event of an Underwritten Offering, a Block Trade, or sale by a broker, placement agent or sales agent pursuant to such Registration, in each of the cases to the extent customary for a transaction of its type, permit a representative of the Holders (such representative to be selected by a majority of the participating Holders), the Underwriters or other financial institutions facilitating such Underwritten Offering, Block Trade or other sale pursuant to such Registration, if any, and any attorney, consultant or accountant retained by such Holders or Underwriters to participate, at each such person's or entity's own expense, in the preparation of the Registration Statement, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such representative, Underwriter, financial institution, attorney, consultant or accountant in connection with the Registration; *provided, however,* that such representatives, Underwriters or financial institutions enter into a confidentiality agreement, in customary form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information and *provided, further,* that, except as required by Law, the Company may not include the name of any Holder or Underwriter or any information regarding any Holder or Underwriter in any Registration Statement or Prospectus, any amendment or supplement to such Registration Statement or Prospectus, any document that is to be incorporated by reference into such Registration Statement or Prospectus, or any response to any comment letter, without the prior written consent of such Holder or Underwriter and providing each such Holder or Underwriter a reasonable amount of time to review and comment on such applicable document, which comments the Company shall consider shall consider in good faith and, to the extent deemed appropriate by the Company in its sole discretion, include.

3.1.10 obtain a "comfort" letter from the Company's independent registered public accountants in the event of an Underwritten Offering, a Block Trade or sale by a broker, placement agent or sales agent pursuant to such Registration in customary form and covering such matters of the type customarily covered by "comfort" letters for a transaction of its type as the managing Underwriter may reasonably request, and reasonably satisfactory to a majority-in-interest of the participating Holders;

3.1.11 in the event of an Underwritten Offering, a Block Trade or sale by a broker, placement agent or sales agent pursuant to such Registration, on the date the Registrable Securities are delivered for sale pursuant to such Registration, to the extent customary for a transaction of its type, obtain an opinion, dated such date, of counsel representing the Company for the purposes of such Registration, addressed to the participating Holders, the broker, placement agents or sales agent, if any, and the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion is being given as the participating Holders, broker, placement agents, sales agent, or Underwriter may reasonably request and as are customarily included in such opinions and negative assurance letters;

3.1.12 in the event of any Underwritten Offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing Underwriter of such offering;

3.1.13 make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the Registration Statement which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any successor rule then in effect), and which requirement will be deemed to be satisfied if the Company timely files complete and accurate information on Forms 10-Q, 10-K and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

3.1.14 if the Registration involves the Registration of Registrable Securities involving gross proceeds in excess of \$25 million, use its commercially reasonable efforts to make available senior executives of the Company to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in such Underwritten Offering; and

3.1.15 otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the participating Holders, consistent with the terms of this Agreement, in connection with such Registration.

Notwithstanding the foregoing, the Company shall not be required to provide any documents or information to an Underwriter, broker, sales agent or placement agent if such Underwriter, broker, sales agent or placement agent has not then been named with respect to the applicable Underwritten Offering or other offering involving a registration as an Underwriter, broker, sales agent or placement agent, as applicable.

3.2 Registration Expenses. Except as otherwise provided herein, the Registration Expenses of all Registrations, including a Registration that is postponed, suspended, delayed or withdrawn, and any failed Registrations that are withdrawn or abandoned by the Company for any reason shall be borne by the Company, unless a Demanding Holder elects to reimburse the Company pursuant to clause (ii) of the second sentence of Section 2.1.5. It is acknowledged by the Holders that each Holder shall bear, severally and not jointly, with respect to such Holder's Registrable Securities being sold, all incremental selling expenses relating to the sale of Registrable Securities, such as Underwriters' commissions and discounts, brokerage fees, Underwriter marketing costs and, other than as set forth in the definition of "Registration Expenses," all reasonable fees and expenses of any legal counsel representing the Holders.

3.3 Requirements for Participation in Underwritten Offerings. Notwithstanding anything in this Agreement to the contrary, if any Holder does not provide the Company with its requested Holder Information (as defined in Section 5.1.2), the Company may exclude such Holder's Registrable Securities from the applicable Registration Statement or Prospectus if the Company determines in good faith, based on the advice of counsel, that it is necessary or advisable to include such information in the applicable Registration Statement or Prospectus and such Holder continues thereafter to withhold such information. In addition, no person or entity may participate in any Underwritten Offering or other offering for equity securities of the Company pursuant to a Registration initiated by the Company hereunder unless such person or entity (i) agrees to sell such person's or entity's securities on the basis provided in any underwriting arrangements approved by the Company and (ii) completes and executes all customary questionnaires, powers of attorney, indemnities, lock-up agreements, underwriting agreements and other customary documents as may be reasonably required under the terms of such underwriting arrangements. For the avoidance of doubt, the exclusion of a Holder's Registrable Securities as a result of this Section 3.3 shall not affect the registration of the other Registrable Securities to be included in such Registration.

3.4 Suspension of Sales; Adverse Disclosure.

3.4.1 Upon receipt of written notice from the Company that a Registration Statement or Prospectus contains a Misstatement, each of the Holders shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended Prospectus correcting the Misstatement (it being understood that the Company hereby covenants to prepare and file such supplement or amendment as soon as reasonably practicable after the time of such notice), or until it is advised in writing by the Company that the use of the Prospectus may be resumed.

3.4.2 If the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration at any time would (a) require the Company to make an Adverse Disclosure, (b) require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company's control, or (c) in the good faith judgment of the majority of the Board such Registration, be seriously detrimental to the Company and the majority of the Board concludes as a result that it is essential to defer such filing, initial effectiveness or continued use at such time, the Company may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time, but in no event no more than three (3) occasions or for more than sixty (60) consecutive days, or more than ninety (90) total calendar days, in each case, during any 12-month period, determined in good faith by the Company to be necessary for such purpose. In the event the Company exercises its rights under the preceding sentence, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to any Registration in connection with any sale or offer to sell Registrable Securities until such Holder receives written notice from the Company that such sales or offers of Registrable Securities may be resumed, and in each case maintain the confidentiality of such notice and its contents. The Company shall promptly notify the Holders of the expiration of any period during which it exercised its rights under this Section 3.4, and, upon the expiration of any such period, the Holders shall be entitled to resume the use of any such Prospectus in connection with any sale or offer to sell Registrable Securities.

3.5 Reporting Obligations. As long as any Holder shall own Registrable Securities, the Company, at all times while it shall be a reporting company under the Exchange Act, covenants to file timely (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Sections 13(a) or 15(d) of the Exchange Act and to promptly furnish the Holders with true and complete copies of all such filings; *provided* that any documents publicly filed or furnished with the Commission pursuant to EDGAR shall be deemed to have been furnished or delivered to the Holders pursuant to this Section 3.5. The Company further covenants that it shall take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell shares of Common Stock held by such Holder without registration under the Securities Act within the limitation of the exemptions provided by Section 4(a)(1) of the Securities Act or Rule 144 promulgated under the Securities Act (or any successor rule then in effect), including providing any legal opinions. Upon the request of any Holder, the Company shall deliver to such Holder a written certification of a duly authorized officer as to whether it has complied with such requirements.

ARTICLE IV LOCK-UP

4.1 Lock-up.

4.1.1 Except as permitted by Section 4.2, each Legacy Orchestra Equityholder and Sponsor Equityholder (each, a "**Lock-up Party**") shall not Transfer (the "**Lock-up**") any shares of Common Stock or any security convertible into or exercisable or exchanged for Common Stock beneficially owned or owned of record by such Holder (the "**Lock-up Shares**") until the date that is the earlier of (i) six (6) months from the date hereof (or twelve (12) months with respect to the Founder Shares and the Private Shares and any shares of Common Stock or any security convertible into or exercisable or exchanged for Common Stock beneficially owned or owned of record by RTW and its Affiliates as of the date of this Agreement), or (ii) the date on which the Company completes a liquidation, merger, stock exchange, reorganization or other similar transaction that results in all of the Company's stockholders having the right to exchange their shares of Common Stock for cash, securities or other property (the "**Lock-up Period**"). Notwithstanding anything to the contrary in this Agreement, (A) to the extent any Holder has executed any other agreement with the Company or any of its Affiliates that provides for a longer lock-up period than the Lock-up Period, the lock-up period in such other agreement shall control and (B) the Company may at any time or from time to time, in its sole discretion, elect to release from the Lock-up some or all of the Lock-up Shares purchased in connection with the Backstop Agreement by providing written notice of such election to the holders of such Lock-up Shares.

4.2 Exceptions. The provisions of Section 4.1 shall not apply to:

4.2.1 transactions relating to shares of Common Stock or warrants acquired in open market transactions;

4.2.2 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock as a bona fide gift or charitable contribution;

4.2.3 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to a trust, family limited partnership or other entity formed for estate planning purposes for the primary benefit of the spouse, domestic partner, parent, sibling, child or grandchild of a Holder or any other person with whom a Holder has a relationship by blood, marriage or adoption not more remote than first cousin and Transfers to any such family member;

4.2.4 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock by will or intestate succession or the laws of descent and distributions upon the death of a Holder (it being understood and agreed that the appointment of one or more executors, administrators or personal representatives of the estate of a Holder shall not be deemed a Transfer hereunder to the extent that such executors, administrators and/or personal representatives comply with the terms of this Article IV on behalf of such estate);

4.2.5 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock pursuant to a qualified domestic order or in connection with a divorce settlement;

4.2.6 if a Holder is a corporation, partnership (whether general, limited or otherwise), limited liability company, trust or other business entity, (i) Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to another corporation, partnership, limited liability company, trust or other business entity that controls, is controlled by or is under common control or management with a Holder (including, for the avoidance of doubt, where such Holder is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), or (ii) Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock as part of a dividend, distribution, transfer or other disposition of shares of Common Stock to partners, limited liability company members, direct or indirect stockholders or other equity holders of a Holder, including, for the avoidance of doubt, where such Holder is a partnership, to its general partner or a successor partnership, fund or investment vehicle, or any other partnerships, funds or investment vehicles controlled or managed by such partnership;

4.2.7 if the Holder is a trust, Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to a trustor or beneficiary of such trust or to the estate of a beneficiary of such trust;

4.2.8 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to the Company's or the Holder's officers, directors, members, consultants or their affiliates;

4.2.9 pledges of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock as security or collateral in connection with any borrowing or the incurrence of any indebtedness by any Holder (provided such borrowing or incurrence of indebtedness is secured by a portfolio of assets or equity interests issued by multiple issuers);

4.2.10 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock pursuant to a *bona fide* third-party tender offer, merger, asset acquisition, stock sale, recapitalization, consolidation, business combination or other transaction or series of related transactions involving a Change in Control of the Company, *provided* that in the event that such tender offer, merger, asset acquisition, stock sale, recapitalization, consolidation, business combination or other such transaction is not completed, the securities subject to this Agreement shall remain subject to this Agreement;

4.2.11 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to the Company in connection with the liquidation or dissolution of the Company by virtue of the laws of the state of the Company's organization and the Company's organizational documents;

4.2.12 the establishment of a trading plan pursuant to Rule 10b5-1 promulgated under the Exchange Act, *provided* that such plan does not provide for the Transfer of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock during the Lock-Up Period; and

4.2.13 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to satisfy any U.S. federal, state, or local income tax obligations of the Lock-up Party (or its direct or indirect owners) arising from a change in the U.S. Internal Revenue Code of 1986, as amended (the "*Code*"), or the U.S. Treasury Regulations promulgated thereunder (the "*Regulations*") after the date on which the Merger Agreement was executed by the parties, and such change prevents the Merger from qualifying as a "reorganization" pursuant to Section 368 of the Code (and the Merger does not qualify for similar tax-free treatment pursuant to any successor or other provision of the Code or Regulations taking into account such changes), in each case solely and to the extent necessary to cover any tax liability as a direct result of the transaction;

PROVIDED, THAT IN THE CASE OF ANY TRANSFER OR DISTRIBUTION PURSUANT TO SECTIONS 4.2.2 THROUGH 4.2.9 AND 4.2.13, EACH DONEE, DISTRIBUTEE OR OTHER TRANSFEREE SHALL AGREE IN WRITING, IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY, TO BE BOUND BY THE PROVISIONS OF THIS AGREEMENT.

4.3 Null and Void. If any Transfer of shares of Common Stock prior to the end of the Lock-up Period is made or attempted contrary to the provisions of this Agreement, such purported Transfer shall be null and void *ab initio*, and the Company shall refuse to recognize any such purported transferee of the Common Stock as one of its equityholders for any purpose.

4.4 Legend. During the Lock-up Period, each certificate evidencing any Common Stock shall be stamped or otherwise imprinted with a legend in substantially the following form, in addition to any other applicable legends:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN AN AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT, DATED AS OF JANUARY 26, 2023 (AS MAY BE AMENDED OR RESTATED FROM TIME TO TIME), A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH AGREEMENT."

Promptly upon the expiration of the Lock-up Period, the Company shall cause the removal of such legend and, if determined appropriate by the Company, any restrictive legend related to compliance with the federal securities laws from the certificates evidencing the Common Stock.

ARTICLE V INDEMNIFICATION AND CONTRIBUTION

5.1 Indemnification.

5.1.1 The Company agrees to indemnify and hold harmless, to the extent permitted by law, each Holder of Registrable Securities, its partners, members, managers, officers, directors and agents and each person or entity who controls such Holder (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and out-of-pocket expenses (including without limitation actual, reasonable and documented attorneys' fees or other fees and expenses incurred thereby in connection with investigating or defending any such claim or proceeding), caused by any untrue or alleged untrue statement of material fact contained or incorporated by reference in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading (except insofar as the same are caused by or contained in any information or affidavit so furnished in writing to the Company by such Holder expressly for use therein). The Company shall indemnify the Underwriters, their officers and directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to the indemnification of the Holder.

5.1.2 In connection with any Registration Statement in which a Holder of Registrable Securities is participating, such Holder shall furnish (or cause to be furnished) to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus (the “**Holder Information**”) and, to the extent permitted by law, shall indemnify the Company, its directors, officers and agents and each person or entity who controls the Company (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and out-of-pocket expenses (including without limitation actual, reasonable and documented attorneys’ fees) resulting from any untrue or alleged untrue statement of material fact contained in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement is contained in (or not contained in, in the case of an omission) the Holder Information; *provided, however*, that the obligation to indemnify shall be several, not joint and several, among such Holders of Registrable Securities, and the liability of each such Holder of Registrable Securities shall be in proportion to and limited to the net proceeds received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement. The Holders of Registrable Securities shall indemnify the Underwriters, their officers, directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to indemnification of the Company.

5.1.3 Any person or entity entitled to indemnification herein shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (*provided*, that the failure to give prompt notice shall not impair any person’s or entity’s right to indemnification hereunder to the extent such failure has not materially prejudiced the indemnifying party) and (ii) unless in such indemnified party’s reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one (1) counsel (plus one (1) local counsel) for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement includes a statement or admission of fault and culpability on the part of such indemnified party or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

5.1.4 The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling person or entity of such indemnified party and shall survive the transfer of securities. The Company and each Holder of Registrable Securities participating in an offering also agrees to make such provisions as are reasonably requested by any indemnified party for contribution to such party in the event the Company’s or such Holder’s indemnification is unavailable for any reason.

5.1.5 If the indemnification provided under Section 5.1 hereof from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and out-of-pocket expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and out-of-pocket expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by (or not made by, in the case of an omission), or relates to information supplied by (or not supplied by, in the case of an omission), such indemnifying party or indemnified party, and the indemnifying party’s and indemnified party’s relative intent, knowledge, access to information and opportunity to correct or prevent such action and the benefits received by such indemnified party or indemnifying party; *provided, however*, that the liability of any Holder under this Section 5.1.5 shall be limited to the amount of the net proceeds received by such Holder in such offering giving rise to such liability. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 5.1.1, 5.1.2 and 5.1.3 above, any legal or other fees, charges or out-of-pocket expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5.1.5 were determined by pro rata allocation or by any other method of allocation, which does not take account of the equitable considerations referred to in this Section 5.1.5. No person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 5.1.5 from any person or entity who was not guilty of such fraudulent misrepresentation.

**ARTICLE VI
MISCELLANEOUS**

6.1 Notices. Any notice hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00PM on a business day, addressee's day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by fax or email, on the date that transmission is confirmed electronically, if by 4:00PM on a business day, addressee's day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows, or to such other address as a party shall specify to the others in accordance with this Section 6.1:

if to the Company, to:

Orchestra BioMed, Inc.
150 Union Square Drive
New Hope PA 18938
Attn: David Hochman, Chairman & CEO
E-mail: DHochman@orchestrabiomed.com,

with a copy to:

Paul Hastings LLP
200 Park Avenue
New York, NY 10166
Attn: Samuel A. Waxman
E-mail: samuelwaxman@paulhastings.com;

if to any Holder, at such Holder's address or contact information as set forth in the Company's books and records.

6.2 Assignment; No Third-Party Beneficiaries.

6.2.1 This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part.

6.2.2 Subject to Section 6.2.4 and Section 6.2.5, this Agreement and the rights, duties and obligations of a Holder hereunder may be assigned in whole or in part to such Holder's Permitted Transferees; *provided* that, (a)(i) the Legacy Orchestra Equityholders shall be permitted to transfer their rights hereunder as a Legacy Orchestra Equityholder to one or more affiliates or any direct or indirect partners, members or equity holders of the Legacy Orchestra Equityholders (it being understood that no such transfer shall reduce any rights of the Legacy Orchestra Equityholders or such transferees) and (ii) the Sponsor Equityholders shall be permitted to transfer their rights hereunder as the Sponsor Equityholders to one or more of their respective affiliates or any direct or indirect partners, members or equity holders of the Sponsor Equityholders (it being understood that no such transfer shall reduce any rights of the Sponsor Equityholders or such transferees).

6.2.3 This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and its successors and the permitted assigns of the Holders, which shall include Permitted Transferees.

6.2.4 This Agreement shall not confer any rights or benefits on any persons or entities that are not parties hereto, other than as expressly set forth in this Agreement and Section 6.2 hereof.

6.2.5 No assignment by any party hereto of such party's rights, duties and obligations hereunder shall be binding upon or obligate the Company unless and until the Company shall have received (i) written notice of such assignment as provided in Section 6.1 hereof and (ii) the written agreement of the assignee, in a form reasonably satisfactory to the Company, to be bound by the terms and provisions of this Agreement (which may be accomplished by an addendum or certificate of joinder to this Agreement). Any transfer or assignment made other than as provided in this Section 6.2 shall be null and void.

6.3 Counterparts; Facsimile Signatures. This Agreement may be executed in separate counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same agreement binding on all the parties hereto. This Agreement shall become effective upon delivery to each party of an executed counterpart or the earlier delivery to each party of original, photocopied, or electronically transmitted signature pages that together (but need not individually) bear the signatures of all other parties. For the avoidance of doubt, each party agrees that an electronic copy of this Agreement shall be considered and treated like an original, and that an electronic or digital signature shall be as valid as a handwritten signature (including .pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000 (e.g., www.docusign.com)).

6.4 Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without giving effect to the conflict of laws principles thereof. Any Action based upon, arising out of or related to this Agreement or the transactions contemplated hereby must be brought in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware), or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the parties irrevocably (i) submits to the exclusive jurisdiction of each such court in any such proceeding or Action, (ii) waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, (iii) agrees that all claims in respect of the proceeding or Action shall be heard and determined only in any such court, and (iv) agrees not to bring any proceeding or Action arising out of or relating to this Agreement or the transactions contemplated hereby in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence Proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any Action brought pursuant to this Section 6.4.

6.5 Waiver of Jury Trial. THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT EACH SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY ACTION OF ANY KIND OR NATURE, IN ANY COURT IN WHICH AN ACTION MAY BE COMMENCED, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY ADDITIONAL AGREEMENT, OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN OR AMONG ANY OF THE PARTIES TO THIS AGREEMENT OF ANY KIND OR NATURE. NO PARTY SHALL BE AWARDED PUNITIVE OR OTHER EXEMPLARY DAMAGES RESPECTING ANY DISPUTE ARISING UNDER THIS AGREEMENT OR ANY ADDITIONAL AGREEMENT.

6.6 Amendments and Modifications. Upon the written consent of the Company, the Holders of a majority-in-interest of the Registrable Securities at the time in question, compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified; *provided, however*, that, notwithstanding the foregoing, any amendment hereto or waiver hereof that (i) adversely affects one Holder, solely in its capacity as a holder of the shares of capital stock of the Company, in a manner that is materially different from the other Holders (in such capacity) shall require the consent of the Holder so affected, (ii) any amendment or waiver hereof that adversely affects the rights of Sponsor (or its successor) shall require the consent of the Sponsor (or its successor), (iii) any amendment or waiver hereof that adversely affects the rights of Covidien Group (or its successor) shall require the consent of Covidien Group (or its successor), and (iv) any amendment or waiver hereof that adversely affects the rights of the Legacy Orchestra Equityholders shall require the consent a majority-in-interest of the Registrable Securities held by the Legacy Orchestra Equityholders at the time in question. No course of dealing between any Holder or the Company and any other party hereto or any failure or delay on the part of a Holder or the Company in exercising any rights or remedies under this Agreement shall operate as a waiver of any rights or remedies of any Holder or the Company. No single or partial exercise of any rights or remedies under this Agreement by a party shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or thereunder by such party.

6.7 Other Registration Rights. The Company represents and warrants that no person or entity, other than a Holder of Registrable Securities, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any Registration filed by the Company for the sale of securities for its own account or for the account of any other person or entity. Further, the Company represents and warrants that this Agreement supersedes any other registration rights agreement or agreement with similar terms and conditions and in the event of a conflict between any such agreement or agreements and this Agreement, the terms of this Agreement shall prevail. This Agreement supersedes, and amends and restates in its entirety, the Prior Agreement.

6.8 Term. This Agreement shall terminate upon the earlier of (i) the tenth (10th) anniversary of the date of this Agreement, (ii) the date as of which all of the Registrable Securities have been sold or disposed of, or (iii) with respect to any particular Holder, on the date such Holder no longer holds Registrable Securities. The provisions of Section 3.5 and Article V shall survive any termination.

6.9 Holder Information. Each Holder agrees, if requested in writing, to represent to the Company the total number of Registrable Securities held by such Holder in order for the Company to make determinations hereunder.

6.10 Severability. A determination by a court or other legal authority that any provision that is not of the essence of this Agreement is legally invalid shall not affect the validity or enforceability of any other provision hereof. The parties shall cooperate in good faith to substitute (or cause such court or other legal authority to substitute) for any provision so held to be invalid a valid provision, as alike in substance to such invalid provision as is lawful.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Amended and Restated Registration Rights Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

COMPANY:

ORCHESTRA BIOMED, INC.

By: /s/ David Hochman
Name: David Hochman
Title: Chief Executive Officer

SPONSOR EQUITYHOLDERS:

HSAC 2 HOLDINGS, LLC

By: /s/ Alice Lee
Name: Alice Lee
Title: Director

/s/ Pedro Granadillo
Pedro Granadillo

/s/ Stuart Peltz
Stuart Peltz

/s/ Michael Brophy
Michael Brophy

/s/ Carsten Boess
Carsten Boess

RTW Master Fund, Ltd.

By: /s/ Roderick Wong, M.D.
Name: Roderick Wong, M.D.
Title: Director

RTW Innovation Master Fund, Ltd.

By: /s/ Roderick Wong, M.D.
Name: Roderick Wong, M.D.
Title: Director

RTW Venture Fund Limited

By: RTW Investments, LP, its Investment Manager

By: /s/ Roderick Wong, M.D.
Name: Roderick Wong, M.D.
Title: Managing Partner

[Signature Page to Registration Rights Agreement]

LEGACY ORCHESTRA EQUITYHOLDERS:

RTW Master Fund, Ltd.

By: /s/ Roderick Wong, M.D.
Name: Roderick Wong, M.D.
Title: Director

RTW Innovation Master Fund, Ltd.

By: /s/ Roderick Wong, M.D.
Name: Roderick Wong, M.D.
Title: Director

RTW Venture Fund Limited

By: /s/ Roderick Wong, M.D.
Name: Roderick Wong, M.D.
Title: Managing Partner of its Investment Manager

By: /s/ David Hochman
Name: David Hochman

By: /s/ Darren Sherman
Name: Darren Sherman

By: /s/ Michael Kaswan
Name: Michael Kaswan

By: /s/ Yuval Mika
Name: Yuval Mika

By: /s/ Eric Fain
Name: Eric Fain

By: /s/ Eric Rose
Name: Eric Rose

By: /s/ Jason Aryeh
Name: Jason Aryeh

By: /s/ Pamela Connealy
Name: Pamela Connealy

By: /s/ Geoffrey W. Smith
Name: Geoffrey W. Smith

Covidien Group S.à.r.l.

By: /s/ Erik De Gres

Name: Erik De Gres

Title: General Manager

Perceptive Life Sciences Master Fund

By: /s/ James Mannix

Name: James Mannix

Title: COO

Ascent Biomedical Ventures II NY, LP

By: /s/ Steve Hochberg

Name: Steve Hochberg

Title: General Partner

Ascent Biomedical Ventures II, LP

By: /s/ Steve Hochberg

Name: Steve Hochberg

Title: General Partner

Ascent Biomedical Ventures Synecor, LP

By: /s/ Steve Hochberg

Name: Steve Hochberg

Title: General Partner

SCHEDULE A – SPONSOR EQUITYHOLDERS

Name and Address of Equityholder

HSAC 2 Holdings, LLC
40 10th Avenue, Floor 7
New York, New York 10014

Pedro Granadillo
40 10th Avenue, Floor 7
New York, New York 10014

Stuart Peltz
40 10th Avenue, Floor 7
New York, New York 10014

Michael Brophy
40 10th Avenue, Floor 7
New York, New York 10014

Carsten Boess
40 10th Avenue, Floor 7
New York, New York 10014

RTW Master Fund, Ltd.
40 10th Avenue, Floor 7
New York, New York 10014

RTW Innovation Master Fund, Ltd.
40 10th Avenue, Floor 7
New York, New York 10014

RTW Venture Fund Limited
40 10th Avenue, Floor 7
New York, New York 10014

SCHEDULE B – LEGACY ORCHESTRA EQUITYHOLDERS

Name and Address of Equityholder

RTW Master Fund, Ltd.
40 10th Avenue, Floor 7
New York, New York 10014

Pam Connealy
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

RTW Innovation Master Fund, Ltd.
40 10th Avenue, Floor 7
New York, New York 10014

Geoffrey W Smith
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

RTW Venture Fund Limited
40 10th Avenue, Floor 7
New York, New York 10014

Covidien Group S.à.r.l.
c/o Medtronic, Inc., Operational Headquarters
710 Medtronic Parkway
Minneapolis, MN 55432-5604

David Hochman
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

Perceptive Life Sciences Master Fund
51 Astor Place, 10th Floor
New York, NY 10003

Darren Sherman
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

Michael Kaswan
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

Yuval Mika
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

Eric Fain
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

Eric Rose
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

Jason Aryeh
Orchestra BioMed, Inc.
150 Union Square Drive
New Hope, PA 18938

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the "Agreement") is made and entered into as of _____, 2023 between Orchestra BioMed Holdings, Inc., a Delaware corporation (the "Company"), and _____ ("Indemnitee").

WITNESSETH THAT:

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Bylaws and Certificate of Incorporation of the Company, each as may be amended or restated from time to time (the "Bylaws" and the "Certificate of Incorporation", respectively) require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("DGCL"). The Bylaws and Certificate of Incorporation and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that agreements may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and Certificate of Incorporation of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; [and]

WHEREAS, Indemnitee does not regard the protection available under the Company's Bylaws and Certificate of Incorporation and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be so indemnified; [and]

[WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by _____ (“Fund”), which Indemnitee and Fund intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company’s acknowledgement and agreement to the foregoing being a material condition to Indemnitee’s willingness to serve on the Board.]

NOW, THEREFORE, in consideration of Indemnitee’s agreement to serve as an officer or director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his or her Corporate Status (as hereinafter defined), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee’s conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his or her Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee’s behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 1 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her or on his or her behalf if, by reason of his or her Corporate Status, he or she is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such Proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such Expenses, judgments, fines or settlement amounts, as well as any other equitable considerations that applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution that may be brought by officers, directors, or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board (1) by a majority vote of the Disinterested Directors, even though less than a quorum, (2) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (3) if there are no Disinterested Directors or if the Disinterested Directors so direct, by independent legal counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee or (4) if so directed by the Board, by the stockholders of the Company.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of “Independent Counsel” as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection that shall have been made by the Indemnitee to the Company’s selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee’s action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, and such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such Proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his or her rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his or her behalf, in advance, any and all Expenses actually and reasonably incurred by him or her in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided, however*, that the foregoing shall not affect the obligations of the Company to advance Expenses prior to the final disposition of the Proceeding pursuant to this Agreement.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other Enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) [The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by the Fund and certain of its affiliates (collectively, the "Fund Indemnitors"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Certificate of Incorporation or Bylaws of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Section 8(c).]

(d) [Except as provided in paragraph (c) above, i]In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee [(other than against the Fund Indemnitors)], who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) [Except as provided in paragraph (c) above, t]The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(f) [Except as provided in paragraph (c) above, t]The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other Enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision[, provided, that the foregoing shall not affect the rights of Indemnitee or the Fund Indemnitors set forth in Section 8(c) above]; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized by Section 7(d) hereof, or (iv) otherwise required by applicable law.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of any other Enterprise) and shall continue until the latest of (i) three (3) years after the date that Indemnitee shall have ceased to serve as a director or agent of the Company (as indicated in the parenthetical above), (ii) the date of final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder (and of any proceeding, including any appeal, commenced pursuant to Section 7 of hereof), or (iii) the expiration of all statutes of limitation applicable to possible Proceedings to which Indemnitee may be subject arising out of or relating to Indemnitee's Corporate Status, whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives. The Company shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement in form and substance reasonably satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

11. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) Without limiting any of the rights of Indemnitee under the Bylaws or Certificate of Incorporation, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a "bar order" that would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of Expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) "Corporate Status" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other Enterprise that such person is or was serving at the express written request of the Company.

(b) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "Enterprise" shall mean the Company, any Subsidiary of the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, trustee, administrator, general partner, manager, managing member, fiduciary, board of directors' committee member, employee, agent or fiduciary. For purposes hereof, if Indemnitee is serving or has served as a director, officer, trustee, administrator, general partner, manager, managing member, fiduciary, board of directors' committee member, employee, agent or fiduciary of a Subsidiary, Indemnitee shall be deemed to be serving, or to have been serving, in such capacity at the express written request of the Company .

(d) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, being or preparing to be a witness in, or responding to, or objecting to, a request to provide discovery in, any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for and other costs relating to any cost bond, supersede as bond or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) “Proceeding” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of his or her Corporate Status, by reason of any action taken by him or her or of any inaction on his or her part while acting in his or her Corporate Status; in each case whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement.

(g) “Subsidiary” means any corporation, partnership, joint venture, limited liability company, association, or other entity in which the Company owns, directly or indirectly, fifty percent (50%) or more of the outstanding equity securities or interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such entity.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter that may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation that it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To the Company at:

Orchestra BioMed Holdings, Inc.
150 Union Square Drive
New Hope, PA 18938
Attention: Chief Executive Officer

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

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

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Signature Page To Follow

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

COMPANY

ORCHESTRA BIOMED HOLDINGS, INC.

By: _____
Name: _____
Title: _____
Electronic Mail _____

INDEMNITEE

By: _____
Name: _____
Address: _____
Electronic Mail: _____

SIGNATURE PAGE TO
INDEMNIFICATION AGREEMENT

ORCHESTRA BiMED HOLDINGS, INC.
2023 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: DECEMBER 12, 2022

APPROVED BY THE STOCKHOLDERS: JANUARY 26, 2023

EFFECTIVE DATE: JANUARY 26, 2023

1. GENERAL.

(a) Plan Purpose. The Company, by means of the Plan, seeks to secure and retain the services of Employees, Directors and Consultants, to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such persons may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

(b) Available Awards. The Plan provides for the grant of the following Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) SARs; (iv) Restricted Stock Awards; (v) RSU Awards; and (vi) Other Awards.

(c) Adoption Date; Effective Date. The Plan will come into existence on the Adoption Date, but no Award may be granted prior to the Effective Date.

2. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to adjustment in accordance with Section 2(c) and any adjustments as necessary to implement any Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards will not exceed 3,455,303 shares plus a number of shares of Common Stock equal to the number of Returning Shares, if any, as such shares become available from time to time. In addition, subject to any adjustments as necessary to implement any Capitalization Adjustments, such aggregate number of shares of Common Stock will automatically increase on January 1 of each year for a period of ten years commencing on January 1, 2023 and ending on (and including) January 1, 2032, in an amount equal to the lesser of (i) 4.8% of the total number of shares of Common Stock outstanding on December 31 of the preceding year, (ii) 3,036,722 shares of Common Stock, and (iii) such number of shares of Common Stock determined by the Board or the Compensation Committee prior to January 1st of a given year.

(b) Aggregate Incentive Stock Option Limit. Notwithstanding anything to the contrary in Section 2(a) and subject to any adjustments as necessary to implement any Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is 3,455,303 shares, which such amount shall be increased commencing on January 1, 2023 and ending on (and including) January 1, 2032, in an amount equal to the lesser of (i) 4.8% of the total number of shares of Common Stock outstanding on December 31 of the preceding year, (ii) 3,036,722 shares of Common Stock, and (iii) such number of shares of Common Stock determined by the Board or the Compensation Committee prior to January 1st of a given year.

(c) Share Reserve Operation.

(i) Limit Applies to Common Stock Issued Pursuant to Awards. For clarity, the Share Reserve is a limit on the number of shares of Common Stock that may be issued pursuant to Awards and does not limit the granting of Awards, except that the Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy its obligations to issue shares pursuant to such Awards. Shares may be issued in connection with a merger or acquisition as permitted by, as applicable, Nasdaq Listing Rule 5635(c), NYSE Listed Company Manual Section 303A.08, NYSE American Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

(ii) Actions that Do Not Constitute Issuance of Common Stock and Do Not Reduce Share Reserve. The following actions do not result in an issuance of shares under the Plan and accordingly do not reduce the number of shares subject to the Share Reserve and available for issuance under the Plan: (1) the expiration or termination of any portion of an Award without the shares covered by such portion of the Award having been issued, (2) the settlement of any portion of an Award in cash (i.e., the Participant receives cash rather than Common Stock), (3) the withholding of shares that would otherwise be issued by the Company to satisfy the exercise, strike or purchase price of an Award; or (4) the withholding of shares that would otherwise be issued by the Company to satisfy a tax withholding obligation in connection with an Award. For the avoidance of doubt, with respect to a SAR, only shares of Common Stock which are issued upon settlement of the SAR shall count towards reducing the number of shares available for issuance under the Plan.

(iii) Reversion of Previously Issued Shares of Common Stock to Share Reserve. The following shares of Common Stock previously issued pursuant to an Award and accordingly initially deducted from the Share Reserve will be added back to the Share Reserve and again become available for issuance under the Plan: (1) any shares that are forfeited back to or repurchased by the Company because of a failure to meet a contingency or condition required for the vesting of such shares; (2) any shares that are reacquired by the Company to satisfy the exercise, strike or purchase price of an Award; and (3) any shares that are reacquired by the Company to satisfy a tax withholding obligation in connection with an Award.

3. ELIGIBILITY AND LIMITATIONS.

(a) Eligible Award Recipients. Subject to the terms of the Plan, Employees, Directors and Consultants are eligible to receive Awards.

(b) Specific Award Limitations.

(i) Limitations on Incentive Stock Option Recipients. Incentive Stock Options may be granted only to Employees of the Company or a “parent corporation” or “subsidiary corporation” thereof (as such terms are defined in Sections 424(e) and (f) of the Code).

(ii) Incentive Stock Option \$100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds \$100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(iii) Limitations on Incentive Stock Options Granted to Ten Percent Stockholders. A Ten Percent Stockholder may not be granted an Incentive Stock Option unless (i) the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant of such Option and (ii) the Option is not exercisable after the expiration of five years from the date of grant of such Option.

(iv) Limitations on Nonstatutory Stock Options and SARs. Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any “parent” of the Company (as such term is defined in Rule 405) unless the stock underlying such Awards is treated as “service recipient stock” under Section 409A because the Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Awards otherwise comply with the distribution requirements of Section 409A.

(c) Aggregate Incentive Stock Option Limit. The aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is the number of shares specified in Section 2(b).

(d) Non-Employee Director Compensation Limit. The aggregate value of all compensation granted or paid, as applicable, in each case following the Effective Date, to any individual for service as a Non-Employee Director with respect to any fiscal year, including Awards granted and cash fees paid by the Company to such Non-Employee Director for his or her service as a Non-Employee Director, will not exceed (i) \$750,000 in total value or (ii) in the event such Non-Employee Director is first appointed or elected to the Board during such fiscal year, \$1,000,000 in total value, in each case calculating the value of any equity awards based on the grant date fair value of such equity awards for financial reporting purposes.

4. OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option and SAR will have such terms and conditions as determined by the Board. Each Option will be designated in writing as an Incentive Stock Option or Nonstatutory Stock Option at the time of grant; provided, however, that if an Option is not so designated, then such Option will be a Nonstatutory Stock Option, and the shares purchased upon exercise of each type of Option will be separately accounted for. Each SAR will be denominated in shares of Common Stock equivalents. The terms and conditions of separate Options and SARs need not be identical; provided, however, that each Option Agreement and SAR Agreement will conform (through incorporation of provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

(a) Term. Subject to Section 3(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of grant of such Award or such shorter period specified in the Award Agreement.

(b) Exercise or Strike Price. Subject to Section 3(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will not be less than 100% of the Fair Market Value on the date of grant of such Award. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value on the date of grant of such Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, 424(a) of the Code.

(c) Exercise Procedure and Payment of Exercise Price for Options. In order to exercise an Option, the Participant must provide notice of exercise to the Plan Administrator in accordance with the procedures specified in the Option Agreement or otherwise provided by the Company. The Board has the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The exercise price of an Option may be paid, to the extent permitted by Applicable Law and as determined by the Board, by one or more of the following methods of payment to the extent set forth in the Option Agreement:

(i) by cash or check, bank draft or money order payable to the Company;

(ii) pursuant to a “cashless exercise” program developed under Regulation T as promulgated by the U.S. Federal Reserve Board that, prior to the issuance of the Common Stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock that are already owned by the Participant free and clear of any liens, claims, encumbrances or security interests, with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) at the time of exercise the Common Stock is publicly traded, (2) any remaining balance of the exercise price not satisfied by such delivery is paid by the Participant in cash or other permitted form of payment, (3) such delivery would not violate any Applicable Law or agreement restricting the redemption of the Common Stock, (4) any certificated shares are endorsed or accompanied by an executed assignment separate from certificate and (5) such shares have been held by the Participant for any minimum period necessary to avoid adverse accounting treatment as a result of such delivery;

(iv) if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) such shares used to pay the exercise price will not be exercisable thereafter and (2) any remaining balance of the exercise price not satisfied by such net exercise is paid by the Participant in cash or other permitted form of payment; or

(v) in any other form of consideration that may be acceptable to the Board and permissible under Applicable Law.

(d) Exercise Procedure and Payment of Appreciation Distribution for SARs. In order to exercise any SAR, the Participant must provide notice of exercise to the Plan Administrator in accordance with the SAR Agreement. The appreciation distribution payable to a Participant upon the exercise of a SAR will not be greater than an amount equal to the excess of (i) the aggregate Fair Market Value on the date of exercise of a number of shares of Common Stock equal to the number of Common Stock equivalents that are vested and being exercised under such SAR, over (ii) the strike price of such SAR. Such appreciation distribution may be paid to the Participant in the form of Common Stock or cash (or any combination of Common Stock and cash) or in any other form of payment, as determined by the Board and specified in the SAR Agreement.

(e) Transferability. Options and SARs may not be transferred to third-party financial institutions for value. The Board may impose such additional limitations on the transferability of an Option or SAR as it determines. In the absence of any such determination by the Board, the following restrictions on the transferability of Options and SARs will apply, provided that except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration and provided, further, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer:

(i) Restrictions on Transfer. An Option or SAR will not be transferable, except by will or by the laws of descent and distribution, and will be exercisable during the lifetime of the Participant only by the Participant; provided, however, that the Board may permit transfer of an Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request, including to a trust if the Participant is considered to be the sole beneficial owner of such trust (as determined under Section 671 of the Code and applicable U.S. state law) while such Option or SAR is held in such trust, provided that the Participant and the trustee enter into a transfer and other agreements required by the Company.

(ii) Domestic Relations Orders. Notwithstanding the foregoing, subject to the execution of transfer documentation in a format acceptable to the Company and subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to a domestic relations order.

(f) Vesting. The Board may impose such restrictions on or conditions to the vesting and/or exercisability of an Option or SAR as determined by the Board and vesting conditions may include achievement of one or more Performance Goals. Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company, vesting of Options and SARs will cease upon termination of the Participant's Continuous Service.

(g) Termination of Continuous Service for Cause. Except as explicitly otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service is terminated for Cause, the Participant's Options and SARs will terminate and be forfeited immediately upon such termination of Continuous Service, and the Participant will be prohibited from exercising any portion (including any vested portion) of such Awards on and after the date of such termination of Continuous Service and the Participant will have no further right, title or interest in such forfeited Award, the shares of Common Stock subject to the forfeited Award, or any consideration in respect of the forfeited Award.

(h) Post-Termination Exercise Period Following Termination of Continuous Service for Reasons Other than Cause. Subject to Section 4(i), if a Participant's Continuous Service terminates for any reason other than for Cause, the Participant may exercise his or her Option or SAR to the extent vested, but only within the following period of time or, if applicable, such other period of time provided in the Award Agreement or other written agreement between a Participant and the Company; provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)):

(i) three months following the date of such termination if such termination is a termination without Cause (other than any termination due to the Participant's Disability or death);

(ii) 12 months following the date of such termination if such termination is due to the Participant's Disability;

(iii) 18 months following the date of such termination if such termination is due to the Participant's death; or

(iv) 18 months following the date of the Participant's death if such death occurs following the date of such termination but during the period such Award is otherwise exercisable (as provided in (i) or (ii) above).

Following the date of such termination, to the extent the Participant does not exercise such Award within the applicable Post-Termination Exercise Period (or, if earlier, prior to the expiration of the maximum term of such Award), such unexercised portion of the Award will terminate, and the Participant will have no further right, title or interest in terminated Award, the shares of Common Stock subject to the terminated Award, or any consideration in respect of the terminated Award.

(i) Restrictions on Exercise; Extension of Exercisability. A Participant may not exercise an Option or SAR at any time that the issuance of shares of Common Stock upon such exercise would violate Applicable Law. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service terminates for any reason other than for Cause and, at any time during the last thirty days of the applicable Post-Termination Exercise Period: (i) the exercise of the Participant's Option or SAR would be prohibited solely because the issuance of shares of Common Stock upon such exercise would violate Applicable Law, or (ii) the immediate sale of any shares of Common Stock issued upon such exercise would violate the Company's Trading Policy, then the applicable Post-Termination Exercise Period will be extended to the last day of the calendar month that commences following the date the Award would otherwise expire, with an additional extension of the exercise period to the last day of the next calendar month to apply if any of the foregoing restrictions apply at any time during such extended exercise period, generally without limitation as to the maximum permitted number of extensions; provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)).

(j) Non-Exempt Employees. No Option or SAR, whether or not vested, granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, will be first exercisable for any shares of Common Stock until at least six months following the date of grant of such Award. Notwithstanding the foregoing, in accordance with the provisions of the Worker Economic Opportunity Act, any vested portion of such Award may be exercised earlier than six months following the date of grant of such Award in the event of (i) such Participant's death or Disability, (ii) a Corporate Transaction in which such Award is not assumed, continued or substituted, (iii) a Change in Control, or (iv) such Participant's retirement (as such term may be defined in the Award Agreement or another applicable agreement or, in the absence of any such definition, in accordance with the Company's then current employment policies and guidelines). This Section 4(j) is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

(k) Whole Shares. Options and SARs may be exercised only with respect to whole shares of Common Stock or their equivalents.

5. AWARDS OTHER THAN OPTIONS AND STOCK APPRECIATION RIGHTS.

(a) Restricted Stock Awards and RSU Awards. Each Restricted Stock Award and RSU Award will have such terms and conditions as determined by the Board; provided, however, that each Restricted Stock Award Agreement and RSU Award Agreement will conform (through incorporation of the provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

(i) Form of Award.

(1) RSAs: To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock subject to a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until such shares become vested or any other restrictions lapse, or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. Unless otherwise determined by the Board, a Participant will have voting and other rights as a stockholder of the Company with respect to any shares subject to a Restricted Stock Award.

(2) RSUs: A RSU Award represents a Participant's right to be issued on a future date the number of shares of Common Stock that is equal to the number of restricted stock units subject to the RSU Award. As a holder of a RSU Award, a Participant is an unsecured creditor of the Company with respect to the Company's unfunded obligation, if any, to issue shares of Common Stock in settlement of such Award and nothing contained in the Plan or any RSU Agreement, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between a Participant and the Company or an Affiliate or any other person. A Participant will not have voting or any other rights as a stockholder of the Company with respect to any RSU Award (unless and until shares are actually issued in settlement of a vested RSU Award).

(ii) Consideration.

(1) RSA: A Restricted Stock Award may be granted in consideration for (A) cash or check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of consideration as the Board may determine and permissible under Applicable Law.

(2) RSU: Unless otherwise determined by the Board at the time of grant, a RSU Award will be granted in consideration for the Participant's services to the Company or an Affiliate, such that the Participant will not be required to make any payment to the Company (other than such services) with respect to the grant or vesting of the RSU Award, or the issuance of any shares of Common Stock pursuant to the RSU Award. If, at the time of grant, the Board determines that any consideration must be paid by the Participant (in a form other than the Participant's services to the Company or an Affiliate) upon the issuance of any shares of Common Stock in settlement of the RSU Award, such consideration may be paid in any form of consideration as the Board may determine and permissible under Applicable Law.

(iii) Vesting. The Board may impose such restrictions on or conditions to the vesting of a Restricted Stock Award or RSU Award as determined by the Board, which may include achievement of one or more Performance Goals. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, vesting of Restricted Stock Awards and RSU Awards will cease upon termination of the Participant's Continuous Service.

(iv) Termination of Continuous Service. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service terminates for any reason, (i) the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant under his or her Restricted Stock Award that have not vested as of the date of such termination as set forth in the Restricted Stock Award Agreement and (ii) any portion of his or her RSU Award that has not vested will be forfeited upon such termination and the Participant will have no further right, title or interest in the RSU Award, the shares of Common Stock issuable pursuant to the RSU Award, or any consideration in respect of the RSU Award.

(v) Dividends and Dividend Equivalents. Dividends or dividend equivalents may be paid or credited, as applicable, with respect to any shares of Common Stock subject to a Restricted Stock Award or RSU Award, as determined by the Board and specified in the Award Agreement).

(vi) Settlement of RSU Awards. A RSU Award may be settled by the issuance of shares of Common Stock or cash (or any combination thereof) or in any other form of payment, as determined by the Board and specified in the RSU Award Agreement. At the time of grant, the Board may determine to impose such restrictions or conditions that delay such delivery to a date following the vesting of the RSU Award.

(b) Other Awards. Other Awards may be granted either alone or in addition to Awards provided for under Section 4 and the preceding provisions of this Section 5. Subject to the provisions of the Plan, the Board will have sole and complete discretion to determine the persons to whom and the time or times at which such Other Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Awards and all other terms and conditions of such Other Awards.

6. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of shares of Common Stock subject to the Plan and the maximum number of shares by which the Share Reserve may annually increase pursuant to Section 2(a), (ii) the class(es) and maximum number of shares that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 2(b), and (iii) the class(es) and number of securities and exercise price, strike price or purchase price of Common Stock subject to outstanding Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. Notwithstanding the foregoing, no fractional shares or rights for fractional shares of Common Stock shall be created in order to implement any Capitalization Adjustment. The Board shall determine an appropriate equivalent benefit, if any, for any fractional shares or rights to fractional shares that might be created by the adjustments referred to in the preceding provisions of this Section.

(b) Dissolution or Liquidation. Except as otherwise provided in the Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Awards (other than Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Award is providing Continuous Service, provided, however, that the Board may determine to cause some or all Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions will apply to Awards in the event of a Corporate Transaction except as set forth in Section 11, and unless otherwise provided in the instrument evidencing the Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of an Award.

(i) Awards May Be Assumed. In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Awards outstanding under the Plan or may substitute similar awards for Awards outstanding under the Plan (including but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of an Award or substitute a similar award for only a portion of an Award, or may choose to assume or continue the Awards held by some, but not all Participants. The terms of any assumption, continuation or substitution will be set by the Board.

(ii) Awards Held by Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the “**Current Participants**”), the vesting of such Awards (and, with respect to Options and Stock Appreciation Rights, the time when such Awards may be exercised) will be accelerated in full to a date prior to the effective time of such Corporate Transaction (contingent upon the effectiveness of the Corporate Transaction) as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective time of the Corporate Transaction), and such Awards will terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Awards will lapse (contingent upon the effectiveness of the Corporate Transaction). With respect to Awards with performance-based vesting that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and that have multiple vesting levels depending on the level of performance, unless otherwise provided in the Award Agreement, the vesting of such Awards will accelerate at 100% of the target level upon the occurrence of the Corporate Transaction. With respect to the vesting of Awards that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and are settled in the form of a cash payment, such cash payment will be made no later than 30 days following the occurrence of the Corporate Transaction.

(iii) Awards Held by Persons other than Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, such Awards will terminate if not exercised (if applicable) prior to the occurrence of the Corporate Transaction; provided, however, that any reacquisition or repurchase rights held by the Company with respect to such Awards will not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

(iv) Payment for Awards in Lieu of Exercise. Notwithstanding the foregoing, in the event an Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Award may not exercise such Award but will receive a payment, in such form as may be determined by the Board, equal in value, at the effective time, to the excess, if any, of (1) the value of the property the Participant would have received upon the exercise of the Award (including, at the discretion of the Board, any unvested portion of such Award), over (2) any exercise price payable by such holder in connection with such exercise.

(d) Appointment of Stockholder Representative. As a condition to the receipt of an Award under this Plan, a Participant will be deemed to have agreed that the Award will be subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on the Participant’s behalf with respect to any escrow, indemnities and any contingent consideration.

(e) No Restriction on Right to Undertake Transactions. The grant of any Award under the Plan and the issuance of shares pursuant to any Award does not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, rights or options to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

7. ADMINISTRATION.

(a) Administration by Board. The Board will administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in subsection (c) below.

(b) Powers of Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time: (1) which of the persons eligible under the Plan will be granted Awards; (2) when and how each Award will be granted; (3) what type or combination of types of Award will be granted; (4) the provisions of each Award granted (which need not be identical), including the time or times when a person will be permitted to receive an issuance of Common Stock or other payment pursuant to an Award (and whether and to what degree any applicable Performance Goals have been attained); (5) the number of shares of Common Stock or cash equivalent with respect to which an Award will be granted to each such person; and (6) the Fair Market Value applicable to an Award.

(ii) To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it deems necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest, notwithstanding the provisions in the Award Agreement stating the time at which it may first be exercised or the time during which it will vest.

(v) To prohibit the exercise of any Option, SAR or other exercisable Award during a period of up to 30 days prior to the consummation of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Corporate Transaction, for reasons of administrative convenience.

(vi) To suspend or terminate the Plan at any time. Suspension or termination of the Plan will not Materially Impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vii) To amend the Plan in any respect the Board deems necessary or advisable; provided, however, that stockholder approval will be required for any amendment to the extent required by Applicable Law. Except as provided above, rights under any Award granted before amendment of the Plan will not be Materially Impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(viii) To submit any amendment to the Plan for stockholder approval.

(ix) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; provided however, that, (1) the Board shall not, without stockholder approval, reduce the exercise or strike price of an Option or SAR (other than in connection with a Capitalization Adjustment) and, at any time when the exercise or strike price of an Option or SAR is above the Fair Market Value of a share of Common Stock, the Board shall not, without stockholder approval, cancel and re-grant or exchange such Option or SAR for a new Award with a lower (or no) purchase price or for cash, and (2) a Participant's rights under any Award will not be Materially Impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing.

(x) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(xi) To adopt such procedures and sub-plans as are necessary or appropriate to permit and facilitate participation in the Plan by, or take advantage of specific tax treatment for Awards granted to, Employees, Directors or Consultants who are non-U.S. nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement to ensure or facilitate compliance with the laws of the relevant non-U.S. jurisdiction).

(c) Delegation to Committee.

(i) General. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to another Committee or a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Each Committee may retain the authority to concurrently administer the Plan with the Committee or subcommittee to which it has delegated its authority hereunder and may, at any time, revert in such Committee some or all of the powers previously delegated. The Board may retain the authority to concurrently administer the Plan with any Committee and may, at any time, revert in the Board some or all of the powers previously delegated.

(ii) Rule 16b-3 Compliance. To the extent an Award is intended to qualify for the exemption from Section 16(b) of the Exchange Act that is available under Rule 16b-3 of the Exchange Act, the Award will be granted by the Board or a Committee that consists solely of two or more Non-Employee Directors, as determined under Rule 16b-3(b)(3) of the Exchange Act, and, thereafter, any action establishing or modifying the terms of the Award will be approved by the Board or a Committee meeting such requirements to the extent necessary for such exemption to remain available.

(d) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board or any Committee in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

(e) Delegation to an Officer. The Board or any Committee may delegate to one or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by Applicable Law, other types of Awards) and, to the extent permitted by Applicable Law, the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Awards granted to such Employees; provided, however, that the resolutions or charter adopted by the Board or any Committee evidencing such delegation will specify the total number of shares of Common Stock that may be subject to the Awards granted by such Officer and that such Officer may not grant an Award to himself or herself. Any such Awards will be granted on the applicable form of Award Agreement most recently approved for use by the Board or the Committee, unless otherwise provided in the resolutions approving the delegation authority. Notwithstanding anything to the contrary herein, neither the Board nor any Committee may delegate to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) the authority to determine the Fair Market Value.

8. TAX WITHHOLDING

(a) Withholding Authorization. As a condition to acceptance of any Award under the Plan, a Participant authorizes withholding from payroll and any other amounts payable to such Participant, and otherwise agrees to make adequate provision for (including), any sums required to satisfy any U.S. and/or non-U.S. federal, state, or local tax or social insurance contribution withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise, vesting or settlement of such Award, as applicable. Accordingly, a Participant may not be able to exercise an Award even though the Award is vested, and the Company shall have no obligation to issue shares of Common Stock subject to an Award, unless and until such obligations are satisfied.

(b) Satisfaction of Withholding Obligation. To the extent permitted by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any U.S. and/or non-U.S. federal, state or local tax or social insurance withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; (v) by allowing a Participant to effectuate a “cashless exercise” pursuant to a program developed under Regulation T as promulgated by the U.S. Federal Reserve Board or (vi) by such other method as may be set forth in the Award Agreement.

(c) No Obligation to Notify or Minimize Taxes; No Liability to Claims. Except as required by Applicable Law, the Company has no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Award. Furthermore, the Company has no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award and will not be liable to any holder of an Award for any adverse tax consequences to such holder in connection with an Award. As a condition to accepting an Award under the Plan, each Participant (i) agrees to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from such Award or other Company compensation and (ii) acknowledges that such Participant was advised to consult with his or her own personal tax, financial and other legal advisors regarding the tax consequences of the Award and has either done so or knowingly and voluntarily declined to do so. Additionally, each Participant acknowledges any Option or SAR granted under the Plan is exempt from Section 409A only if the exercise or strike price is at least equal to the “fair market value” of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the Award. Additionally, as a condition to accepting an Option or SAR granted under the Plan, each Participant agrees not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the U.S. Internal Revenue Service asserts that such exercise price or strike price is less than the “fair market value” of the Common Stock on the date of grant as subsequently determined by the U.S. Internal Revenue Service.

(d) Withholding Indemnification. As a condition to accepting an Award under the Plan, in the event that the amount of the Company’s and/or its Affiliate’s withholding obligation in connection with such Award was greater than the amount actually withheld by the Company and/or its Affiliates, each Participant agrees to indemnify and hold the Company and/or its Affiliates harmless from any failure by the Company and/or its Affiliates to withhold the proper amount.

9. MISCELLANEOUS.

(a) Source of Shares. The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

(b) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

(c) Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action approving the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

(d) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Award unless and until (i) such Participant has satisfied all requirements for exercise of the Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Award is reflected in the records of the Company.

(e) No Employment or Other Service Rights. Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or affect the right of the Company or an Affiliate to terminate at will and without regard to any future vesting opportunity that a Participant may have with respect to any Award (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the U.S. state or non-U.S. jurisdiction in which the Company or the Affiliate is incorporated, as the case may be. Further, nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award will constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or service or confer any right or benefit under the Award or the Plan unless such right or benefit has specifically accrued under the terms of the Award Agreement and/or Plan.

(f) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board may determine, to the extent permitted by Applicable Law, to (i) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (ii) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

(g) Execution of Additional Documents. As a condition to accepting an Award under the Plan, the Participant agrees to execute any additional documents or instruments necessary or desirable, as determined in the Plan Administrator's sole discretion, to carry out the purposes or intent of the Award, or facilitate compliance with securities and/or other regulatory requirements, in each case at the Plan Administrator's request.

(h) Electronic Delivery and Participation. Any reference herein or in an Award Agreement to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at www.sec.gov (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access). By accepting any Award the Participant consents to receive documents by electronic delivery and to participate in the Plan through any on-line electronic system established and maintained by the Plan Administrator or another third party selected by the Plan Administrator. The form of delivery of any Common Stock (e.g., a stock certificate or electronic entry evidencing such shares) shall be determined by the Company.

(i) Clawback/Recovery. All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other Applicable Law and any clawback policy that the Company otherwise adopts, to the extent applicable and permissible under Applicable Law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a Participant's right to voluntarily terminate employment upon a "resignation for good reason," or for a "constructive termination" or any similar term under any plan of or agreement with the Company.

(j) Securities Law Compliance. A Participant will not be issued any shares in respect of an Award unless either (i) the shares are registered under the Securities Act; or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Each Award also must comply with other Applicable Law governing the Award, and a Participant will not receive such shares if the Company determines that such receipt would not be in material compliance with Applicable Law.

(k) Transfer or Assignment of Awards; Issued Shares. Except as expressly provided in the Plan or the form of Award Agreement, Awards granted under the Plan may not be transferred or assigned by the Participant. After the vested shares subject to an Award have been issued, or in the case of Restricted Stock and similar awards, after the issued shares have vested, the holder of such shares is free to assign, hypothecate, donate, encumber or otherwise dispose of any interest in such shares provided that any such actions are in compliance with the provisions herein, the terms of the Trading Policy and Applicable Law.

(l) Effect on Other Employee Benefit Plans. The value of any Award granted under the Plan, as determined upon grant, vesting or settlement, shall not be included as compensation, earnings, salaries, or other similar terms used when calculating any Participant's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

(m) Deferrals. To the extent permitted by Applicable Law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals will be made in accordance with the requirements of Section 409A.

(n) Section 409A. Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A, and, to the extent not so exempt, in compliance with the requirements of Section 409A. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A is a "specified employee" for purposes of Section 409A, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A without regard to alternative definitions thereunder) will be issued or paid before the date that is six months and one day following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(o) Choice of Law. This Plan and any controversy arising out of or relating to this Plan shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to conflict of law principles that would result in any application of any law other than the law of the State of Delaware.

10. COVENANTS OF THE COMPANY.

(a) Compliance with Law. The Company will seek to obtain from each regulatory commission or agency, as may be deemed necessary, having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise or vesting of the Awards; provided, however, that this undertaking will not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary or advisable for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise or vesting of such Awards unless and until such authority is obtained. A Participant is not eligible for the grant of an Award or the subsequent issuance of Common Stock pursuant to the Award if such grant or issuance would be in violation of any Applicable Law.

11. ADDITIONAL RULES FOR AWARDS SUBJECT TO SECTION 409A.

(a) Application. Unless the provisions of this Section of the Plan are expressly superseded by the provisions in the form of Award Agreement, the provisions of this Section shall apply and shall supersede anything to the contrary set forth in the Award Agreement for a Non-Exempt Award.

(b) Non-Exempt Awards Subject to Non-Exempt Severance Arrangements. To the extent a Non-Exempt Award is subject to Section 409A due to application of a Non-Exempt Severance Arrangement, the following provisions of this subsection (b) apply.

(i) If the Non-Exempt Award vests in the ordinary course during the Participant's Continuous Service in accordance with the vesting schedule set forth in the Award Agreement, and does not accelerate vesting under the terms of a Non-Exempt Severance Arrangement, in no event will the shares be issued in respect of such Non-Exempt Award any later than the later of: (i) December 31st of the calendar year that includes the applicable vesting date, or (ii) the 60th day that follows the applicable vesting date.

(ii) If vesting of the Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with the Participant's Separation from Service, and such vesting acceleration provisions were in effect as of the date of grant of the Non-Exempt Award and, therefore, are part of the terms of such Non-Exempt Award as of the date of grant, then the shares will be earlier issued in settlement of such Non-Exempt Award upon the Participant's Separation from Service in accordance with the terms of the Non-Exempt Severance Arrangement, but in no event later than the 60th day that follows the date of the Participant's Separation from Service. However, if at the time the shares would otherwise be issued the Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of such Participant's Separation from Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

(iii) If vesting of a Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with a Participant's Separation from Service, and such vesting acceleration provisions were not in effect as of the date of grant of the Non-Exempt Award and, therefore, are not a part of the terms of such Non-Exempt Award on the date of grant, then such acceleration of vesting of the Non-Exempt Award shall not accelerate the issuance date of the shares, but the shares shall instead be issued on the same schedule as set forth in the Grant Notice as if they had vested in the ordinary course during the Participant's Continuous Service, notwithstanding the vesting acceleration of the Non-Exempt Award. Such issuance schedule is intended to satisfy the requirements of payment on a specified date or pursuant to a fixed schedule, as provided under Treasury Regulations Section 1.409A-3(a)(4).

(c) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Employees and Consultants. The provisions of this subsection (c) shall apply and shall supersede anything to the contrary set forth in the Plan with respect to the permitted treatment of any Non-Exempt Award in connection with a Corporate Transaction if the Participant was either an Employee or Consultant upon the applicable date of grant of the Non-Exempt Award.

(i) Vested Non-Exempt Awards. The following provisions shall apply to any Vested Non-Exempt Award in connection with a Corporate Transaction:

(1) If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Vested Non-Exempt Award. Upon the Section 409A Change in Control the settlement of the Vested Non-Exempt Award will automatically be accelerated and the shares will be immediately issued in respect of the Vested Non-Exempt Award. Alternatively, the Company may instead provide that the Participant will receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control.

(2) If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute each Vested Non-Exempt Award. The shares to be issued in respect of the Vested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of the Fair Market Value of the shares made on the date of the Corporate Transaction.

(ii) Unvested Non-Exempt Awards. The following provisions shall apply to any Unvested Non-Exempt Award unless otherwise determined by the Board pursuant to subsection (e) of this Section.

(1) In the event of a Corporate Transaction, the Acquiring Entity shall assume, continue or substitute any Unvested Non-Exempt Award. Unless otherwise determined by the Board, any Unvested Non-Exempt Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of any Unvested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value of the shares made on the date of the Corporate Transaction.

(2) If the Acquiring Entity will not assume, substitute or continue any Unvested Non-Exempt Award in connection with a Corporate Transaction, then such Award shall automatically terminate and be forfeited upon the Corporate Transaction with no consideration payable to any Participant in respect of such forfeited Unvested Non-Exempt Award. Notwithstanding the foregoing, to the extent permitted and in compliance with the requirements of Section 409A, the Board may in its discretion determine to elect to accelerate the vesting and settlement of the Unvested Non-Exempt Award upon the Corporate Transaction, or instead substitute a cash payment equal to the Fair Market Value of such shares that would otherwise be issued to the Participant, as further provided in subsection (e)(ii) below. In the absence of such discretionary election by the Board, any Unvested Non-Exempt Award shall be forfeited without payment of any consideration to the affected Participants if the Acquiring Entity will not assume, substitute or continue the Unvested Non-Exempt Awards in connection with the Corporate Transaction.

(3) The foregoing treatment shall apply with respect to all Unvested Non-Exempt Awards upon any Corporate Transaction, and regardless of whether or not such Corporate Transaction is also a Section 409A Change in Control.

(d) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Non-Employee Directors. The following provisions of this subsection (d) shall apply and shall supersede anything to the contrary that may be set forth in the Plan with respect to the permitted treatment of a Non-Exempt Director Award in connection with a Corporate Transaction.

(i) If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Non-Exempt Director Award. Upon the Section 409A Change in Control the vesting and settlement of any Non-Exempt Director Award will automatically be accelerated and the shares will be immediately issued to the Participant in respect of the Non-Exempt Director Award. Alternatively, the Company may provide that the Participant will instead receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control pursuant to the preceding provision.

(ii) If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute the Non-Exempt Director Award. Unless otherwise determined by the Board, the Non-Exempt Director Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of the Non-Exempt Director Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value made on the date of the Corporate Transaction.

(e) If the RSU Award is a Non-Exempt Award, then the provisions in this Section 11(e) shall apply and supersede anything to the contrary that may be set forth in the Plan or the Award Agreement with respect to the permitted treatment of such Non-Exempt Award:

(i) Any exercise by the Board of discretion to accelerate the vesting of a Non-Exempt Award shall not result in any acceleration of the scheduled issuance dates for the shares in respect of the Non-Exempt Award unless earlier issuance of the shares upon the applicable vesting dates would be in compliance with the requirements of Section 409A.

(ii) The Company explicitly reserves the right to earlier settle any Non-Exempt Award to the extent permitted and in compliance with the requirements of Section 409A, including pursuant to any of the exemptions available in Treasury Regulations Section 1.409A-3(j)(4)(ix).

(iii) To the extent the terms of any Non-Exempt Award provide that it will be settled upon a Change in Control or Corporate Transaction, to the extent it is required for compliance with the requirements of Section 409A, the Change in Control or Corporate Transaction event triggering settlement must also constitute a Section 409A Change in Control. To the extent the terms of a Non-Exempt Award provide that it will be settled upon a termination of employment or termination of Continuous Service, to the extent it is required for compliance with the requirements of Section 409A, the termination event triggering settlement must also constitute a Separation From Service. However, if at the time the shares would otherwise be issued to a Participant in connection with a "separation from service" such Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of the Participant's Separation From Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

(iv) The provisions in this subsection (e) for delivery of the shares in respect of the settlement of a RSU Award that is a Non-Exempt Award are intended to comply with the requirements of Section 409A so that the delivery of the shares to the Participant in respect of such Non-Exempt Award will not trigger the additional tax imposed under Section 409A, and any ambiguities herein will be so interpreted.

12. SEVERABILITY.

If all or any part of the Plan or any Award Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of the Plan or such Award Agreement not declared to be unlawful or invalid. Any Section of the Plan or any Award Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

13. TERMINATION OF THE PLAN.

The Board may suspend or terminate the Plan at any time. No Incentive Stock Options may be granted after the tenth anniversary of the earlier of: (i) the Adoption Date, or (ii) the date the Plan is approved by the Company's stockholders. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

14. DEFINITIONS.

As used in the Plan, the following definitions apply to the capitalized terms indicated below:

(a) "**Acquiring Entity**" means the surviving or acquiring corporation (or its parent company) in connection with a Corporate Transaction.

(b) "**Adoption Date**" means the date the Plan is first approved by the Board or Compensation Committee.

(c) "**Affiliate**" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 promulgated under the Securities Act. The Board may determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(d) "**Applicable Law**" means the Code and any applicable U.S. or non-U.S. securities, federal, state, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (including under the authority of any applicable self-regulating organization such as the Nasdaq Stock Market, New York Stock Exchange or the Financial Industry Regulatory Authority).

(e) "**Award**" means any right to receive Common Stock, cash or other property granted under the Plan (including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a RSU Award, a SAR, or any Other Award).

(f) "**Award Agreement**" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award. The Award Agreement generally consists of the Grant Notice and the agreement containing the written summary of the general terms and conditions applicable to the Award and which is provided to a Participant along with the Grant Notice.

(g) “**Board**” means the board of directors of the Company (or its designee). Any decision or determination made by the Board shall be a decision or determination that is made in the sole discretion of the Board (or its designee), and such decision or determination shall be final and binding on all Participants.

(h) “**Capitalization Adjustment**” means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(i) “**Cause**” has the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) the Participant’s theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or intentional falsification of any Company or Affiliate documents or records; (ii) the Participant’s material failure to abide by the Company’s Code of Business Conduct and Ethics or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct and policies of any Affiliate, as applicable); (iii) the Participant’s unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company or any of its Affiliates (including, without limitation, the Participant’s improper use or disclosure of Company or Affiliate confidential or proprietary information); (iv) any intentional act by the Participant which has a material detrimental effect on the Company’s or its Affiliate’s reputation or business; (v) the Participant’s repeated failure or inability to perform any reasonable assigned duties after written notice from the Company (or its Affiliate, as applicable) of, and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by the Participant of any employment or service agreement between the Participant and the Company (or its Affiliate, as applicable), which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant’s conviction (including any plea of guilty or *nolo contendere*) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant’s ability to perform his or her duties with the Company (or its Affiliate, as applicable). The determination that a termination of the Participant’s Continuous Service is either for Cause or without Cause will be made by the Board with respect to Participants who are executive officers of the Company and by the Company’s Chief Executive Officer or his or her designee with respect to Participants who are not executive officers of the Company. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(j) “**Change in Control**” or “**Change of Control**” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events; provided, however, to the extent necessary to avoid adverse personal income tax consequences to the Participant in connection with an Award, also constitutes a Section 409A Change in Control:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company’s securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the “**Subject Person**”) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the “*Incumbent Board*”) cease for any reason to constitute at least a majority of the members of the Board; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(k) “*Code*” means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(l) “*Committee*” means the Compensation Committee and any other committee of one or more Directors to whom authority has been delegated by the Board or Compensation Committee in accordance with the Plan.

(m) “*Common Stock*” means the common stock of the Company.

(n) “*Company*” means Orchestra BioMed Holdings, Inc., a Delaware corporation, and any successor corporation thereto.

(o) “*Compensation Committee*” means the Compensation Committee of the Board.

(p) “*Consultant*” means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a “Consultant” for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company’s securities to such person.

(q) “*Continuous Service*” means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, will not terminate a Participant’s Continuous Service; provided, however, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, such Participant’s Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company’s leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law. In addition, to the extent required for exemption from or compliance with Section 409A, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of “separation from service” as defined under U.S. Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

(r) “*Corporate Transaction*” means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(s) “*Director*” means a member of the Board.

(t) “*determine*” or “*determined*” means as determined by the Board or the Committee (or its designee) in its sole discretion.

(u) “*Disability*” means, with respect to a Participant, such Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(v) “*Effective Date*” means the date of the closing of the transactions contemplated by the Merger Agreement.

(w) “*Employee*” means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an “Employee” for purposes of the Plan.

(x) “*Employer*” means the Company or the Affiliate that employs the Participant.

(y) “*Entity*” means a corporation, partnership, limited liability company or other entity.

(z) “*Exchange Act*” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(aa) “Exchange Act Person” means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities.

(bb) “Fair Market Value” means, as of any date, unless otherwise determined by the Board, the value of the Common Stock (as determined on a per share or aggregate basis, as applicable) determined as follows: (i) if the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable; (ii) if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists; or (iii) in the absence of such markets for the Common Stock, or if otherwise determined by the Board, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(cc) “Governmental Body” means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) U.S. or non-U.S. federal, state, local, municipal, or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the Nasdaq Stock Market, New York Stock Exchange, and the Financial Industry Regulatory Authority).

(dd) “Grant Notice” means the notice provided to a Participant that he or she has been granted an Award under the Plan and which includes the name of the Participant, the type of Award, the date of grant of the Award, number of shares of Common Stock subject to the Award or potential cash payment right, (if any), the vesting schedule for the Award (if any) and other key terms applicable to the Award.

(ee) “Incentive Stock Option” means an option granted pursuant to Section 4 of the Plan that is intended to be, and qualifies as, an “incentive stock option” within the meaning of Section 422 of the Code.

(ff) “Materially Impair” means any amendment to the terms of the Award that materially adversely affects the Participant’s rights under the Award. A Participant’s rights under an Award will not be deemed to have been Materially Impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant’s rights. For example, the following types of amendments to the terms of an Award do not Materially Impair the Participant’s rights under the Award: (i) imposition of reasonable restrictions on the minimum number of shares subject to an Option that may be exercised, (ii) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iii) to change the terms of an Incentive Stock Option in a manner that disqualifies, impairs or otherwise affects the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iv) to clarify the manner of exemption from, or to bring the Award into compliance with or qualify it for an exemption from, Section 409A; or (v) to comply with other Applicable Laws.

(gg) “*Merger Agreement*” means the Agreement and Plan of Merger, dated as of July 4, 2022, by and among the Company and the other parties thereto.

(hh) “*Non-Employee Director*” means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (“*Regulation S-K*”)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a “non-employee director” for purposes of Rule 16b-3.

(ii) “*Non-Exempt Award*” means any Award that is subject to, and not exempt from, Section 409A, including as the result of (i) a deferral of the issuance of the shares subject to the Award which is elected by the Participant or imposed by the Company or (ii) the terms of any Non-Exempt Severance Agreement.

(jj) “*Non-Exempt Director Award*” means a Non-Exempt Award granted to a Participant who was a Director but not an Employee on the applicable grant date.

(kk) “*Non-Exempt Severance Arrangement*” means a severance arrangement or other agreement between the Participant and the Company that provides for acceleration of vesting of an Award and issuance of the shares in respect of such Award upon the Participant’s termination of employment or separation from service (as such term is defined in Section 409A(a)(2)(A)(i) of the Code (and without regard to any alternative definition thereunder)) (“*Separation from Service*”) and such severance benefit does not satisfy the requirements for an exemption from application of Section 409A provided under Treasury Regulations Section 1.409A-1(b)(4), 1.409A-1(b)(9) or otherwise.

(ll) “*Nonstatutory Stock Option*” means any option granted pursuant to Section 4 of the Plan that does not qualify as an Incentive Stock Option.

(mm) “*Officer*” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(nn) “*Option*” means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(oo) “*Option Agreement*” means a written agreement between the Company and the Optionholder evidencing the terms and conditions of the Option grant. The Option Agreement includes the Grant Notice for the Option and the agreement containing the written summary of the general terms and conditions applicable to the Option and which is provided to a Participant along with the Grant Notice. Each Option Agreement will be subject to the terms and conditions of the Plan.

(pp) “*Optionholder*” means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(qq) “*Other Award*” means an award valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value at the time of grant) that is not an Incentive Stock Options, Nonstatutory Stock Option, SAR, Restricted Stock Award, or RSU Award.

(rr) “Other Award Agreement” means a written agreement between the Company and a holder of an Other Award evidencing the terms and conditions of an Other Award grant. Each Other Award Agreement will be subject to the terms and conditions of the Plan.

(ss) “Own,” “Owned,” “Owner,” “Ownership” means that a person or Entity will be deemed to “Own,” to have “Owned,” to be the “Owner” of or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(tt) “Participant” means an Employee, Director or Consultant to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

(uu) “Performance Criteria” means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: earnings (including earnings per share and net earnings); earnings before interest, taxes and depreciation; earnings before interest, taxes, depreciation and amortization; total stockholder return; return on equity or average stockholder’s equity; return on assets, investment, or capital employed; stock price; margin (including gross margin); income (before or after taxes); operating income; operating income after taxes; pre-tax profit; operating cash flow; sales or revenue targets; increases in revenue or product revenue; expenses and cost reduction goals; improvement in or attainment of working capital levels; economic value added (or an equivalent metric); market share; cash flow; cash flow per share; share price performance; debt reduction; customer satisfaction; stockholders’ equity; capital expenditures; debt levels; operating profit or net operating profit; workforce diversity; growth of net income or operating income; billings; pre-clinical development related compound goals; financing; regulatory milestones, including approval of a compound; stockholder liquidity; corporate governance and compliance; product commercialization; intellectual property; personnel matters; progress of internal research or clinical programs; progress of partnered programs; partner satisfaction; budget management; clinical achievements; completing phases of a clinical study (including the treatment phase); announcing or presenting preliminary or final data from clinical studies; in each case, whether on particular timelines or generally; timely completion of clinical trials; submission of INDs and NDAs and other regulatory achievements; partner or collaborator achievements; internal controls, including those related to the Sarbanes-Oxley Act of 2002; research progress, including the development of programs; investor relations, analysts and communication; manufacturing achievements (including obtaining particular yields from manufacturing runs and other measurable objectives related to process development activities); strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property; establishing relationships with commercial entities with respect to the marketing, distribution and sale of the Company’s products (including with group purchasing organizations, distributors and other vendors); supply chain achievements (including establishing relationships with manufacturers or suppliers of active pharmaceutical ingredients and other component materials and manufacturers of the Company’s products); co-development, co-marketing, profit sharing, joint venture or other similar arrangements; individual performance goals; corporate development and planning goals; and other measures of performance selected by the Board or Committee.

(vv) “Performance Goals” means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of items that are “unusual” in nature or occur “infrequently” as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of Common Stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company’s bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; and (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Award Agreement.

(ww) “*Performance Period*” means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to vesting or exercise of an Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(xx) “*Plan*” means this Orchestra BioMed Holdings, Inc. 2023 Equity Incentive Plan, as amended from time to time.

(yy) “*Plan Administrator*” means the person, persons, and/or third-party administrator designated by the Company to administer the day-to-day operations of the Plan and the Company’s other equity incentive programs.

(zz) “*Post-Termination Exercise Period*” means the period following termination of a Participant’s Continuous Service within which an Option or SAR is exercisable, as specified in Section 4(h).

(aaa) “*Prior Plan*” means the Orchestra BioMed, Inc. 2018 Stock Incentive Plan, as amended.

(bbb) “*Restricted Stock Award*” or “*RSA*” means an Award of shares of Common Stock granted pursuant to the terms and conditions of Section 5(a).

(ccc) “*Restricted Stock Award Agreement*” means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. The Restricted Stock Award Agreement includes the Grant Notice for the Restricted Stock Award and the agreement containing the written summary of the general terms and conditions applicable to the Restricted Stock Award and which is provided to a Participant along with the Grant Notice. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ddd) “*Returning Shares*” means shares subject to outstanding stock awards granted under the Prior Plan and that following the Effective Date: (A) are not issued because such stock award or any portion thereof expires or otherwise terminates without all of the shares covered by such stock award having been issued; (B) are not issued because such stock award or any portion thereof is settled in cash; (C) are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares; (D) are withheld or reacquired to satisfy the exercise, strike or purchase price; or (E) are withheld or reacquired to satisfy a tax withholding obligation.

(eee) “*RSU Award*” or “*RSU*” means an Award of restricted stock units representing the right to receive an issuance of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

(fff) “*RSU Award Agreement*” means a written agreement between the Company and a holder of a RSU Award evidencing the terms and conditions of a RSU Award. The RSU Award Agreement includes the Grant Notice for the RSU Award and the agreement containing the written summary of the general terms and conditions applicable to the RSU Award and which is provided to a Participant along with the Grant Notice. Each RSU Award Agreement will be subject to the terms and conditions of the Plan.

(ggg) “*Rule 16b-3*” means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(hhh) “*Rule 405*” means Rule 405 promulgated under the Securities Act.

(iii) “*Section 409A*” means Section 409A of the Code and the regulations and other guidance thereunder.

(jjj) “*Section 409A Change in Control*” means a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company’s assets, as provided in Section 409A(a)(2)(A)(v) of the Code and Treasury Regulations Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

(kkk) “*Securities Act*” means the U.S. Securities Act of 1933, as amended.

(lll) “*Share Reserve*” means the number of shares available for issuance under the Plan as set forth in Section 2(a).

(mmm) “*Stock Appreciation Right*” or “*SAR*” means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 4.

(nnn) “*SAR Agreement*” means a written agreement between the Company and a holder of a SAR evidencing the terms and conditions of a SAR grant. The SAR Agreement includes the Grant Notice for the SAR and the agreement containing the written summary of the general terms and conditions applicable to the SAR and which is provided to a Participant along with the Grant Notice. Each SAR Agreement will be subject to the terms and conditions of the Plan.

(ooo) “*Subsidiary*” means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding Common Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(ppp) “*Ten Percent Stockholder*” means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

(qqq) “*Trading Policy*” means the Company’s policy permitting certain individuals to sell Company shares only during certain “window” periods and/or otherwise restricts the ability of certain individuals to transfer or encumber Company shares, as in effect from time to time.

(rrr) “*Unvested Non-Exempt Award*” means the portion of any Non-Exempt Award that had not vested in accordance with its terms upon or prior to the date of any Corporate Transaction.

(sss) “*Vested Non-Exempt Award*” means the portion of any Non-Exempt Award that had vested in accordance with its terms upon or prior to the date of a Corporate Transaction.

ORCHESTRA BiOMED HOLDINGS, INC.
STOCK OPTION GRANT NOTICE
(2023 EQUITY INCENTIVE PLAN)

Orchestra BioMed Holdings, Inc. (the “Company”), pursuant to its 2023 Equity Incentive Plan (the “Plan”), has granted to you (“Optionholder”) an option to purchase the number of shares of the Common Stock set forth below (the “Option”). Your Option is subject to all of the terms and conditions as set forth herein and in the Plan and the Stock Option Agreement, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein, but defined in the Plan or the Stock Option Agreement, shall have the meanings set forth in the Plan or the Stock Option Agreement, as applicable.

Optionholder: _____
Date of Grant: _____
Vesting Commencement Date: _____
Number of Shares of Common Stock Subject to Option: _____
Exercise Price (Per Share): _____
Total Exercise Price: _____
Expiration Date: _____

Type of Grant: [Incentive Stock Option] OR [Nonstatutory Stock Option]

Exercise and

Vesting Schedule: Subject to the Optionholder’s Continuous Service through each applicable vesting date, the Option will vest as follows: [_____]. Notwithstanding the foregoing, vesting shall terminate upon the Optionholder’s termination of Continuous Service.

Optionholder Acknowledgements: By your signature below, or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The Option is governed by this Stock Option Grant Notice, and the provisions of the Plan and the Stock Option Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Stock Option Agreement (together, the “Option Agreement”) may not be modified, amended or revised, except in a writing signed by you and a duly authorized officer of the Company.
- If the Option is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options granted to you) cannot be first exercisable for more than \$100,000 in value (measured by exercise price) in any calendar year. Any excess over \$100,000 is a Nonstatutory Stock Option.
- You consent to receive this Grant Notice, the Stock Option Agreement, the Plan, the prospectus prepared for the Plan (the “Prospectus”) and any other Plan-related documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.
- You have read and are familiar with the provisions of the Plan, the Stock Option Agreement, and the Prospectus. In the event of any conflict between the provisions in this Grant Notice, the Option Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The Option Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject, with the exception of other equity awards previously granted to you and any.
- written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this Option.
- Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method, and any counterpart so delivered, will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

ORCHESTRA BiOMED HOLDINGS, INC.

OPTIONHOLDER:

By: _____
Signature

Signature

Title: _____

Date: _____

Date: _____

ORCHESTRA BIOMED HOLDINGS, INC.
2023 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

As reflected by your Stock Option Grant Notice (“*Grant Notice*”) Orchestra BioMed Holdings, Inc. (the “*Company*”) has granted you an option under its 2023 Equity Incentive Plan (the “*Plan*”) to purchase a number of shares of Common Stock at the exercise price indicated in your Grant Notice (the “*Option*”). Capitalized terms not explicitly defined in this Agreement, but defined in the Grant Notice or the Plan, shall have the meanings set forth in the Grant Notice or Plan, as applicable. The terms of your Option as specified in the Grant Notice and this Stock Option Agreement constitute your Option Agreement.

The general terms and conditions applicable to your Option are as follows:

1. GOVERNING PLAN DOCUMENT. Your Option is subject to all the provisions of the Plan. Your Option is further subject to all interpretations, amendments, rules and regulations, which may, from time to time, be promulgated and adopted pursuant to the Plan. In the event of any conflict between the Option Agreement and the provisions of the Plan, the provisions of the Plan shall control.

2. EXERCISE.

(a) You may generally exercise the vested portion of your Option for whole shares of Common Stock at any time during its term by delivery of payment of the exercise price and applicable withholding taxes and other required documentation to the Plan Administrator in accordance with the exercise procedures established by the Plan Administrator, which may include an electronic submission. Please review the Plan, which may restrict or prohibit your ability to exercise your Option during certain periods.

(b) To the extent permitted by Applicable Law, you may pay your Option exercise price as follows:

(i) cash, check, bank draft or money order;

(ii) subject to Company and/or Committee consent at the time of exercise, pursuant to a “cashless exercise” program as further described in the Plan, if at the time of exercise the Common Stock is publicly traded;

(iii) subject to Company and/or Committee consent at the time of exercise, by delivery of previously owned shares of Common Stock as further described in the Plan; or

(iv) subject to Company and/or Committee consent at the time of exercise, if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement as further described in the Plan.

3. TERM. You may not exercise your Option before the commencement of its term or after its term expires. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

- (a) immediately upon the termination of your Continuous Service for Cause;
- (b) three months after the termination of your Continuous Service for any reason other than Cause, Disability or death;
- (c) 12 months after the termination of your Continuous Service due to your Disability;
- (d) 18 months after your death if you die during your Continuous Service;
- (e) immediately upon a Corporate Transaction if the Board has determined that the Option will terminate in connection with a Corporate Transaction,
- (f) the Expiration Date indicated in your Grant Notice; or
- (g) the day before the 10th anniversary of the Date of Grant.

Notwithstanding the foregoing, if you die during the period provided in Section 3(b) or 3(c) above, the term of your Option shall not expire until the earlier of (i) 18 months after your death, (ii) upon any termination of the Option in connection with a Corporate Transaction, (iii) the Expiration Date indicated in your Grant Notice, or (iv) the day before the 10th anniversary of the Date of Grant. Additionally, the Post-Termination Exercise Period of your Option may be extended as provided in the Plan.

To obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your Option, and ending on the day three months before the date of your Option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. If the Company provides for the extended exercisability of your Option under certain circumstances for your benefit, your Option will not necessarily be treated as an Incentive Stock Option if you exercise your Option more than three months after the date your employment terminates.

4. WITHHOLDING OBLIGATIONS.

(a) Regardless of any action taken by the Company or, if different, the Affiliate to which you provide Continuous Service (the "**Service Recipient**") with respect to any income tax, social insurance, payroll tax, fringe benefits tax, payment on account, or other tax-related items associated with the grant, vesting or exercise of the Option or sale of the underlying Common Stock or other tax-related items related to your participation in the Plan and legally applicable to you (the "**Tax Liability**"), you hereby acknowledge and agree that the Tax Liability is your ultimate responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. You further acknowledge that the Company and the Service Recipient (i) make no representations or undertakings regarding any Tax Liability in connection with any aspect of this Option, including, but not limited to, the grant, vesting or exercise of the Option, the issuance of Common Stock pursuant to such exercise, the subsequent sale of shares of Common Stock, and the payment of any dividends on the shares; and (ii) do not commit to, and are under no obligation to structure the terms of the grant or any aspect of the Option to reduce or eliminate your Tax Liability or achieve a particular tax result. Further, if you are subject to Tax Liability in more than one jurisdiction, you acknowledge that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax Liability in more than one jurisdiction.

(b) Prior to any relevant taxable or tax withholding event, as applicable, you agree to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax Liability. As further provided in Section 8 of the Plan, you hereby authorize the Company and any applicable Service Recipient to satisfy any applicable withholding obligations with regard to the Tax Liability by one or a combination of the following methods: (i) causing you to pay any portion of the Tax Liability in cash or cash equivalent in a form acceptable to the Company; (ii) withholding from any compensation otherwise payable to you by the Company or the Service Recipient; (iii) withholding from the proceeds of the sale of shares of Common Stock issued upon exercise of the Option (including by means of a “cashless exercise” pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company, or by means of the Company acting as your agent to sell sufficient shares of Common Stock for the proceeds to settle such withholding requirements, on your behalf pursuant to this authorization without further consent); (iv) withholding shares of Common Stock otherwise issuable to you upon the exercise of the Option, provided that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Board or the Company’s Compensation Committee; and/or (v) any other method determined by the Company to be in compliance with Applicable Law. Furthermore, you agree to pay the Company or the Service Recipient any amount the Company or the Service Recipient may be required to withhold, collect or pay as a result of your participation in the Plan or that cannot be satisfied by the means previously described. In the event it is determined that the amount of the Tax Liability was greater than the amount withheld by the Company or the Service Recipient, you agree to indemnify and hold the Company and/or the Service Recipient (as applicable) harmless from any failure by the Company or the applicable Service Recipient to withhold the proper amount.

(c) The Company may withhold or account for your Tax Liability by considering statutory withholding amounts or other withholding rates applicable in your jurisdiction(s), including (i) maximum applicable rates in your jurisdiction(s), in which case you may receive a refund of any over-withheld amount in cash (whether from applicable tax authorities or the Company) and you will have no entitlement to the equivalent amount in Common Stock or (ii) minimum or such other applicable rates in your jurisdiction(s), in which case, you may be solely responsible for paying any additional Tax Liability to the applicable tax authorities or to the Company and/or the Service Recipient. If the Tax Liability withholding obligation is satisfied by withholding shares of Common Stock, for tax purposes, you are deemed to have been issued the full number of shares of Common Stock subject to the exercised portion of the Option, notwithstanding that a number of the shares of Common Stock is held back solely for the purpose of paying such Tax Liability.

(d) You acknowledge that you may not be able to exercise your Option, even though the Option is vested, and that the Company shall have no obligation to issue shares of Common Stock, in each case, unless, and until you have fully satisfied any applicable Tax Liability, as determined by the Company. Unless any withholding obligation for the Tax Liability is satisfied, the Company shall have no obligation to deliver to you any Common Stock in respect of the Option.

5. INCENTIVE STOCK OPTION DISPOSITION REQUIREMENT. If your option is an Incentive Stock Option, you must notify the Company in writing within 15 days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two years after the date of your option grant or within one year after such shares of Common Stock are transferred upon exercise of your option.

6. TRANSFERABILITY. Except as otherwise provided in the Plan, your Option is not transferable, except by will or by the applicable laws of descent and distribution, and is exercisable during your life only by you.

7. CORPORATE TRANSACTION. Your Option is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

8. NO LIABILITY FOR TAXES. As a condition to accepting the Option, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the Option or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the Option, and have either done so, or knowingly and voluntarily declined to do so. Additionally, you acknowledge that the Option is exempt from Section 409A, only if the exercise price is at least equal to the "fair market value" of the Common Stock on the date of grant as determined by the Internal Revenue Service, and there is no other impermissible deferral of compensation associated with the Option. Additionally, as a condition to accepting the Option, you agree not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that such exercise is less than the "fair market value" of the Common Stock on the date of grant as subsequently determined by the Internal Revenue Service.

9. OBLIGATIONS; RECOUPMENT. You hereby acknowledge that the grant of your Option is additional consideration for any obligations (whether during or after employment) that you have to the Company not to compete, not to solicit its customers, clients or employees, not to disclose or misuse confidential information or similar obligations. Accordingly, if the Company reasonably determines that you breached such obligations, in addition to any other available remedy, the Company may, to the extent permitted by Applicable Law, recoup any income realized by you with respect to the exercise of your Option within two years of such breach. In addition, to the extent permitted by Applicable Law, this right to recoupment by the Company applies in the event that your employment is terminated for Cause, or if the Company reasonably determines that circumstances existed that it could have terminated your employment for Cause.

10. SEVERABILITY. If any part of this Option Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Option Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Option Agreement (or part of such a Section) so declared to be unlawful or invalid, will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible, while remaining lawful and valid.

11. INDEBTEDNESS TO THE COMPANY. In the event that you have any loans, draws, advances or any other indebtedness owing to the Company at the time of exercise of all or a portion of the Option, the Company may deduct and not deliver that number of shares of Common Stock with a Fair Market Value subject to the Option equal to such indebtedness to satisfy all or a portion of such indebtedness, to the extent permitted by law and in a manner consistent with Section 409A of the Code, if applicable.

12. OTHER DOCUMENTS. You hereby acknowledge receipt of, or the right to receive a document providing the information required by Rule 428(b) (1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Trading Policy.

13. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your Option, including a summary of the applicable federal income tax consequences, please see the Prospectus.

* * * *

**ORCHESTRA BIOMED HOLDINGS, INC.
RSU AWARD GRANT NOTICE
(2023 EQUITY INCENTIVE PLAN)**

Orchestra BioMed Holdings, Inc. (the “*Company*”) has awarded to you (the “*Participant*”) the number of restricted stock units specified and on the terms set forth below in consideration of your services (the “*RSU Award*”). Your RSU Award is subject to all of the terms and conditions as set forth herein and in the Company’s 2023 Equity Incentive Plan (the “*Plan*”) and the Award Agreement (the “*Agreement*”), which are incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Agreement shall have the meanings set forth in the Plan or the Agreement.

Participant:

Date of Grant:

Vesting Commencement Date:

Number of Restricted Stock Units:

Vesting Schedule:

[_____]. Notwithstanding the foregoing, vesting shall terminate upon the Participant’s termination of Continuous Service.

Issuance Schedule: One share of Common Stock will be issued for each restricted stock unit, which vests at the time set forth in Section 5 of the Agreement.

Participant Acknowledgements: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The RSU Award is governed by this RSU Award Grant Notice (the “*Grant Notice*”), and the provisions of the Plan and the Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Agreement (together, the “*RSU Award Agreement*”) may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- You have read and are familiar with the provisions of the Plan, the RSU Award Agreement and the prospectus prepared for the Plan (the “*Prospectus*”). In the event of any conflict between the provisions in the RSU Award Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The RSU Award Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of: (i) other equity awards previously granted to you, and (ii) any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this RSU Award.

ORCHESTRA BIOMED HOLDINGS, INC.

PARTICIPANT:

By: _____
Signature

Signature

Title:
Date:

Date:

ORCHESTRA BIOMED HOLDINGS, INC.
2023 EQUITY INCENTIVE PLAN
AWARD AGREEMENT (RSU AWARD)

As reflected by your Restricted Stock Unit Grant Notice (“*Grant Notice*”), Orchestra BioMed Holdings, Inc. (the “*Company*”) has granted you a RSU Award under its 2023 Equity Incentive Plan (the “*Plan*”) for the number of restricted stock units as indicated in your Grant Notice (the “*RSU Award*”). The terms of your RSU Award as specified in this Award Agreement for your RSU Award (the “*Agreement*”) and the Grant Notice constitute your “*RSU Award Agreement*”. Defined terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the same definitions as in the Grant Notice or Plan, as applicable.

The general terms applicable to your RSU Award are as follows:

1. GOVERNING PLAN DOCUMENT. Your RSU Award is subject to all the provisions of the Plan. Your RSU Award is further subject to all interpretations, amendments, rules and regulations, which may, from time to time, be promulgated and adopted pursuant to the Plan. In the event of any conflict between the RSU Award Agreement and the provisions of the Plan, the provisions of the Plan shall control.

2. GRANT OF THE RSU AWARD. This RSU Award represents your right to be issued on a future date the number of shares of the Company’s Common Stock that is equal to the number of restricted stock units indicated in the Grant Notice subject to your satisfaction of the vesting conditions set forth therein (the “*Restricted Stock Units*”). Any additional Restricted Stock Units that become subject to the RSU Award pursuant to Capitalization Adjustments as set forth in the Plan and the provisions of Section 3 below, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units covered by your RSU Award.

3. DIVIDENDS. You shall receive no benefit or adjustment to your RSU Award with respect to any cash dividend, stock dividend or other distribution that does not result from a Capitalization Adjustment as provided in the Plan; provided, however, that this sentence shall not apply with respect to any shares of Common Stock that are delivered to you in connection with your RSU Award after such shares have been delivered to you.

4. WITHHOLDING OBLIGATIONS.

(a) Regardless of any action taken by the Company or, if different, the Affiliate to which you provide Continuous Service (the “*Service Recipient*”) with respect to any income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items associated with the grant or vesting of the RSU Award or sale of the underlying Common Stock or other tax-related items related to your participation in the Plan and legally applicable to you (the “*Tax Liability*”), you hereby acknowledge and agree that the Tax Liability is your ultimate responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. You further acknowledge that the Company and the Service Recipient (i) make no representations or undertakings regarding any Tax Liability in connection with any aspect of this RSU Award, including, but not limited to, the grant or vesting of the RSU Award, the issuance of Common Stock pursuant to such vesting, the subsequent sale of shares of Common Stock, and the payment of any dividends on the Common Stock; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the RSU Award to reduce or eliminate your Tax Liability or achieve a particular tax result. Further, if you are subject to Tax Liability in more than one jurisdiction, you acknowledge that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax Liability in more than one jurisdiction.

(b) Prior to any relevant taxable or tax withholding event, as applicable, you agree to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax Liability. As further provided in Section 8 of the Plan, you hereby authorize the Company and any applicable Service Recipient to satisfy any applicable withholding obligations with regard to the Tax Liability by any of the following means or by a combination of such means: (i) causing you to pay any portion of the Tax Liability in cash or cash equivalent in a form acceptable to the Company; (ii) withholding from any compensation otherwise payable to you by the Company or the Service Recipient; (iii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to you in connection with the Award; *provided*, however, that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Board or the Company's Compensation Committee; (iv) permitting or requiring you to enter into a "same day sale" commitment, if applicable, with a broker-dealer that is a member of the Financial Industry Regulatory Authority (a "*FINRA Dealer*"), pursuant to this authorization and without further consent, whereby you irrevocably elect to sell a portion of the shares of Common Stock to be delivered in connection with your Restricted Stock Units to satisfy the Tax Liability and whereby the FINRA Dealer irrevocably commits to forward the proceeds necessary to satisfy the Tax Liability directly to the Company or the Service Recipient; and/or (v) any other method determined by the Company to be in compliance with Applicable Law. Furthermore, you agree to pay the Company or the Service Recipient any amount the Company or the Service Recipient may be required to withhold, collect, or pay as a result of your participation in the Plan or that cannot be satisfied by the means previously described. In the event it is determined that the amount of the Tax Liability was greater than the amount withheld by the Company and/or the Service Recipient (as applicable), you agree to indemnify and hold the Company and/or the Service Recipient (as applicable) harmless from any failure by the Company or the applicable Service Recipient to withhold the proper amount.

(c) The Company may withhold or account for your Tax Liability by considering statutory withholding amounts or other withholding rates applicable in your jurisdiction(s), including (i) maximum applicable rates in your jurisdiction(s), in which case you may receive a refund of any over-withheld amount in cash (whether from applicable tax authorities or the Company) and you will have no entitlement to the equivalent amount in Common Stock or (ii) minimum or such other applicable rates in your jurisdiction(s), in which case you may be solely responsible for paying any additional Tax Liability to the applicable tax authorities or to the Company and/or the Service Recipient. If the Tax Liability withholding obligation is satisfied by withholding shares of Common Stock, for tax purposes, you are deemed to have been issued the full number of shares of Common Stock subject to the vested portion of the RSU Award, notwithstanding that a number of the shares of Common Stock is held back solely for the purpose of paying such Tax Liability.

(d) You acknowledge that you may not participate in the Plan and the Company shall have no obligation to deliver shares of Common Stock until you have fully satisfied the Tax Liability, as determined by the Company. Unless any withholding obligation for the Tax Liability is satisfied, the Company shall have no obligation to deliver to you any Common Stock in respect of the RSU Award.

5. DATE OF ISSUANCE. The issuance of shares in respect of the Restricted Stock Units is intended to comply with U.S. Treasury Regulations Section 1.409A-3(a) and will be construed and administered in such a manner. Subject to the satisfaction of the Tax Liability withholding obligation, if any, in the event one or more Restricted Stock Units vests, the Company shall issue to you one (1) share of Common Stock for each vested Restricted Stock Unit. Each issuance date determined by this paragraph is referred to as an “**Original Issuance Date**.” The Original Issuance Date shall be the date the underlying Restricted Stock Unit vests except that if the Original Issuance Date otherwise would fall on a date that is not a business day, the Original Issuance Date shall instead occur on the next following business day. In addition, and notwithstanding the foregoing, if:

(a) the Original Issuance Date does not occur (1) during an “open window period” applicable to you, as determined by the Company in accordance with the Company’s then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company’s policies (a “**10b5-1 Arrangement**”)); and

(b) either (1) a Tax Liability withholding obligation does not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Tax Liability withholding obligation by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a “same day sale” commitment with a broker-dealer (including, but not limited to, a commitment under a 10b5-1 Arrangement) and (C) not to permit you to pay your Tax Liability in cash, then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Common Stock in the open public market, but in no event later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with U.S. Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a “substantial risk of forfeiture” within the meaning of U.S. Treasury Regulations Section 1.409A-1(d).

6. TRANSFERABILITY. Except as otherwise provided in the Plan, your RSU Award is not transferable, except by will or by the applicable laws of descent and distribution

7. CORPORATE TRANSACTION. Your RSU Award is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

8. No LIABILITY FOR TAXES. As a condition to accepting the RSU Award, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the RSU Award or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the RSU Award and have either done so or knowingly and voluntarily declined to do so.

9. SEVERABILITY. If any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

10. OTHER DOCUMENTS. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b) (1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Trading Policy.

11. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your RSU Award, including a summary of the applicable federal income tax consequences please see the Prospectus.

ORCHESTRA BIOMED HOLDINGS, INC.
AMENDED AND RESTATED
EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of January 26, 2023 (the "Amendment Date"), by and between Orchestra BioMed Holdings, Inc., a Delaware corporation (the "Company") and the parent company of Orchestra BioMed, Inc., and David Hochman ("Executive"). This Agreement amends and restates in its entirety that certain Employment Agreement (the "Prior Agreement") entered into by and between Orchestra BioMed, Inc. and Executive, dated May 31, 2018 (the "Original Effective Date").

WHEREAS, Executive was an employee of Orchestra BioMed, Inc. prior to its acquisition by the Company (the "Acquisition"), which was previously known as Health Sciences Acquisitions Corp 2;

WHEREAS, upon the closing of the Acquisition, Orchestra BioMed, Inc. became a subsidiary of the Company;

WHEREAS, the Company desires to retain Executive as an employee of the Company, and Executive desires to be employed by the Company, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the employment of Executive by the Company and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. Employment. During the Employment Period (as defined below), the Company hereby agrees to employ Executive as Chief Executive Officer and Orchestra BioMed Founder, and Executive hereby accepts such employment and agrees to serve as Chief Executive Officer and Orchestra BioMed Founder, all in accordance with the terms and conditions of this Agreement. Executive hereby represents and warrants that neither Executive's entry into this Agreement nor Executive's performance of Executive's obligations hereunder will conflict with or result in a breach of the terms, conditions, or provisions of any other agreement or obligation of any nature to which Executive is a party or by which Executive is bound, including, without limitation, any non-competition agreement, non-solicitation agreement or confidentiality agreement or policy entered into by Executive or to which Executive is subject.

2. Term of Employment. The term of Executive's employment under this Agreement will commence on the Amendment Date and will continue until terminated in accordance with Section 8 hereof (such term, the "Employment Period"). For the avoidance of doubt, and notwithstanding any contrary provision herein, Executive's employment is "at will" although Executive may be eligible for specified payments and benefits in the event of certain terminations of employment as set forth in Sections 4(c) and 8.

3. Position and Responsibilities. During the Employment Period: (a) Executive shall serve in the position of Chief Executive Officer and Orchestra BioMed Founder; (b) Executive shall have the duties, responsibilities, functions and authority, including administrative, financial, executive and managerial, as shall be designated by the Company's board of directors (the "Board") from time to time; (c) Executive will use his best efforts to promote the interests, prospects, condition (financial and otherwise) and welfare of the Company and shall perform his duties and responsibilities to the best of his ability in a diligent, trustworthy, businesslike and efficient manner; and (d) Executive shall comply at all times with all policies and codes of conduct of the Company, as such policies and codes may change from time to time.

(a) Board of Directors. So long as he remains the Company's Chief Executive Officer, the Company shall nominate Executive to serve as a Director. Unless otherwise agreed upon by Executive and the Company, Executive's service as a Director shall continue until the first to occur of (i) the date that Executive is no longer employed by the Company and its affiliates, (ii) the death of the Director, (iii) the resignation by the Executive from the Board of Directors, and (iv) the expiration of the then current term as a Director if Executive is not re-elected by the Company's stockholders to serve as a Director. Executive agrees to serve as a Director during the term of this Agreement, so long as he is elected to serve as a Director by the Company's stockholders.

4. Compensation.

(a) Salary. During the Employment Period, the Company shall pay to Executive a base salary at the rate of \$595,000 per annum (the "Base Salary"). On an annual basis the Board or the compensation committee of the Board (the "Compensation Committee") shall review Executive's Base Salary and may increase such amount as it may deem advisable. The Base Salary shall be paid in accordance with the Company's standard payroll practices in effect from time to time.

(b) Bonus. Commencing on the Amendment Date, in addition to the Base Salary, Executive shall be eligible to receive a discretionary annual bonus during each fiscal year of the Employment Period, with a target bonus amount of eighty percent (80%) of the Base Salary. The performance metrics and goals required to receive such bonus amount, shall be determined by the Board in consultation with the Company's Chief Executive Officer within sixty (60) days following the commencement of each fiscal year or, if later, at the next regularly scheduled meeting of the Board that occurs at least five business days after the Chief Executive Officer has submitted recommended performance metrics to the Board. The actual bonus, if any, payable under this Section 4(b) shall be paid within thirty (30) days following receipt of the Company's audited financial statements for the applicable fiscal year, unless such payment is delayed due to an unforeseeable administrative impracticability, in which case, such bonus will be paid as soon as administratively practicable thereafter, but in no event later than the end of the fiscal year immediately following the applicable fiscal year; provided that Executive is an employee with the Company at such time of payment and Executive has not breached any provision of this Agreement.

(c) Equity Interest. Company shall award Executive stock options to acquire common stock of the Company (the “Common Shares”) or restricted common stock units (“RSUs”) (as agreed upon by Executive and the Board) as soon as reasonably practicable following the beginning of the first open trading window after the date of this Agreement under the Company’s Insider Trading Policy, so that Executive’s long-term incentive equity holdings represent, in the aggregate, the Equity Award Percentage (as defined below; such grant, the “Equity Award Grant”). Except as otherwise provided herein, the terms of the Equity Award Grant shall reflect the Company’s standard terms and conditions for executive equity award grants.

(i) Defined Terms. For the purposes of this Agreement, the following defined terms shall be construed to have the meanings set forth or referenced below.

(1) “Equity Award Percentage” means four and six-tenths percent (4.6%) of the fully diluted Common Shares of the combined company as of immediately following the closing of the Acquisition; provided, however, that notwithstanding any contrary provision herein, the parties acknowledge that the 4.6% assumes an award solely in the form of options. To the extent the Equity Award is in restricted stock units, the number of shares covered by the Equity Award will be reduced reflecting a ratio of 2 shares covered by restricted stock units is equivalent to 3 shares covered by options (i.e., rounding down, a restricted stock unit award covering 666 shares of Company common stock is deemed equivalent to an option award covering 1,000 shares of Company common stock).

(2) “Equity Vesting Schedule” means that twenty-five percent (25%) of any options awarded to the Executive shall be fully vested on the first (1st) anniversary of the Amendment Date and the remaining seventy-five percent (75%) of any options awarded to the Executive shall vest on a quarterly basis thereafter over the following three years; and unless otherwise agreed, any RSUs awarded to the Executive shall vest on a schedule to be agreed upon between the Executive and the Board (provided such vesting schedule shall be over a minimum of three (3) years unless otherwise agreed by the Company and Executive and other than as provided herein). All vesting shall be subject to continued employment or service as a member of the Board through the applicable vesting date; provided, however, in the event of the termination of Executive’s employment and the Board requests that Executive continue to serve on the Board (notwithstanding that Executive agrees that Executive otherwise shall resign from the Board upon termination of employment), the parties agree to negotiate in good faith a reduction in the number of shares as to which the Equity Award Grant has not yet vested so that future vesting of the award more closely reflects grant sizes for non-employee directors.

(ii) Other Terms. The Equity Award Grant shall vest according to the Equity Vesting Schedule and contain the following additional terms:

(1) Notwithstanding the terms of any document to the contrary, in the event that (i) a “Change of Control” (as defined in the Company’s 2023 Equity Incentive Plan provided, however, that the Acquisition is not a Change of Control) occurs, and (ii) the surviving corporation or the acquiring corporation fails to either (A) continue or assume any or all of Executive’s Company options or other stock awards or (B) substitute similar stock awards for Executive’s Company options or other stock awards (it being understood that similar stock awards include, but are not limited to, awards to acquire the same consideration paid to the stockholders or the Company, as the case may be, pursuant to the Change of Control), then 100% of Executive’s unvested Company options or other stock awards shall immediately vest as of the date immediately preceding the Change of Control.

(2) If the Executive is terminated without Cause (as defined below), or voluntarily terminates the Employment Period with Good Reason during the period commencing three (3) months prior to a Change of Control of and ending twelve (12) months following a Change of Control (the "Change of Control Period"), and subject to the Executive satisfying the Release Requirement (defined below), any unvested equity awards then held by the Executive shall become fully vested.

(3) If the Executive is terminated without Cause (as defined below), or voluntarily terminates the Employment Period with Good Reason outside of the Change of Control Period, and subject to the Executive satisfying the Release Requirement, the vesting of any equity held by the Executive as of the closing of the Acquisition shall be determined as if the Executive had remained employed for an additional twelve (12) months beyond his date of termination.

5. Benefit Plans. During the Employment Period, Executive shall be eligible to participate in and receive benefits under the employee benefit plans, equity incentive plans, practices, policies, perquisites and programs established and maintained by the Company from time to time, in the Company's sole discretion, for which executives of the Company are generally eligible, in each case, subject to the eligibility and participation requirements thereof.

6. Business Expenses. The Company, in accordance with policies and practices established by the Company from time to time, will pay or reimburse Executive for all expenses reasonably incurred by Executive during the Employment Period in connection with the performance of Executive's duties under this Agreement; provided, that Executive shall provide to the Company reasonable documentation or evidence of expenses for which Executive seeks reimbursement in accordance with the policies and procedures established by the Company from time to time. Executive's air travel shall be pursuant to Company policy for executives.

7. Paid Time Off. Executive shall be entitled, during the Employment Period, to four (4) weeks of paid vacation and sick time in each calendar year or pursuant to Company policy for executives, whichever is greater. Accrued vacation and sick time not taken in any calendar year may not be carried forward or be usable in any subsequent calendar year, nor shall Executive be entitled to compensation for unused vacation or sick days during the Employment Period or upon termination of employment. Paid holidays may be taken in accordance with the holiday policy and schedule of the Company as from time to time in effect.

8. Termination.

(a) Termination For Cause. The Company may terminate the Employment Period immediately upon the occurrence of any of the following events (each of which shall constitute "Cause"):

(i) Executive's breach of any of Executive's obligations under Section 9;

(ii) Executive's breach of any of Executive's obligations under this Agreement other than Section 9, which, to the extent curable, has not been cured within thirty (30) days after Executive has been provided written notice of such breach;

(iii) Executive being convicted of, or pleading guilty or nolo contendere to, or being indicted for, any felony or any misdemeanor involving theft, fraud, dishonesty or moral turpitude; or

(iv) Fraud or embezzlement against the Company.

If the Employment Period is terminated pursuant to this Section 8(a), the Company shall have no further obligation to Executive except for (i) payment of Base Salary accrued but unpaid through the date of termination and (ii) subject to the provisions of Section 6, reimbursement of any expense properly incurred by Executive through the date of termination (collectively, the “Accrued Obligations”). The Accrued Obligations shall be paid in accordance with applicable state law and in no event later than thirty (30) days after the date of termination.

(b) Termination upon Executive’s Death. The Employment Period shall terminate immediately upon the death of Executive. If the Employment Period is terminated pursuant to this Section 8(b), the Company shall have the following obligations to Executive (or his estate) (i) the payment of the Accrued Obligations, which shall be paid in accordance with Section 8(a), and (ii) the payment of Severance Obligations, which shall be paid in accordance with Section 8(f).

(c) Termination by the Company without Cause. The Company may terminate the Employment Period at any time without Cause upon written notice to Executive. If the Employment Period is terminated pursuant to this Section 8(c), the Company shall have the following obligations to Executive (or his estate): (i) Payment of all Accrued Obligations, which shall be paid in accordance with Section 8(a); and (ii) Payment of the Severance Obligations as described in Section 8(f).

(d) Voluntary Resignation by Executive - Without Cause. Executive may terminate the Employment Period for any reason upon not less than ten (10) days’ prior written notice. If the Employment Period is terminated pursuant to this Section 8(d), the Company shall have no further obligation to Executive except for Accrued Obligations, which shall be paid in accordance with Section 8(a).

(e) Voluntary Resignation by Executive - With Good Reason. Executive may terminate the Employment Period, with Good Reason, upon not less than ten (10) days’ prior written notice. If Executive terminates the Employment Period with Good Reason, the Company shall have the following obligations to Executive (or his estate):

(i) Payment of all Accrued Obligations, which shall be paid in accordance with Section 8(a); and

(ii) Payment of the Severance Obligations as described in Section 8(f).

(iii) For purposes of this Section 8(e), “Good Reason” shall mean each of the following, without Executive’s consent: (A) any change in the Executive’s position, title or reporting relationship with the Company that diminishes in any material respect the Executive’s authority, duties or responsibilities; provided, however, that a change in the Executive’s authority, duties or responsibilities solely due to the Company becoming a division, subsidiary or other similar part of a larger organization, shall not by itself constitute Good Reason; (B) any material reduction in the Executive’s base compensation; (C) the relocation of the Executive’s principal office, or principal place of employment, to a location more than fifty (50) miles from the location of the Executive’s principal office or principal place of business; or (D) a material breach of any provision hereof by the Company or any successor or assign. Notwithstanding the foregoing, “Good Reason” shall not be deemed to have occurred unless: (1) the Executive provides the Company with written notice that the Executive intends to terminate the Executive’s employment hereunder for one of the grounds set forth in subsections (A), (B), (C) or (D) within sixty (60) days of such reason(s) occurring, (2) if such ground is capable of being cured, the Company has failed to cure such ground within a period of sixty (60) days from the date of such written notice, and (3) the Executive terminates the Executive’s employment within sixty (60) days after the cure period has lapsed. For purposes of clarification, the above-listed conditions shall apply separately to each occurrence of Good Reason and failure to adhere to such conditions in the event of Good Reason shall not disqualify the Executive from asserting Good Reason for any subsequent occurrence of Good Reason.

(f) Severance Payments. In the event Executive’s employment is terminated (i) by the Company without Cause or (ii) by Executive for Good Reason, the Company shall continue to pay Executive as severance, the aggregate sum of one hundred percent (100%) of Executive’s then-effective Base Salary plus his target bonus for the year of termination proportionally for a period of twelve (12) months beginning on the date such termination becomes effective (such payments, the Company’s “Severance Obligations”), and if the Executive validly elects to continue his healthcare coverage under COBRA, reimburse the Executive for the premiums he pays to continue healthcare coverage for the Executive and his eligible dependents for twelve (12) months or, if earlier, until the Executive becomes eligible for healthcare coverage from a subsequent employer; provided, as a condition to all amounts specified in this clause (f), that Executive executes a full and final release substantially in the form attached as Exhibit B hereto (with such changes as the Company may reasonably request to reflect changes in applicable law) and such release becomes irrevocably effective within 60 days following the termination of Executive’s employment (such requirement for an irrevocably effective release, the “Release Requirement”). Any and all payments of Severance Obligations shall be less applicable withholding and deductions. Further, in the event Executive’s employment is terminated (i) by the Company without Cause or (ii) by Executive for Good Reason, and subject to satisfaction of the Release Requirement, the stated post-termination exercise period of Executive’s outstanding options shall be extended to twelve months following the termination of Executive’s employment; provided, however, options shall expire earlier upon expiration of the maximum term or, subject to Section 4(c)(ii)(1), pursuant to a Change of Control if all Company options are terminated in connection with the Change of Control.

In the event of such termination without Cause or resignation for Good Reason during the Change of Control Period, the Severance Obligations will be one hundred and fifty percent (150%) of the sum of Executive’s then-effective Base Salary plus his target bonus for the year of termination, in addition to the healthcare continuation and extended post-termination exercise period set forth above.

Payment of the Severance Obligations shall accrue until the Release Requirement is satisfied, with accrued amounts paid on the first regularly scheduled Company payroll date after the Release Requirement is satisfied; provided, however, if the 60-day period following the termination of Executive's employment spans two calendar years in no event will any of the Severance Obligations be paid prior to January 1 of the second calendar year (with amounts accruing until that date). Reimbursement of COBRA healthcare premiums shall be paid in accordance with the Company's standard expense reimbursement procedures subject to Executive submitting proof of payment within 60 days of paying the applicable premium.

9. Restrictive Covenants.

(a) Executive's Acknowledgment. Executive acknowledges that: (i) the Company is and will be engaged in its business during the Employment Period and thereafter; (ii) Executive is one of a limited number of persons who is and will be developing the business and will, during the Employment Period, have frequent and prolonged interactions with all customers and suppliers of the Company with respect to matters significantly affecting the business relationship between those customers and suppliers and the Company; (iii) Executive occupies a position of trust and confidence with the Company and is familiar with the Company's trade secrets and with other proprietary and confidential information concerning the Company and its business; and (iv) the agreements and covenants contained in this Section 9 are essential to protect the Company and the goodwill of the business and are a condition precedent to the Company entering into this Agreement. Executive acknowledges that he or she has carefully read this Agreement and has given careful consideration to the restraints imposed upon him by this Agreement, and is in full accord as to their necessity for the reasonable and proper protection of confidential and proprietary information and goodwill of the Company now existing or to be developed or created in the future.

(b) Non-Solicitation. Executive will not, during the Restricted Period, directly or indirectly (whether as an owner, partner, shareholder, member, agent, officer, director, manager, employee, independent contractor, consultant, or otherwise) with or through any individual or entity:

(i) solicit for employment or engagement, or identify for another person or entity to employ, engage or solicit for employment or engagement, any individual who is, or was at any time during the twelve (12) month period immediately preceding any such action, an employee of the Company, or otherwise seek to adversely influence or alter any such employee's relationship with the Company;

(ii) employ or engage any individual who is, or was at any time during the twelve (12) month period immediately preceding any such action, an employee of the Company; or

(iii) solicit or encourage any individual or entity that is, or was during the twenty four (24) month period immediately preceding any such action, a current or prospective customer, supplier or vendor of the Company (A) to terminate or otherwise adversely alter his, her or its relationship with the Company or (B) for any purposes which are competitive with Company's business.

(c) Right to Conduct Activities. During the term of this Agreement, Executive agrees to devote substantially all of his business time and effort to the performance of his services to the Company; provided however, Executive may serve as a member of the Board of Directors or other governing body of up to two (2) for-profit entities, as well as any entity in which the Company has an investment, so long as such service does not unreasonably interfere with Executive's obligations hereunder. In addition, the Company consents to Executive's continued service as a member of the Board of Directors or other governing body of any of the entities set forth on Exhibit A, or any other entity approved by the Company, so long as such service does not unreasonably interfere with Executive's obligations hereunder.

(d) Scope/Severability. The parties acknowledge that the Company's business is and will be conducted throughout the Restricted Territory and thus the covenants in this Section 9 would be ineffective if the covenants were to be limited to a particular geographic area within the Restricted Territory. If any court of competent jurisdiction at any time deems the Restricted Period too lengthy, or the Restricted Territory too extensive, or any of the covenants set forth in this Section 9 otherwise not fully enforceable, the other provisions of this Section 9, and this Agreement in general, will nevertheless stand and to the full extent consistent with law continue in full force and effect, and it is the intention and desire of the parties that the court treat any provisions of this Agreement which are not fully enforceable as having been modified to the extent deemed necessary by the court to render them reasonable and enforceable and that the court enforce them to such extent (for example, that Restricted Territory be deemed to comprise the largest territory permissible by law under the circumstances but not in excess of the territory provided for herein).

10. Equitable Remedies. Executive acknowledges and agrees that the agreements and covenants set forth in Section 9 of this Agreement are reasonable and necessary for the protection of the Company's business interests, that irreparable injury will result to the Company if Executive breaches any of the terms of said covenants, and that in the event of Executive's actual or threatened breach of any such covenants, the Company will have no adequate remedy at law. Executive accordingly agrees that, in the event of any actual or threatened breach by Executive of any of said covenants, the Company will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages or the necessity of showing that monetary damages are an inadequate remedy. Nothing in this Section 10 will be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages that it is able to prove.

11. Assistance. From and after the date hereof (including after the termination of Executive's employment with the Company for any reason), Executive shall, upon reasonable notice, furnish the Company with such information as may be in Executive's possession or control, and cooperate with the Company, as the Company may reasonably request, in connection with any litigation, claim, or other dispute in which the Company is or may become a party, provided that following termination of Executive's employment with the Company, any such assistance shall not unreasonably interfere with Executive's personal or business affairs. The Company shall reimburse Executive for all reasonable out-of-pocket expenses incurred by Executive in fulfilling Executive's obligations under this Section

12. Definitions. The following terms used herein shall have the definitions set forth below:

“Restricted Period” means twelve (12) months following the date of termination.

“Restricted Territory” means the United States of America.

13. Effect of Prior Agreements. Unless otherwise provided herein, this Agreement contains the entire understanding between the Company and Executive relating to the subject matter hereof and, as of the Amendment Date, will supersede the Prior Agreement and any other agreement relating to the subject matter hereof between Executive and the Company or any of its subsidiaries (including, without limitation, Orchestra BioMed, Inc.). Executive acknowledges that he is not relying and has not relied on any oral or written statements, promises, representations or warranties (whether made by the Company or any equity holder, director, officer, employee, agent or other representative of the Company or otherwise) that are not expressly set forth in this Agreement and those documents expressly referred to herein. For the avoidance of doubt, the non-solicitation and other restrictive covenants contained in this Agreement shall be in addition to, and not in lieu of, and shall not in any way limit or be limited by, any restrictive covenant covering similar subject matter contained in any other agreement to which Executive is a party, including but not limited to, any asset purchase agreement, equity subscription agreement or stockholder or operating agreement with respect to any equity interest in the Company.

14. Confidential Information and Intellectual Property Assignment Agreement. Notwithstanding anything herein to the contrary, the terms of that certain Confidential Information and Intellectual Property Assignment Agreement, dated as of the date hereof, between Executive and the Company are hereby incorporated by reference.

15. Withholding and Deductions. All amounts payable to Executive (or his estate, as applicable) pursuant to this Agreement shall be subject to such withholding and deductions by the Company as required by law and the applicable benefit plans of the Company.

16. Code Section 409A. The Company and Executive agree that this Agreement and the rights granted to Executive hereunder are intended to meet the requirements of paragraphs (2), (3) and (4) of Section 409A(a)(1)(A) of the Internal Revenue Code of 1986, as amended, (the “Code”). Accordingly, the parties agree that they shall negotiate in good faith to revise any provisions of this Agreement that might otherwise fail to meet the requirements of paragraphs (2), (3) and (4) of Section 409A of Code. However, the Company does not guarantee any particular tax effect of payments under this Agreement, and in no event shall the Company have any obligation to “gross-up” or otherwise compensate Executive with respect to any tax effect of payments under this Agreement. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year after the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. “Termination of employment,” or words of similar import, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation subject to Section 409A, Executive’s “separation from service” as defined in Section 409A. For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments. If Executive is deemed on the date of termination of employment to be a “specified employee” within the meaning of Section 409A of the Code, then with regard to the payment or the provision of any benefit that is considered nonqualified deferred compensation under Section 409A of the Code payable on account of a “separation from service,” such payment or benefit shall not be made or provided until the date which is the earlier of (i) the expiration of the six (6) month period measured from the date of such separation from service and (ii) the date of Executive’s death. Upon the expiration of the foregoing delay period, all payments and benefits so delayed shall be paid or provided or reimbursed in a lump sum. In the event of a conflict between the terms of this Section 16 and the terms of any other provision in this Agreement relating to payment timing, the terms of this Section 16 shall control.

17. Code Section 280G. If any payment or benefit the Executive would receive pursuant to a Change of Control from the Company or otherwise (“Payment”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then such Payment shall be equal to the Reduced Amount. The “Reduced Amount” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Executive’s receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. Any reduction shall be made in the following manner: first a pro rata reduction of (i) cash payments subject to Section 409A of the Code as deferred compensation and (ii) cash payments not subject to Section 409A of the Code, and second a pro rata cancellation of (i) equity-based compensation subject to Section 409A of the Code as deferred compensation and (ii) equity-based compensation not subject to Section 409A of the Code. Reduction in either cash payments or equity compensation benefits shall be made pro rata between and among benefits which are subject to Section 409A of the Code and benefits which are exempt from Section 409A of the Code.

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and the Executive within fifteen (15) calendar days after the date on which the Executive’s right to a Payment is triggered (if requested at that time by the Company or the Executive) or such other time as requested by the Company or the Executive. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish the Company and the Executive with an opinion reasonably acceptable to the Executive that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and the Executive.

The Company agrees to cooperate with the Executive to minimize the amount of any payment to the Executive that is subject to Section 280G of the Code, including soliciting the consent of the Company’s stockholders, as applicable, to such payment under Section 280G(b)(5) of the Code.

18. Modification and Waiver. This Agreement may not be modified or amended, nor may any provisions of this Agreement be waived, except by an instrument in writing signed by the parties hereto. No written waiver will be deemed to be a continuing waiver unless specifically stated therein, and each such waiver will operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived. No failure of any party hereto to exercise any right or remedy given to such party under this Agreement or otherwise available to such party hereto or to insist upon strict compliance by any other party hereto with its or his obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of any party’s right to demand exact compliance with the terms hereof.

19. Indemnification. The Company hereby indemnifies Executive to the maximum extent provided in the Company’s By-Laws and organizational documents, as currently in effect. Executive shall be entitled to coverage under the directors’ and officers’ liability insurance on terms no less favorable to him in any respect than the coverage then being provided to any other current or former director or officer of the Company and which the Company shall maintain with minimum coverage of Five Million Dollars (\$5 million).

20. Severability. Without limiting Section 9(c): (i) if, for any reason, any provision of this Agreement is held invalid, such invalidity will not affect any other provision of this Agreement, and each provision will, to the full extent consistent with law, continue in full force and effect and (ii) if any provision of this Agreement is held invalid in part, such invalidity will in no way affect the rest of such provision, and the rest of such provision, together with all other provisions of this Agreement, will, to the full extent consistent with law, continue in full force and effect.

21. Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and shall be given by delivery in person, by facsimile transmission, by email, by overnight courier or by registered or certified mail, postage prepaid to the address set forth below or such other address as such party may give to the other parties by notice pursuant to this Section 21. Notice shall be deemed given on (a) the date such notice is personally delivered, (b) the date of scheduled delivery if sent by overnight courier, or (c) the date such notice is transmitted by facsimile or email, if such transmission is prior to 5:00 p.m. Eastern Time on a business day, or the next succeeding business day if such transmission is after 5:00 p.m. Eastern Time.

If to the Board or the Company: Orchestra BioMed Holdings, Inc.
150 Union Square Drive
New Hope, PA 18938
E-Mail: dhochman@orchestrabiomed.com

If to Executive: David Hochman
At such address or email address as is in the Company's personnel records

22. Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties to this Agreement, their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

23. Headings. The headings and other captions in this Agreement are included solely for convenience of reference and will not control the meaning and interpretation of any provision of this Agreement.

24. Governing Law. The validity, interpretation, performance, and enforcement of this Agreement will be governed by the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Executive and the Company hereby irrevocably submit to the exclusive jurisdiction of any state or federal court located in the State of Delaware, over any suit, action or proceeding, whether at law or in equity, arising out of or relating to or concerning this Agreement. Each party hereto agrees that it will not challenge the applicability of the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction), in any suit or proceeding regarding the validity, interpretation, performance, or enforcement of any provision of this Agreement, regardless of who initiates such suit or proceeding.

25. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE MATERS CONTEMPLATED HEREBY, PROVIDED, HOWEVER, THAT THE PARTIES HERETO AGREE THAT SUCH WAIVER SHALL NOT BE DEEMED TO CONSTITUTE A WAIVER OF ADJUDICATION BY A COURT HAVING APPROPRIATE JURISDICTION.

26. Non-Assignability/Binding Effect. This Agreement shall not be assignable by either party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of Executive, the Company and their respective successors and permitted assigns.

27. Construction. The parties hereto 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 hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

28. Survival. Termination of the Employment Period in accordance with Section 8 will not affect the provisions of Section 3(a) or Sections 9 through 28 of this Agreement, each of which shall survive such termination.

29. Counterparts. This Agreement may be executed in separate counterparts and may be executed and delivered by facsimile or other electronic delivery, each of which is deemed to be an original and all of which, taken together, constitute one and the same agreement.

[Remainder of Page Intentionally Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer, and Executive has signed this Agreement, as of the date first above written.

ORCHESTRA BIOMED HOLDINGS, INC.:

By: /s/ Darren Sherman

Name: Darren Sherman

Title: President, Chief Operating Officer

EMPLOYEE:

/s/ David Hochman

David Hochman

Exhibit A

Boards of Directors

- Motus GI Holdings, Inc. (Chairman)
- Vivasure Medical Ltd. (Observer)
- Mollie Parnis Livingston Foundation (President of board)

Exhibit B
Form of Release

ORCHESTRA BIOMED HOLDINGS, INC.
AMENDED AND RESTATED
EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of January 26, 2023 (the "Amendment Date"), by and between Orchestra BioMed Holdings, Inc., a Delaware corporation (the "Company") and the parent company of Orchestra BioMed, Inc., and Darren R. Sherman ("Executive"). This Agreement amends and restates in its entirety that certain Employment Agreement (the "Prior Agreement") entered into by and between Orchestra BioMed, Inc. and Executive, dated May 31, 2018 (the "Original Effective Date").

WHEREAS, Executive was an employee of Orchestra BioMed, Inc. prior to its acquisition by the Company (the "Acquisition"), which was previously known as Health Sciences Acquisitions Corp 2;

WHEREAS, upon the closing of the Acquisition, Orchestra BioMed, Inc. became a subsidiary of the Company;

WHEREAS, the Company desires to retain Executive as an employee of the Company, and Executive desires to be employed by the Company, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the employment of Executive by the Company and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. Employment. During the Employment Period (as defined below), the Company hereby agrees to employ Executive as President, Chief Operating Officer and Orchestra BioMed Founder, and Executive hereby accepts such employment and agrees to serve as President, Chief Operating Officer and Orchestra BioMed Founder, all in accordance with the terms and conditions of this Agreement. Executive hereby represents and warrants that neither Executive's entry into this Agreement nor Executive's performance of Executive's obligations hereunder will conflict with or result in a breach of the terms, conditions, or provisions of any other agreement or obligation of any nature to which Executive is a party or by which Executive is bound, including, without limitation, any non-competition agreement, non-solicitation agreement or confidentiality agreement or policy entered into by Executive or to which Executive is subject.

2. Term of Employment. The term of Executive's employment under this Agreement will commence on the Amendment Date and will continue until terminated in accordance with Section 8 hereof (such term, the "Employment Period"). For the avoidance of doubt, and notwithstanding any contrary provision herein, Executive's employment is "at will" although Executive may be eligible for specified payments and benefits in the event of certain terminations of employment as set forth in Sections 4(c) and 8.

3. Position and Responsibilities. During the Employment Period: (a) Executive shall serve in the position of President, Chief Operating Officer and Orchestra BioMed Founder; (b) Executive shall have the duties, responsibilities, functions and authority, including administrative, financial, executive and managerial, as shall be designated by the Company's board of directors (the "Board") or Chief Executive Officer from time to time; (c) Executive will use his best efforts to promote the interests, prospects, condition (financial and otherwise) and welfare of the Company and shall perform his duties and responsibilities to the best of his ability in a diligent, trustworthy, businesslike and efficient manner; and (d) Executive shall comply at all times with all policies and codes of conduct of the Company, as such policies and codes may change from time to time.

(a) Board of Directors. So long as he remains the Company's President and Chief Operating Officer, the Company shall nominate Executive to serve as a Director. Unless otherwise agreed upon by Executive and the Company, Executive's service as a Director shall continue until the first to occur of (i) the date that Executive is no longer employed by the Company and its affiliates, (ii) the death of the Director, (iii) the resignation by the Executive from the Board of Directors, and (iv) the expiration of the then current term as a Director if Executive is not re-elected by the Company's stockholders to serve as a Director. Executive agrees to serve as a Director during the term of this Agreement, so long as he is elected to serve as a Director by the Company's stockholders.

4. Compensation.

(a) Salary. During the Employment Period, the Company shall pay to Executive a base salary at the rate of \$495,000 per annum (the "Base Salary"). On an annual basis the Board or the compensation committee of the Board (the "Compensation Committee") shall review Executive's Base Salary and may increase such amount as it may deem advisable. The Base Salary shall be paid in accordance with the Company's standard payroll practices in effect from time to time.

(b) Bonus. Commencing on the Amendment Date, in addition to the Base Salary, Executive shall be eligible to receive a discretionary annual bonus during each fiscal year of the Employment Period, with a target bonus amount of eighty percent (80%) of the Base Salary. The performance metrics and goals required to receive such bonus amount, shall be determined by the Board in consultation with the Company's Chief Executive Officer within sixty (60) days following the commencement of each fiscal year or, if later, at the next regularly scheduled meeting of the Board that occurs at least five business days after the Chief Executive Officer has submitted recommended performance metrics to the Board. The actual bonus, if any, payable under this Section 4(b) shall be paid within thirty (30) days following receipt of the Company's audited financial statements for the applicable fiscal year, unless such payment is delayed due to an unforeseeable administrative impracticability, in which case, such bonus will be paid as soon as administratively practicable thereafter, but in no event later than the end of the fiscal year immediately following the applicable fiscal year; provided that Executive is an employee with the Company at such time of payment and Executive has not breached any provision of this Agreement.

(c) Equity Interest. Company shall award Executive stock options to acquire common stock of the Company (the “Common Shares”) or restricted common stock units (“RSUs”) (as agreed upon by Executive and the Board) as soon as reasonably practicable following the beginning of the first open trading window after the date of this Agreement under the Company’s Insider Trading Policy, so that Executive’s long-term incentive equity holdings represent, in the aggregate, the Equity Award Percentage (as defined below; such grant, the “Equity Award Grant”). Except as otherwise provided herein, the terms of the Equity Award Grant shall reflect the Company’s standard terms and conditions for executive equity award grants.

(i) Defined Terms. For the purposes of this Agreement, the following defined terms shall be construed to have the meanings set forth or referenced below.

(1) “Equity Award Percentage” means four and three-tenths percent (4.3%) of the fully diluted Common Shares of the combined company as of immediately following the closing of the Acquisition; provided, however, that notwithstanding any contrary provision herein, the parties acknowledge that the 4.3% assumes an award solely in the form of options. To the extent the Equity Award is in restricted stock units, the number of shares covered by the Equity Award will be reduced reflecting a ratio of 2 shares covered by restricted stock units is equivalent to 3 shares covered by options (i.e., rounding down, a restricted stock unit award covering 666 shares of Company common stock is deemed equivalent to an option award covering 1,000 shares of Company common stock).

(2) “Equity Vesting Schedule” means that twenty-five percent (25%) of any options awarded to the Executive shall be fully vested on the first (1st) anniversary of the Amendment Date and the remaining seventy-five percent (75%) of any options awarded to the Executive shall vest on a quarterly basis thereafter over the following three years; and unless otherwise agreed, any RSUs awarded to the Executive shall vest on a schedule to be agreed upon between the Executive and the Board (provided such vesting schedule shall be over a minimum of three (3) years unless otherwise agreed by the Company and Executive and other than as provided herein). All vesting shall be subject to continued employment or service as a member of the Board through the applicable vesting date; provided, however, in the event of the termination of Executive’s employment and the Board requests that Executive continue to serve on the Board (notwithstanding that Executive agrees that Executive otherwise shall resign from the Board upon termination of employment), the parties agree to negotiate in good faith a reduction in the number of shares as to which the Equity Award Grant has not yet vested so that future vesting of the award more closely reflects grant sizes for non-employee directors.

(ii) Other Terms. The Equity Award Grant shall vest according to the Equity Vesting Schedule and contain the following additional terms:

(1) Notwithstanding the terms of any document to the contrary, in the event that (i) a “Change of Control” (as defined in the Company’s 2023 Equity Incentive Plan provided, however, that the Acquisition is not a Change of Control) occurs, and (ii) the surviving corporation or the acquiring corporation fails to either (A) continue or assume any or all of Executive’s Company options or other stock awards or (B) substitute similar stock awards for Executive’s Company options or other stock awards (it being understood that similar stock awards include, but are not limited to, awards to acquire the same consideration paid to the stockholders or the Company, as the case may be, pursuant to the Change of Control), then 100% of Executive’s unvested Company options or other stock awards shall immediately vest as of the date immediately preceding the Change of Control.

(2) If the Executive is terminated without Cause (as defined below), or voluntarily terminates the Employment Period with Good Reason during the period commencing three (3) months prior to a Change of Control of and ending twelve (12) months following a Change of Control (the "Change of Control Period"), and subject to the Executive satisfying the Release Requirement (defined below), any unvested equity awards then held by the Executive shall become fully vested.

(3) If the Executive is terminated without Cause (as defined below), or voluntarily terminates the Employment Period with Good Reason outside of the Change of Control Period, and subject to the Executive satisfying the Release Requirement, the vesting of any equity held by the Executive as of the closing of the Acquisition shall be determined as if the Executive had remained employed for an additional twelve (12) months beyond his date of termination.

5. Benefit Plans. During the Employment Period, Executive shall be eligible to participate in and receive benefits under the employee benefit plans, equity incentive plans, practices, policies, perquisites and programs established and maintained by the Company from time to time, in the Company's sole discretion, for which executives of the Company are generally eligible, in each case, subject to the eligibility and participation requirements thereof.

6. Business Expenses. The Company, in accordance with policies and practices established by the Company from time to time, will pay or reimburse Executive for all expenses reasonably incurred by Executive during the Employment Period in connection with the performance of Executive's duties under this Agreement; provided, that Executive shall provide to the Company reasonable documentation or evidence of expenses for which Executive seeks reimbursement in accordance with the policies and procedures established by the Company from time to time. Executive's air travel shall be pursuant to Company policy for executives.

7. Paid Time Off. Executive shall be entitled, during the Employment Period, to four (4) weeks of paid vacation and sick time in each calendar year or pursuant to Company policy for executives, whichever is greater. Accrued vacation and sick time not taken in any calendar year may not be carried forward or be usable in any subsequent calendar year, nor shall Executive be entitled to compensation for unused vacation or sick days during the Employment Period or upon termination of employment. Paid holidays may be taken in accordance with the holiday policy and schedule of the Company as from time to time in effect.

8. Termination.

(a) Termination For Cause. The Company may terminate the Employment Period immediately upon the occurrence of any of the following events (each of which shall constitute "Cause"):

(i) Executive's breach of any of Executive's obligations under Section 9;

(ii) Executive's breach of any of Executive's obligations under this Agreement other than Section 9, which, to the extent curable, has not been cured within thirty (30) days after Executive has been provided written notice of such breach;

(iii) Executive being convicted of, or pleading guilty or nolo contendere to, or being indicted for, any felony or any misdemeanor involving theft, fraud, dishonesty or moral turpitude; or

(iv) Fraud or embezzlement against the Company.

If the Employment Period is terminated pursuant to this Section 8(a), the Company shall have no further obligation to Executive except for (i) payment of Base Salary accrued but unpaid through the date of termination and (ii) subject to the provisions of Section 6, reimbursement of any expense properly incurred by Executive through the date of termination (collectively, the "Accrued Obligations"). The Accrued Obligations shall be paid in accordance with applicable state law and in no event later than thirty (30) days after the date of termination.

(b) Termination upon Executive's Death. The Employment Period shall terminate immediately upon the death of Executive. If the Employment Period is terminated pursuant to this Section 8(b), the Company shall have the following obligations to Executive (or his estate) (i) the payment of the Accrued Obligations, which shall be paid in accordance with Section 8(a), and (ii) the payment of Severance Obligations, which shall be paid in accordance with Section 8(f).

(c) Termination by the Company without Cause. The Company may terminate the Employment Period at any time without Cause upon written notice to Executive. If the Employment Period is terminated pursuant to this Section 8(c), the Company shall have the following obligations to Executive (or his estate): (i) Payment of all Accrued Obligations, which shall be paid in accordance with Section 8(a); and (ii) Payment of the Severance Obligations as described in Section 8(f).

(d) Voluntary Resignation by Executive - Without Cause. Executive may terminate the Employment Period for any reason upon not less than ten (10) days' prior written notice. If the Employment Period is terminated pursuant to this Section 8(d), the Company shall have no further obligation to Executive except for Accrued Obligations, which shall be paid in accordance with Section 8(a).

(e) Voluntary Resignation by Executive - With Good Reason. Executive may terminate the Employment Period, with Good Reason, upon not less than ten (10) days' prior written notice. If Executive terminates the Employment Period with Good Reason, the Company shall have the following obligations to Executive (or his estate):

(i) Payment of all Accrued Obligations, which shall be paid in accordance with Section 8(a); and

(ii) Payment of the Severance Obligations as described in Section 8(f).

(iii) For purposes of this Section 8(e), “Good Reason” shall mean each of the following, without Executive’s consent: (A) any change in the Executive’s position, title or reporting relationship with the Company that diminishes in any material respect the Executive’s authority, duties or responsibilities; provided, however, that a change in the Executive’s authority, duties or responsibilities solely due to the Company becoming a division, subsidiary or other similar part of a larger organization, shall not by itself constitute Good Reason; (B) any material reduction in the Executive’s base compensation; (C) the relocation of the Executive’s principal office, or principal place of employment, to a location more than fifty (50) miles from the location of the Executive’s principal office or principal place of business; or (D) a material breach of any provision hereof by the Company or any successor or assign. Notwithstanding the foregoing, “Good Reason” shall not be deemed to have occurred unless: (1) the Executive provides the Company with written notice that the Executive intends to terminate the Executive’s employment hereunder for one of the grounds set forth in subsections (A), (B), (C) or (D) within sixty (60) days of such reason(s) occurring, (2) if such ground is capable of being cured, the Company has failed to cure such ground within a period of sixty (60) days from the date of such written notice, and (3) the Executive terminates the Executive’s employment within sixty (60) days after the cure period has lapsed. For purposes of clarification, the above-listed conditions shall apply separately to each occurrence of Good Reason and failure to adhere to such conditions in the event of Good Reason shall not disqualify the Executive from asserting Good Reason for any subsequent occurrence of Good Reason.

(f) Severance Payments. In the event Executive’s employment is terminated (i) by the Company without Cause or (ii) by Executive for Good Reason, the Company shall continue to pay Executive as severance, the aggregate sum of one hundred percent (100%) of Executive’s then-effective Base Salary plus his target bonus for the year of termination proportionally for a period of twelve (12) months beginning on the date such termination becomes effective (such payments, the Company’s “Severance Obligations”), and if the Executive validly elects to continue his healthcare coverage under COBRA, reimburse the Executive for the premiums he pays to continue healthcare coverage for the Executive and his eligible dependents for twelve (12) months or, if earlier, until the Executive becomes eligible for healthcare coverage from a subsequent employer; provided, as a condition to all amounts specified in this clause (f), that Executive executes a full and final release substantially in the form attached as Exhibit B hereto (with such changes as the Company may reasonably request to reflect changes in applicable law) and such release becomes irrevocably effective within 60 days following the termination of Executive’s employment (such requirement for an irrevocably effective release, the “Release Requirement”). Any and all payments of Severance Obligations shall be less applicable withholding and deductions. Further, in the event Executive’s employment is terminated (i) by the Company without Cause or (ii) by Executive for Good Reason, and subject to satisfaction of the Release Requirement, the stated post-termination exercise period of Executive’s outstanding options shall be extended to twelve months following the termination of Executive’s employment; provided, however, options shall expire earlier upon expiration of the maximum term or, subject to Section 4(c)(ii)(1), pursuant to a Change of Control if all Company options are terminated in connection with the Change of Control.

In the event of such termination without Cause or resignation for Good Reason during the Change of Control Period, the Severance Obligations will be one hundred and fifty percent (150%) of the sum of Executive's then-effective Base Salary plus his target bonus for the year of termination, in addition to the healthcare continuation and extended post-termination exercise period set forth above.

Payment of the Severance Obligations shall accrue until the Release Requirement is satisfied, with accrued amounts paid on the first regularly scheduled Company payroll date after the Release Requirement is satisfied; provided, however, if the 60-day period following the termination of Executive's employment spans two calendar years in no event will any of the Severance Obligations be paid prior to January 1 of the second calendar year (with amounts accruing until that date). Reimbursement of COBRA healthcare premiums shall be paid in accordance with the Company's standard expense reimbursement procedures subject to Executive submitting proof of payment within 60 days of paying the applicable premium.

9. Restrictive Covenants.

(a) Executive's Acknowledgment. Executive acknowledges that: (i) the Company is and will be engaged in its business during the Employment Period and thereafter; (ii) Executive is one of a limited number of persons who is and will be developing the business and will, during the Employment Period, have frequent and prolonged interactions with all customers and suppliers of the Company with respect to matters significantly affecting the business relationship between those customers and suppliers and the Company; (iii) Executive occupies a position of trust and confidence with the Company and is familiar with the Company's trade secrets and with other proprietary and confidential information concerning the Company and its business; and (iv) the agreements and covenants contained in this Section 9 are essential to protect the Company and the goodwill of the business and are a condition precedent to the Company entering into this Agreement. Executive acknowledges that he or she has carefully read this Agreement and has given careful consideration to the restraints imposed upon him by this Agreement, and is in full accord as to their necessity for the reasonable and proper protection of confidential and proprietary information and goodwill of the Company now existing or to be developed or created in the future.

(b) Non-Solicitation. Executive will not, during the Restricted Period, directly or indirectly (whether as an owner, partner, shareholder, member, agent, officer, director, manager, employee, independent contractor, consultant, or otherwise) with or through any individual or entity:

(i) solicit for employment or engagement, or identify for another person or entity to employ, engage or solicit for employment or engagement, any individual who is, or was at any time during the twelve (12) month period immediately preceding any such action, an employee of the Company, or otherwise seek to adversely influence or alter any such employee's relationship with the Company;

(ii) employ or engage any individual who is, or was at any time during the twelve (12) month period immediately preceding any such action, an employee of the Company; or

(iii) solicit or encourage any individual or entity that is, or was during the twenty four (24) month period immediately preceding any such action, a current or prospective customer, supplier or vendor of the Company (A) to terminate or otherwise adversely alter his, her or its relationship with the Company or (B) for any purposes which are competitive with Company's business.

(c) Right to Conduct Activities. During the term of this Agreement, Executive agrees to devote substantially all of his business time and effort to the performance of his services to the Company; provided however, Executive may serve as a member of the Board of Directors or other governing body of up to two (2) for-profit entities, as well as any entity in which the Company has an investment, so long as such service does not unreasonably interfere with Executive's obligations hereunder. In addition, the Company consents to Executive's continued service as a member of the Board of Directors or other governing body of any of the entities set forth on Exhibit A, or any other entity approved by the Company, so long as such service does not unreasonably interfere with Executive's obligations hereunder.

(d) Scope/Severability. The parties acknowledge that the Company's business is and will be conducted throughout the Restricted Territory and thus the covenants in this Section 9 would be ineffective if the covenants were to be limited to a particular geographic area within the Restricted Territory. If any court of competent jurisdiction at any time deems the Restricted Period too lengthy, or the Restricted Territory too extensive, or any of the covenants set forth in this Section 9 otherwise not fully enforceable, the other provisions of this Section 9, and this Agreement in general, will nevertheless stand and to the full extent consistent with law continue in full force and effect, and it is the intention and desire of the parties that the court treat any provisions of this Agreement which are not fully enforceable as having been modified to the extent deemed necessary by the court to render them reasonable and enforceable and that the court enforce them to such extent (for example, that Restricted Territory be deemed to comprise the largest territory permissible by law under the circumstances but not in excess of the territory provided for herein).

10. Equitable Remedies. Executive acknowledges and agrees that the agreements and covenants set forth in Section 9 of this Agreement are reasonable and necessary for the protection of the Company's business interests, that irreparable injury will result to the Company if Executive breaches any of the terms of said covenants, and that in the event of Executive's actual or threatened breach of any such covenants, the Company will have no adequate remedy at law. Executive accordingly agrees that, in the event of any actual or threatened breach by Executive of any of said covenants, the Company will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages or the necessity of showing that monetary damages are an inadequate remedy. Nothing in this Section 10 will be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages that it is able to prove.

11. Assistance. From and after the date hereof (including after the termination of Executive's employment with the Company for any reason), Executive shall, upon reasonable notice, furnish the Company with such information as may be in Executive's possession or control, and cooperate with the Company, as the Company may reasonably request, in connection with any litigation, claim, or other dispute in which the Company is or may become a party, provided that following termination of Executive's employment with the Company, any such assistance shall not unreasonably interfere with Executive's personal or business affairs. The Company shall reimburse Executive for all reasonable out-of-pocket expenses incurred by Executive in fulfilling Executive's obligations under this Section

12. Definitions. The following terms used herein shall have the definitions set forth below:

"Restricted Period" means twelve (12) months following the date of termination.

"Restricted Territory" means the United States of America.

13. Effect of Prior Agreements. Unless otherwise provided herein, this Agreement contains the entire understanding between the Company and Executive relating to the subject matter hereof and, as of the Amendment Date, will supersede the Prior Agreement and any other agreement relating to the subject matter hereof between Executive and the Company or any of its subsidiaries (including, without limitation, Orchestra BioMed, Inc.). Executive acknowledges that he is not relying and has not relied on any oral or written statements, promises, representations or warranties (whether made by the Company or any equity holder, director, officer, employee, agent or other representative of the Company or otherwise) that are not expressly set forth in this Agreement and those documents expressly referred to herein. For the avoidance of doubt, the non-solicitation and other restrictive covenants contained in this Agreement shall be in addition to, and not in lieu of, and shall not in any way limit or be limited by, any restrictive covenant covering similar subject matter contained in any other agreement to which Executive is a party, including but not limited to, any asset purchase agreement, equity subscription agreement or stockholder or operating agreement with respect to any equity interest in the Company.

14. Confidential Information and Intellectual Property Assignment Agreement. Notwithstanding anything herein to the contrary, the terms of that certain Confidential Information and Intellectual Property Assignment Agreement, dated as of the date hereof, between Executive and the Company are hereby incorporated by reference.

15. Withholding and Deductions. All amounts payable to Executive (or his estate, as applicable) pursuant to this Agreement shall be subject to such withholding and deductions by the Company as required by law and the applicable benefit plans of the Company.

16. Code Section 409A. The Company and Executive agree that this Agreement and the rights granted to Executive hereunder are intended to meet the requirements of paragraphs (2), (3) and (4) of Section 409A(a)(1)(A) of the Internal Revenue Code of 1986, as amended, (the “Code”). Accordingly, the parties agree that they shall negotiate in good faith to revise any provisions of this Agreement that might otherwise fail to meet the requirements of paragraphs (2), (3) and (4) of Section 409A of Code. However, the Company does not guarantee any particular tax effect of payments under this Agreement, and in no event shall the Company have any obligation to “gross-up” or otherwise compensate Executive with respect to any tax effect of payments under this Agreement. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following conditions: (1) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (2) the reimbursement of an eligible expense shall be made no later than the end of the year after the year in which such expense was incurred; and (3) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. “Termination of employment,” or words of similar import, as used in this Agreement means, for purposes of any payments under this Agreement that are payments of deferred compensation subject to Section 409A, Executive’s “separation from service” as defined in Section 409A. For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments. If Executive is deemed on the date of termination of employment to be a “specified employee” within the meaning of Section 409A of the Code, then with regard to the payment or the provision of any benefit that is considered nonqualified deferred compensation under Section 409A of the Code payable on account of a “separation from service,” such payment or benefit shall not be made or provided until the date which is the earlier of (i) the expiration of the six (6) month period measured from the date of such separation from service and (ii) the date of Executive’s death. Upon the expiration of the foregoing delay period, all payments and benefits so delayed shall be paid or provided or reimbursed in a lump sum. In the event of a conflict between the terms of this Section 16 and the terms of any other provision in this Agreement relating to payment timing, the terms of this Section 16 shall control.

17. Code Section 280G. If any payment or benefit the Executive would receive pursuant to a Change of Control from the Company or otherwise (“Payment”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then such Payment shall be equal to the Reduced Amount. The “Reduced Amount” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Executive’s receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. Any reduction shall be made in the following manner: first a pro rata reduction of (i) cash payments subject to Section 409A of the Code as deferred compensation and (ii) cash payments not subject to Section 409A of the Code, and second a pro rata cancellation of (i) equity-based compensation subject to Section 409A of the Code as deferred compensation and (ii) equity-based compensation not subject to Section 409A of the Code. Reduction in either cash payments or equity compensation benefits shall be made pro rata between and among benefits which are subject to Section 409A of the Code and benefits which are exempt from Section 409A of the Code.

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and the Executive within fifteen (15) calendar days after the date on which the Executive's right to a Payment is triggered (if requested at that time by the Company or the Executive) or such other time as requested by the Company or the Executive. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish the Company and the Executive with an opinion reasonably acceptable to the Executive that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and the Executive.

The Company agrees to cooperate with the Executive to minimize the amount of any payment to the Executive that is subject to Section 280G of the Code, including soliciting the consent of the Company's stockholders, as applicable, to such payment under Section 280G(b)(5) of the Code.

18. Modification and Waiver. This Agreement may not be modified or amended, nor may any provisions of this Agreement be waived, except by an instrument in writing signed by the parties hereto. No written waiver will be deemed to be a continuing waiver unless specifically stated therein, and each such waiver will operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived. No failure of any party hereto to exercise any right or remedy given to such party under this Agreement or otherwise available to such party hereto or to insist upon strict compliance by any other party hereto with its or his obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

19. Indemnification. The Company hereby indemnifies Executive to the maximum extent provided in the Company's By-Laws and organizational documents, as currently in effect. Executive shall be entitled to coverage under the directors' and officers' liability insurance on terms no less favorable to him in any respect than the coverage then being provided to any other current or former director or officer of the Company and which the Company shall maintain with minimum coverage of Five Million Dollars (\$5 million).

20. Severability. Without limiting Section 9(c): (i) if, for any reason, any provision of this Agreement is held invalid, such invalidity will not affect any other provision of this Agreement, and each provision will, to the full extent consistent with law, continue in full force and effect and (ii) if any provision of this Agreement is held invalid in part, such invalidity will in no way affect the rest of such provision, and the rest of such provision, together with all other provisions of this Agreement, will, to the full extent consistent with law, continue in full force and effect.

21. Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and shall be given by delivery in person, by facsimile transmission, by email, by overnight courier or by registered or certified mail, postage prepaid to the address set forth below or such other address as such party may give to the other parties by notice pursuant to this Section 21. Notice shall be deemed given on (a) the date such notice is personally delivered, (b) the date of scheduled delivery if sent by overnight courier, or (c) the date such notice is transmitted by facsimile or email, if such transmission is prior to 5:00 p.m. Eastern Time on a business day, or the next succeeding business day if such transmission is after 5:00 p.m. Eastern Time.

If to the Board or the Company:

Orchestra BioMed Holdings, Inc.
150 Union Square Drive
New Hope, PA 18938
E-Mail: dhochman@orchestrabiomed.com

If to Executive:

Darren R. Sherman
At such address or email address as is in the Company's personnel records

22. Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties to this Agreement, their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

23. Headings. The headings and other captions in this Agreement are included solely for convenience of reference and will not control the meaning and interpretation of any provision of this Agreement.

24. Governing Law. The validity, interpretation, performance, and enforcement of this Agreement will be governed by the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Executive and the Company hereby irrevocably submit to the exclusive jurisdiction of any state or federal court located in the State of Delaware, over any suit, action or proceeding, whether at law or in equity, arising out of or relating to or concerning this Agreement. Each party hereto agrees that it will not challenge the applicability of the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction), in any suit or proceeding regarding the validity, interpretation, performance, or enforcement of any provision of this Agreement, regardless of who initiates such suit or proceeding.

25. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE MATERS CONTEMPLATED HEREBY, PROVIDED, HOWEVER, THAT THE PARTIES HERETO AGREE THAT SUCH WAIVER SHALL NOT BE DEEMED TO CONSTITUTE A WAIVER OF ADJUDICATION BY A COURT HAVING APPROPRIATE JURISDICTION.

26. Non-Assignability/Binding Effect. This Agreement shall not be assignable by either party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of Executive, the Company and their respective successors and permitted assigns.

27. Construction. The parties hereto 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 hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

28. Survival. Termination of the Employment Period in accordance with Section 8 will not affect the provisions of Section 3(a) or Sections 9 through 28 of this Agreement, each of which shall survive such termination.

29. Counterparts. This Agreement may be executed in separate counterparts and may be executed and delivered by facsimile or other electronic delivery, each of which is deemed to be an original and all of which, taken together, constitute one and the same agreement.

[Remainder of Page Intentionally Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer, and Executive has signed this Agreement, as of the date first above written.

ORCHESTRA BIOMED HOLDINGS, INC.:

By: /s/ David Hochman

Name: David Hochman

Title: Chief Executive Officer

EMPLOYEE:

/s/ Darren Sherman

Darren R. Sherman

Exhibit A
Boards of Directors

· Motus GI Holdings, Inc.

Exhibit B
Form of Release



January 31, 2023

Office of the Chief Accountant
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Ladies and Gentlemen:

We have read Orchestra Biomed Holdings, Inc.'s (formerly known as Health Sciences Acquisitions Corporation 2) statements included under Item 4.01 of its Form 8-K dated January 25, 2023. We agree with the statements concerning our Firm under Item 4.01, in which we were informed of our dismissal on January 26, 2023. We are not in a position to agree or disagree with other statements contained therein.

Very truly yours,

/s/ WithumSmith + Brown, PC

WithumSmith+Brown, PC

New York, New York

WithumSmith+Brown, PC 1411 Broadway, 9th Floor, New York, New York 10018-3496 T |212| 751 9100 F |212| 750 3262 withum.com

AN INDEPENDENT MEMBER OF HLB - THE GLOBAL ADVISORY AND ACCOUNTING NETWORK

Subsidiaries of Orchestra BioMed Holdings, Inc.

Name	State or Jurisdiction of Incorporation or Organization
Orchestra BioMed, Inc.	Delaware
BackBeat Medical, LLC	Delaware
Caliber Therapeutics, LLC	Delaware
FreeHold Surgical, LLC	Delaware
Accelerated Technologies Inc.	Delaware

Orchestra BioMed Debuts as Nasdaq-Traded Company with Lead Programs Targeting Hypertension and Artery Disease and Novel Partnership-Enabled Business Model

Business combination with Health Sciences Acquisitions Corporation 2, a special purpose acquisition company sponsored by an affiliate of RTW Investments, LP, completed on January 26, 2023

The combination was announced simultaneously with Orchestra's strategic collaboration with Medtronic to develop BackBeat Cardiac Neuromodulation Therapy™ as potential integrated hypertension treatment for cardiac pacemaker patients

Gross proceeds from transaction and previously completed financing led by RTW and Medtronic total approximately \$180 million and support cash runway into 2026

Orchestra BioMed Holdings, Inc. to commence trading on January 27 on Nasdaq Global Market under ticker symbol "OBIO"

NEW HOPE, Pa., Jan. 27, 2023 (GLOBE NEWSWIRE) – Orchestra BioMed, Inc. ("Orchestra BioMed"), a biomedical company accelerating high-impact technologies to patients through risk-reward sharing partnerships, today announced the closing of its previously announced business combination with Health Sciences Acquisitions Corporation 2 ("HSAC2") (Nasdaq: HSAQ). Common stock of the combined company (Nasdaq: OBIO or the "Company"), which is called "Orchestra BioMed Holdings, Inc.," will commence trading on January 27, 2023, on the Nasdaq Global Market under the ticker symbol "OBIO". Orchestra BioMed's management team, led by Chairman, Chief Executive Officer and Co-founder David Hochman, will lead the combined company.

The business combination, which had previously been approved by Orchestra BioMed stockholders, was approved by HSAC2 shareholders at a special general meeting held on January 24, 2023. Gross proceeds from the business combination were \$70 million including \$20 million in market purchases of HSAC2 stock by an affiliate of Medtronic plc ("Medtronic") and funds managed by RTW Investments, LP ("RTW"), a leading life sciences investment firm, as well as an additional investment by RTW concurrent with the closing. Together with proceeds from Orchestra BioMed's previously completed \$110 million Series D financing, total cash following the business combination is expected to provide the Company with a cash runway into 2026. The Series D financing included a \$40 million investment from Medtronic, a \$20 million investment from RTW, and investments from Perceptive Advisors, Terumo, SternAegis Ventures and others. The Company's cash resources are intended to support the execution of pivotal studies for BackBeat Cardiac Neuromodulation Therapy™ (CNT™) for the treatment of hypertension in cardiac pacemaker patients and Virtue® Sirolimus AngioInfusion™ Balloon (SAB) in patients with coronary in-stent restenosis.

"Orchestra BioMed is pioneering an innovative business model designed to leverage partnerships with global medical device leaders like Medtronic and Terumo to accelerate the development and commercialization of high-impact device therapies like BackBeat CNT and Virtue SAB. With a strong balance sheet, a top-flight shareholder base, and world-class strategic collaborators, this transaction puts us in an excellent position to address the unmet needs of patients and physicians while seeking to generate differentiated growth for our stockholders," said Mr. Hochman. "We have several important milestones ahead of us, including the expected initiation of pivotal trials this year for both BackBeat CNT and Virtue SAB. These innovative technologies are supported by strong proof-of-concept clinical data, fueling our excitement for Orchestra BioMed as it enters the public markets and the next phase of its corporate evolution."

Roderick Wong, M.D., Managing Partner and Chief Investment Officer of RTW, added, “BackBeat CNT and Virtue SAB are supported by promising data and novel partnerships with global leaders across medtech that we believe will help accelerate clinical development and position them for commercial success. We are proud to be supporting this significant milestone and look forward to our continued work with Orchestra BioMed’s leadership team, which has an exceptional track record of bringing novel medical technologies to market.”

Advisors

Jefferies LLC acted as lead financial advisor and a capital markets advisor to Orchestra BioMed. Piper Sandler & Co. acted as a capital markets advisor to Orchestra BioMed.

Chardan and Barclays acted as financial and capital markets advisors to HSAC2. Chardan acted as M&A advisor to HSAC2.

Paul Hastings LLP is served as legal counsel for Orchestra BioMed. Loeb & Loeb LLP served as legal counsel for HSAC2. Latham & Watkins LLP served as legal counsel for Jefferies LLC, Piper Sandler & Co., Chardan and Barclays.

About Orchestra BioMed

Orchestra BioMed is a biomedical innovation company accelerating high-impact technologies to patients through risk-reward sharing partnerships with leading medical device companies. Orchestra BioMed’s partnership-enabled business model focuses on forging strategic collaborations with leading medical device companies to drive successful global commercialization of products it develops. Orchestra BioMed’s flagship product candidates include BackBeat Cardiac Neuromodulation Therapy™ (CNT™) for the treatment of hypertension, a significant risk factor for death worldwide, and Virtue® Sirolimus AngioInfusion™ Balloon (SAB) for the treatment of atherosclerotic artery disease, the leading cause of mortality worldwide. Orchestra BioMed has a strategic collaboration with Medtronic, one of the largest medical device companies in the world, for development and commercialization of BackBeat CNT for the treatment of hypertension in pacemaker-indicated patients, and a strategic partnership with Terumo Corporation, a global leader in medical technology, for development and commercialization of Virtue SAB for the treatment of artery disease. Orchestra BioMed has additional product candidates and plans to potentially expand its product pipeline through acquisitions, strategic collaborations, licensing, and organic development. For further information about Orchestra BioMed, please visit www.orchestrabiomed.com.

About BackBeat CNT and the Strategic Collaboration with Medtronic

BackBeat CNT is an investigational bioelectronic treatment designed to lower blood pressure. It is compatible with standard pacemakers as a firmware upgrade and has been evaluated in pilot studies in patients with hypertension who also are indicated for pacemakers. It is estimated that more than 70% of the approximately 1.1 million people globally who are implanted with cardiac pacemakers each year are also diagnosed with hypertension¹.

The recent peer-reviewed, double-blind, randomized pilot study, MODERATO II, showed that patients treated with the BackBeat CNT experienced net reductions of 8.1 mmHg in 24-hour ambulatory systolic blood pressure (aSBP) and 12.3 mmHg in office systolic blood pressure (oSBP) when compared to control patients at six months. Orchestra BioMed plans to conduct a global pivotal trial to further evaluate the safety and efficacy of the BackBeat CNT in lowering blood pressure in a similar target population of patients who have been indicated for, and recently received, a cardiac pacemaker implant. The strategic collaboration with Medtronic will provide Orchestra BioMed with development, clinical, and regulatory support for this planned multi-national study. Upon regulatory approval, Medtronic will have the global rights to commercialize BackBeat CNT-enabled pacing systems for this target population. Orchestra BioMed will share in the revenues generated from Medtronic sales of the BackBeat CNT-enabled pacing systems.

About Virtue SAB and the Strategic Collaboration with Terumo

Virtue SAB is a patented drug/device combination product candidate in development for the treatment of certain forms of artery disease that is designed to deliver a proprietary, investigational, extended-release formulation of sirolimus, SirolimusEFR™, to the vessel wall during balloon angioplasty without any coating on the balloon surface or the need to leave a stent or other permanent implant in the artery. Virtue SAB demonstrated positive three-year clinical data in coronary in-stent restenosis (ISR) in the SABRE trial, a multi-center prospective, independent core lab-adjudicated clinical trial of 50 patients conducted in Europe. Virtue SAB has been granted Breakthrough Device designation by the U.S. Food and Drug Administration for specific indications relating to coronary ISR, coronary small vessel disease and peripheral artery disease below-the-knee.

Under the terms of their collaboration agreement, Orchestra BioMed and Terumo plan to execute a global clinical program in an effort to gain regulatory approval for commercial sale of Virtue SAB in multiple markets and indications. Terumo made an upfront payment of \$30 million to Orchestra BioMed and Terumo will potentially make additional future clinical and regulatory milestone payments. Orchestra BioMed will share meaningfully in future commercial revenues of Virtue SAB through royalties and per unit payments as the exclusive supplier of SirolimusEFR. Orchestra BioMed retains the rights to develop and license SirolimusEFR and other technologies used in Virtue SAB for clinical applications outside of coronary and peripheral vascular interventions.

About HSAC2

Health Sciences Acquisitions Corporation 2 was a blank check company formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses. The sponsor of HSAC2 was HSAC 2 Holdings, LLC, an affiliate of RTW Investments, LP.

About RTW Investments, LP

RTW Investments, LP is a New York-based, global, full life-cycle investment firm that focuses on identifying transformational and disruptive innovations across the biopharmaceutical and medical technologies sectors. As a leading partner of industry and academia, RTW combines deep scientific expertise with a solution-oriented investment approach to advance emerging medical therapies by building and supporting the companies and/or academics developing them. For further information about RTW, please visit www.RTWfunds.com.

References

1. Company estimates based on published sources, including National Inpatient Survey (NIS) and National Health and Nutrition Examination Survey (NHANES)

Forward-Looking Statements

Certain statements included in this document that are not historical facts are forward-looking statements for purposes of the safe harbor provisions under the United States Private Securities Litigation Reform Act of 1995. Forward-looking statements generally are accompanied by words such as “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect,” “should,” “would,” “plan,” “predict,” “potential,” “seem,” “seek,” “future,” “outlook” and similar expressions that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements include, but are not limited to, statements relating to our expected cash runway, the potential efficacy of our BackBeat CNT product candidate, the timing of our planned pivotal trials, and the ability of our partnerships to accelerate clinical development. These statements are based on various assumptions, whether or not identified in this document, and on the current expectations of the Company’s management and are not predictions of actual performance. These forward-looking statements are provided for illustrative purposes only and are not intended to serve as and must not be relied on as a guarantee, an assurance, a prediction, or a definitive statement of fact or probability. Actual events and circumstances are difficult or impossible to predict and may differ from assumptions. Many actual events and circumstances are beyond the control of the Company. These forward-looking statements are subject to a number of risks and uncertainties, including changes in domestic and foreign business, market, financial, political, and legal conditions; failure to realize the anticipated benefits of the business combination; risks related to regulatory approval of the Company’s product candidates; the timing of, and the Company’s ability to achieve, expected regulatory and business milestones; the impact of competitive products and product candidates; the impact of COVID-19; and the risk factors identified under the heading “Risk Factors—Risks Related to Orchestra’s Business and New Orchestra Following the Business Combination” in the proxy statement/prospectus filed by HSAC2 with the U.S. Securities and Exchange Commission pursuant to Rule 424(b)(3) on December 16, 2022.

The Company operates in a very competitive and rapidly changing environment. New risks emerge from time to time. Given these risks and uncertainties, the Company cautions against placing undue reliance on these forward-looking statements, which only speak as of the date of this press release. The Company does not plan and, subject to applicable law, undertakes no obligation to update any of the forward-looking statements made herein, except as required by law.

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UNAUDITED PRO FORMA CONDENSED CONSOLIDATED COMBINED FINANCIAL INFORMATION

Defined terms included below have the same meaning as terms defined and included elsewhere in the Current Report on Form 8-K (the "Form 8-K") filed by Orchestra BioMed Holdings, Inc. with the Securities and Exchange Commission (the "SEC") on January 31, 2023 and, if not defined in the Form 8-K, the Proxy Statement. Unless the context otherwise requires, "Orchestra" refers to Orchestra BioMed, Inc. prior to the Closing, and "HSAC2" refers to Health Sciences Acquisition Corporation 2 prior to the Closing.

The following unaudited pro forma condensed consolidated combined financial information has been prepared in accordance with Article 11 of Regulation S-X as amended by the final rule, Release No. 33-10786 "Amendments to Financial Disclosures about Acquired and Disposed Businesses."

The historical financial information of HSAC2 was derived from the unaudited condensed financial statements of HSAC2 as of September 30, 2022 and for the nine months ended September 30, 2022 and the audited financial statements of HSAC2 as of and for the year ended December 31, 2021. The historical financial information of Orchestra was derived from the unaudited condensed consolidated financial statements of Orchestra as of September 30, 2022 and for the nine months ended September 30, 2022 and the audited consolidated financial statements of Orchestra as of and for the year ended December 31, 2021. Such unaudited pro forma financial information has been prepared on a basis consistent with the audited financial statements of HSAC2 and Orchestra, respectively, and should be read in conjunction with the audited historical financial statements and related notes. This information should be read together with HSAC2's and Orchestra's audited financial statements and related notes, the sections titled "*Management's Discussion and Analysis of Results of Financial Condition and Results of Operations of HSAC2*" and "*Orchestra's Management's Discussion and Analysis of Financial Condition and Results of Operations*" in HSAC2's Proxy Statement/Prospectus filed with the SEC on December 16, 2022.

The unaudited pro forma condensed consolidated combined balance sheet as of September 30, 2022 combines the historical balance sheet of HSAC2 and the historical consolidated balance sheet of Orchestra on a pro forma basis as if the Business Combination and the related transactions contemplated by the Merger Agreement, summarized below, had been consummated on September 30, 2022. The unaudited pro forma condensed consolidated combined statements of operations for the nine months ended September 30, 2022 and for the year ended December 31, 2021, combines the historical statement of operations of HSAC2 and historical consolidated statement of operations of Orchestra for such periods on a pro forma basis as if the Business Combination and the transactions contemplated by the Merger Agreement, summarized below, had been consummated on January 1, 2021, the beginning of the earliest period presented. There were no pro forma adjustments required to eliminate activities between the companies.

The Business Combination will be accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with U.S. GAAP. Under this method of accounting, HSAC2 is treated as the "acquired" company for financial reporting purposes. Accordingly, the Business Combination will be treated as the equivalent of Orchestra issuing stock for the net assets of HSAC2, accompanied by a recapitalization. Orchestra has been determined to be the accounting acquirer because Orchestra, as a group, has retained a majority of the outstanding shares of the combined company as of the closing of the Business Combination, they have nominated all seven persons who will comprise the New Orchestra Board upon Closing, Orchestra's management will continue to manage the combined company and Orchestra's business will comprise the ongoing operations of the combined company.

These unaudited pro forma condensed consolidated combined financial statements are for informational purposes only. They do not purport to indicate the results that would have been obtained had the Business Combination and related transactions actually been completed on the assumed date or for the periods presented, or which may be realized in the future. The pro forma adjustments are based on the information currently available and the assumptions and estimates underlying the pro forma adjustments are described in the accompanying notes. Actual results may differ materially from the assumptions within the accompanying unaudited pro forma condensed consolidated combined financial information.

Description of the Business Combination

On July 4, 2022, HSAC2 entered into the Merger Agreement, pursuant to which the Business Combination between HSAC2 and Orchestra was effected in two steps. First, before the Closing, HSAC2 effected the Domestication by deregistering in the Cayman Islands and domesticating as a Delaware corporation in accordance with Section 388 of the Delaware General Corporation Law and the Companies Act. Second, at the Closing, the Merger was effected by Merger Sub merging with and into Orchestra, with Orchestra surviving such merger as the surviving entity. Upon consummation of the Business Combination, Orchestra became a wholly owned subsidiary of HSAC2. HSAC2 then changed its name to "Orchestra BioMed Holdings, Inc."

Simultaneously with the execution of the Merger Agreement, HSAC2 and Orchestra entered into the Forward Purchase Agreement with the RTW Funds and Medtronic, pursuant to which each of the Purchasing Parties agreed to purchase \$10.0 million of HSAC2 Ordinary Shares, for a total of \$20.0 million, less the dollar amount of HSAC2 Ordinary Shares holding redemption rights that the Purchasing Party acquires and holds until immediately prior to the Domestication.

Simultaneously with the execution of the Merger Agreement and Forward Purchase Agreements, HSAC2, Orchestra, and the RTW Funds entered into the Backstop Agreement pursuant to which the RTW Funds, jointly and severally, agreed to purchase such number of HSAC2 Ordinary Shares at a price of \$10.00 per share to the extent that the amount of Parent Closing Cash as of immediately prior to the closing of the Merger is less than \$60.0 million (which calculation excludes amounts received pursuant to the Medtronic Forward Purchase Agreement or are otherwise held in the Trust Account in respect of Medtronic's Forward Purchase Shares, but is inclusive of amounts received pursuant to the RTW Forward Purchase Agreement and otherwise held in the Trust Account in respect of the RTW Funds' Forward Purchase Shares).

On October 21, 2022, the parties amended the RTW Forward Purchase Agreement and the Backstop Agreement, pursuant to which the RTW Funds agreed that (1) the per share price under each of the RTW Forward Purchase Agreement and the Backstop Agreement will not exceed the redemption price available to HSAC2 shareholders exercising redemption rights at the Shareholder Meeting, (2) any shares purchased pursuant to the RTW Forward Purchase Agreement or the Backstop Agreement, or otherwise acquired by the RTW Funds outside of the existing redemption offer, will not be voted in favor of approving the Business Combination, and (3) the RTW Funds will waive redemption rights with respect to such purchases in the vote to approve the Business Combination.

The RTW Funds completed their purchases of HSAC2 Ordinary Shares under their Forward Purchase Agreement on or before July 22, 2022. Medtronic completed approximately \$9.9 million of purchases of HSAC2 Ordinary Shares under its Forward Purchase Agreement on or before January 20, 2023. Medtronic subsequently completed \$0.1 million in purchases of HSAC2 Ordinary Shares and/or New Orchestra Common Stock on or before January 30, 2023. Pursuant to the Backstop Agreement, the RTW Funds purchased 1,808,512 HSAC2 Ordinary Shares on January 25, 2023, immediately prior to the Domestication. The Sponsor and the Purchasing Parties have registration rights pursuant to the Amended and Restated Registration Rights Agreement with respect to the New Orchestra Common Stock.

In addition, the Sponsor has agreed that 25% or 1,000,000 shares of its New Orchestra Common Stock received in the Domestication will be forfeited to New Orchestra on the first business day following the fifth anniversary of the Closing unless, (i) as to 500,000 shares, the VWAP of the New Orchestra Common Stock is greater than or equal to \$15.00 per share over any 20 Trading Days within any 30-Trading Day period, and (ii) as to the remaining 500,000 shares, the VWAP of the New Orchestra Common Stock is greater than or equal to \$20.00 per share over any 20-Trading Days within any 30-Trading Day period. Further, the Sponsor and HSAC2's other initial shareholders prior to its initial public offering have agreed to subject the 4,000,000 shares of New Orchestra Common Stock to be received in the Domestication in exchange for the 4,000,000 HSAC2 Ordinary Shares issued to HSAC2's initial shareholders prior to its initial public offering and 450,000 shares of New Orchestra Common Stock to be received in the Domestication in exchange for 450,000 HSAC2 Ordinary Shares purchased in a private placement simultaneously with the HSAC2 initial public offering, to a lock-up for up to 12 months following the Closing and, subject to the Closing, the Sponsor agreed to forfeit 50% of its Private Warrants, comprising 750,000 Private Warrants, for no consideration immediately prior to the Closing. Pursuant to the terms of the Merger Agreement, immediately following such forfeiture and prior to the Closing, HSAC2 issued 750,000 New Warrants to eleven specified employees and directors of Orchestra. These New Warrants have substantially similar terms to the forfeited Private Warrants, except that they will become exercisable between 24 and 36 months after the Closing.

On January 24, 2023, HSAC2 held the Meeting, at which time the HSAC2 shareholders approved, among other matters, the Domestication and the Merger Agreement.

The consideration paid at Closing by HSAC2 to Orchestra security holders was paid in shares of HSAC2 Common Stock subject to the Exchange Ratio.

Orchestra stockholders had the opportunity to elect to participate in an earnout pursuant to which each such Earnout Participant may receive Earnout Consideration of up to 8,000,000 shares of New Orchestra Common Stock in the aggregate. Each Earnout Participant agreed to extend their applicable Lock-up Period from 6 months to 12 months, pursuant to an Earnout Election Agreement and will be entitled to receive the Earnout Consideration as follows:

- Earnout Participants will collectively be entitled to receive 4,000,000 Initial Earnout Shares, in the event that, during the Earnout Period, over any 20 Trading Days within any 30-Trading Day period during the Earnout Period the VWAP of the New Orchestra Common Stock is greater than or equal to \$15.00 per share; and
- Earnout Participants will collectively be entitled to receive an additional 4,000,000 Final Earnout Shares, in the event that, during the Earnout Period, over any 20-Trading Days within any 30-Trading Day period during the Earnout Period the VWAP of the New Orchestra Common Stock is greater than or equal to \$20.00 per share.
- Upon the first change in control meeting certain conditions that occurs during the Earnout Period, if the corresponding valuation of New Orchestra is equal to or greater than \$15.00 per share (taking into consideration the Initial Earnout Shares in determining such calculation), the Initial Milestone Event will be deemed to have occurred and if equal to or greater than \$20.00 per share (taking into consideration the issuance of all Earnout Consideration in determining such calculation), the Final Milestone Event will be deemed to have occurred, in each case immediately prior to such change in control.

Orchestra accounts for the Earnout Shares as either equity-classified or liability-classified instruments based on an assessment of the Earnout Shares specific terms and applicable authoritative guidance in ASC 480, *Distinguishing Liabilities from Equity* (“ASC 480”) and ASC 815, *Derivatives and Hedging* (“ASC 815”). Orchestra has preliminarily determined that the Earnout Shares are indexed to New Orchestra’s stock and are therefore will be classified within stockholders’ equity. The unaudited pro forma condensed combined financial information does not reflect pro forma adjustments related to the recognition of the Earnout Shares as the issuance of the shares would be represented by both an increase and offsetting decrease to additional paid-in capital. The unaudited pro forma condensed combined financial information does not reflect pro forma adjustments on a per share basis for the Earnout Shares because the earnout contingencies have not yet been met and because the earnout shares would be anti-dilutive.

The issuance of such Earnout Shares would dilute the value of all shares of New Orchestra Common Stock outstanding at the time of issuance. Assuming the current capitalization structure, the 4,000,000 Initial Earnout Shares that would become vested upon meeting the \$15.00 earnout threshold, would represent approximately 13% of total shares outstanding for the redemption scenarios set forth. Assuming the current capitalization structure, the total 8,000,000 shares representing the Initial Earnout Shares and Final Earnout Shares that would become vested upon meeting the \$20.00 earnout threshold, would represent approximately 26% of total shares outstanding for the redemption scenarios set forth.

Each share of Orchestra capital stock, if any, that is owned by HSAC2, Merger Sub, or Orchestra, or any of their subsidiaries (as treasury stock or otherwise) was canceled and extinguished without any conversion or consideration.

At the Effective Time, each issued and outstanding share of Orchestra Common Stock (other than any such shares of Orchestra Common Stock canceled as described above and any dissenting shares) was converted into the right to receive (1) a number of shares of HSAC2 Common Stock at the Exchange Ratio, and (2) shares of Earnout Consideration as, and subject to the contingencies, described above, including entry into an Earnout Election Agreement.

Each share of common stock, par value \$0.01 per share, of Merger Sub common stock issued and outstanding immediately prior to the Effective Time was converted into one newly issued share of Orchestra as the surviving corporation in the Merger.

At the Effective Time, each outstanding option to purchase shares of Orchestra Common Stock was converted into an option to purchase, subject to substantially the same terms and conditions as were applicable under such options prior to the Effective Time, shares of New Orchestra Common Stock equal to the number of shares subject to such option prior to the Effective Time multiplied by the Exchange Ratio, at an exercise price per share of New Orchestra Common Stock equal to the exercise price per share of Orchestra Common Stock subject to such option divided by the Exchange Ratio.

Effective immediately prior to the Effective Time, each outstanding warrant to purchase shares of Orchestra capital stock was treated in accordance with the terms of the relevant agreements governing such warrants and converted into New Orchestra warrants. The outstanding warrants to purchase shares of Orchestra capital stock are expected to be equity classified upon the consummation of the Business Combination.

Extension Proposal

On July 1, 2022, HSAC2 filed a proxy statement seeking approval of the Extension Proposal from its shareholders to amend the Company's Existing Charter to: (a) extend from August 6, 2022 to November 6, 2022, the date by which, if the Company has not consummated a merger, amalgamation, share exchange, asset acquisition, share purchase, reorganization or similar business combination involving one or more businesses or entities, the Company must: (i) cease all operations except for the purpose of winding up; (ii) as promptly as reasonably possible but not more than ten business days thereafter, redeem the Public Shares; and (iii) as promptly as reasonably possible following such redemption liquidate and dissolve, subject in each case to its obligations under Cayman Islands law to provide for claims of creditors and in all cases subject to the other requirements of applicable law, and (b) allow the Company, without another shareholder vote, to elect to extend the date to consummate a business combination on a monthly basis for up to three times by an additional one month each time after November 6, 2022, upon five days' advance notice prior to the applicable deadlines, until February 6, 2023 or a total of up to six months after August 6, 2022, unless the closing of the Company's initial business combination shall have occurred.

On November 15, 2022, the Directors of the Company elected to extend the deadline until January 6, 2023 and on December 15, 2022, the Directors of the Company elected to further extend the deadline until February 6, 2023.

The submission of the Extension Proposal to amend HSAC2's Existing Charter entitled holders of Public Shares to redeem their shares for their pro rata portion of the funds held in the trust account established at the time of the HSAC2 initial public offering. In connection with the Extension Meeting, as of July 22, 2022, HSAC2 received requests for redemption from shareholders with respect to 9,237,883 HSAC2 Ordinary Shares.

HSAC2 held the Meeting on January 24, 2023 for the purposes of considering and voting upon, among other things, the business combination HSAC2 with Orchestra. The submission of the Business Combination to the shareholders entitles holders of Public Shares in the Company to redeem their shares for their pro rata portion of the funds held in the trust account established at the time of the HSAC2 initial public offering. In connection with the General Meeting, as of January 24, 2023, HSAC2 received requests for redemption from shareholders with respect to 1,597,888 HSAC2 Ordinary Shares.

The following summarizes the pro forma ownership of New Orchestra Common Stock following the Business Combination:

	Number of Shares	Percentage of Outstanding Shares
Orchestra stockholders ⁽¹⁾	13,881,338	45.3%
Medtronic ⁽²⁾	4,992,588	16.3%
HSAC2 Public Shareholders ⁽³⁾	3,141,641	10.3%
Sponsor and related parties ⁽⁴⁾⁽⁵⁾	8,598,512	28.1%
Pro forma Common Stock at September 30, 2022	<u>30,614,079</u>	<u>100.0%</u>

(1) Excludes (i) 8,000,000 Earnout Ordinary Shares as the earnout contingencies have not yet been met, (ii) shares issuable in connection with outstanding Orchestra options and warrants, (iii) shares available for issuance pursuant to the 2022 Equity Incentive Plan, (iv) 2,310,000 shares held by certain funds managed by RTW Investments, LP. and (v) shares held by Medtronic.

(2) Includes 4,000,000 shares of Orchestra and 992,588 HSAC2 Ordinary Shares.

(3) Reflects the redemption of 9,237,883 HSAC2 Ordinary Shares in connection with the Extension Amendment and 1,597,888 ordinary shares in connection with the Meeting. Excludes 1,992,588 Public Shares acquired by the RTW Funds and Medtronic in connection with the Forward Purchase Agreements and 30,000 Ordinary Shares held by officers of HSAC2.

(4) Excludes 1,000,000 HSAC2 Ordinary Shares subject to forfeiture upon the expiration of the Earnout Period, includes 1,000,000 HSAC2 Ordinary Shares purchased pursuant to the Forward Purchase Agreement with RTW Funds.

(5) Excludes 750,000 Private Warrants. If all potential sources of dilution were exercised and converted into HSAC2 Ordinary Shares the Sponsor and related parties would hold approximately 20.7%

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED COMBINED BALANCE SHEET
AS OF SEPTEMBER 30, 2022
(in thousands, except share and per share data)

	<u>HSAC2</u> <u>(Historical)</u>	<u>Orchestra</u> <u>(Historical)</u>	<u>Transaction</u> <u>Accounting</u> <u>Adjustments</u>	<u>Pro Forma</u> <u>Combined</u>
ASSETS				
Current assets				
Cash and cash equivalents	\$ 735	\$ 96,995	\$ 51,761 B 18,085 C (2,372) D (7,118) E (5,600) F	\$ 152,486
Strategic investments	—	251	—	251
Accounts receivable, net	—	96	—	96
Inventory	—	330	—	330
Prepaid expenses and other current assets	137	828	—	965
Total current assets	<u>872</u>	<u>98,500</u>	<u>54,756</u>	<u>154,128</u>
Property and equipment, net	—	1,505	—	1,505
Right-of-use assets	—	2,339	—	2,339
Strategic investments, less current portion	—	2,495	—	2,495
Deposits and other assets	—	3,508	(2,937) E	571
Investments held in Trust Account	67,777	—	(51,761) B (16,016) A	—
Total assets	<u>\$ 68,649</u>	<u>\$ 108,347</u>	<u>\$ (15,958)</u>	<u>\$ 161,038</u>
LIABILITIES, REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)				
Current liabilities				
Accounts payable	\$ 282	\$ 7,686	\$ (137) D (2,260) E	\$ 5,571
Accrued expenses and other liabilities	1,159	4,746	(1,147) D	4,758
Operating lease liability - current	—	684	—	684
Warrant liability	—	1,873	(1,873) G	—
Deferred revenue, current portion	—	5,143	—	5,143
Total current liabilities	<u>1,441</u>	<u>20,132</u>	<u>(5,417)</u>	<u>16,156</u>
Deferred revenue, less current portion	—	15,327	—	15,327
Loan payable, less current portion	—	9,453	—	9,453
Operating lease liability, less current portion	—	1,864	—	1,864
Other long-term liabilities	—	142	—	142
Deferred underwriting commissions	5,600	—	(5,600) F	—
Total liabilities	<u>7,041</u>	<u>46,918</u>	<u>(11,017)</u>	<u>42,942</u>
Ordinary shares subject to possible redemption	67,676	—	(16,016) A (51,660) H	—
Series A preferred stock	—	51,452	(51,452) J	—
Series D-1 preferred stock	—	27,272	(27,272) J	—
Series D-2 preferred stock	—	87,199	(87,199) J	—
Stockholders' equity (deficit)				
Preferred Stock	—	—	—	—
Ordinary stock	—	—	1 H (1) I	—
New Orchestra Common Stock	—	—	1 I 2 J	3
Additional paid-in capital	—	85,490	18,085 C (7,795) E 1,873 G 51,659 H 165,921 J (6,068) K	309,165
Accumulated deficit	(6,068)	(189,984)	(1,088) D 6,068 K	(191,072)
Total stockholders' equity (deficit)	<u>(6,068)</u>	<u>(104,494)</u>	<u>228,658</u>	<u>118,096</u>
Total liabilities, preferred stock and stockholders' equity (deficit)	<u>\$ 68,649</u>	<u>\$ 108,347</u>	<u>\$ (15,958)</u>	<u>\$ 161,038</u>

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED COMBINED STATEMENT OF OPERATIONS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2022
(in thousands, except share and per share data)

	<u>HSAC2 (Historical)</u>	<u>Orchestra (Historical)</u>	<u>Transaction Accounting Adjustments</u>	<u>Pro Forma Combined</u>
Revenue				
Partnership revenue	\$ —	\$ 1,931	\$ —	\$ 1,931
Product revenue	—	499	—	499
Total revenue	<u>—</u>	<u>2,430</u>	<u>—</u>	<u>2,430</u>
Expenses				
Cost of product revenues	—	158	—	158
Research and development	—	14,402	—	14,402
Selling, general and administrative	2,113	10,699	807 D.1	13,619
Administrative fee - related party	90	—	—	90
Total expenses	<u>2,203</u>	<u>25,259</u>	<u>807</u>	<u>28,269</u>
Operating loss	<u>(2,203)</u>	<u>(22,829)</u>	<u>(807)</u>	<u>(25,839)</u>
Other income (expense)				
Interest income from investments held in Trust Account	345	—	(345) A.1	—
Interest income (expense), net	—	(419)	—	(419)
Loss on fair value adjustment of warrant liability	—	(1,124)	1,124 C.1	—
Loss on debt extinguishment	—	(682)	—	(682)
Gain on fair value of strategic investments	—	1,196	—	1,196
Total other income (expense)	<u>345</u>	<u>(1,029)</u>	<u>779</u>	<u>95</u>
Net loss	<u>\$ (1,858)</u>	<u>\$ (23,858)</u>	<u>\$ (28)</u>	<u>\$ (25,744)</u>
Net loss per share (Note 4)				
Weighted average shares outstanding	18,182,827	2,412,363		30,614,079
Basic and diluted net loss per share	<u>\$ (0.10)</u>	<u>\$ (10.72)</u>		<u>\$ (0.84)</u>

UNAUDITED PRO FORMA CONDENSED CONSOLIDATED COMBINED STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2021
(in thousands, except share and per share data)

	<u>HSAC2 (Historical)</u>	<u>Orchestra (Historical)</u>	<u>Transaction Accounting Adjustments</u>	<u>Pro Forma Combined</u>
Revenue				
Partnership revenue	\$ —	\$ (1,475)	\$ —	\$ (1,475)
Product revenue	—	693	—	693
Total revenue	<u>—</u>	<u>(782)</u>	<u>—</u>	<u>(782)</u>
Expenses				
Cost of product revenues	—	199	—	199
Research and development	—	12,890	—	12,890
Selling, general and administrative	275	7,928	1,088 B.1	10,367
			1,076 D.1	
Administrative fee - related party	120	—	—	120
Total expenses	<u>395</u>	<u>21,017</u>	<u>2,164</u>	<u>23,576</u>
Loss from operations	<u>(395)</u>	<u>(21,799)</u>	<u>(2,164)</u>	<u>(24,358)</u>
Other income (expense)				
Interest income from investments held in Trust Account	16	—	(16) A.1	—
Interest income (expense), net	—	(927)	—	(927)
Gain on fair value adjustment of warrant liability	—	699	(699) C.1	—
Loss on fair value of strategic investments	—	(987)	—	(987)
Total other income (expense)	<u>16</u>	<u>(1,215)</u>	<u>(715)</u>	<u>(1,914)</u>
Net loss	<u>\$ (379)</u>	<u>\$ (23,014)</u>	<u>\$ (2,879)</u>	<u>\$ (26,272)</u>
Net loss per share (Note 4)				
Weighted average shares outstanding	20,450,000	2,111,161		30,614,079
Basic and diluted net loss per share	<u>\$ (0.02)</u>	<u>\$ (10.90)</u>		<u>\$ (0.86)</u>

NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED COMBINED FINANCIAL INFORMATION

Note 1. Basis of Presentation

The Business Combination has been accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with U.S. GAAP. Under this method of accounting, HSAC2 has been treated as the “accounting acquiree” and Orchestra as the “accounting acquirer” for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination has been treated as the equivalent of Orchestra issuing shares for the net assets of HSAC2, followed by a recapitalization. The net assets of HSAC2 have been stated at historical cost. Operations prior to the Business Combination are those of Orchestra.

The unaudited pro forma condensed consolidated combined balance sheet as of September 30, 2022 gives effect to the Business Combination and related transactions as if they had been completed on September 30, 2022. The unaudited pro forma condensed consolidated combined statement of operations for the nine months ended September 30, 2022 and year ended December 31, 2021 gives effect to the Business Combination and related transactions as if they had been completed on January 1, 2021. These periods are presented on the basis that Orchestra is the acquirer for accounting purposes.

The pro forma adjustments reflecting the consummation of the Business Combination and the related transaction are based on certain currently available information and certain assumptions and methodologies that HSAC2 management believes are reasonable under the circumstances. The unaudited condensed consolidated combined pro forma adjustments, which are described in the accompanying notes, may be revised as additional information becomes available and is evaluated. Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments, and it is possible that the difference may be material. HSAC2 management believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the Business Combination and the related transactions based on information available to management at this time and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the unaudited pro forma condensed consolidated combined financial information.

The unaudited pro forma condensed consolidated combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the Business Combination. The unaudited pro forma condensed consolidated combined financial information is not necessarily indicative of the future consolidated results of operations or financial position of the post-combination company. They should be read in conjunction with the historical consolidated financial statements and notes thereto of HSAC2 and Orchestra.

Note 2. Accounting Policies and Reclassifications

Upon consummation of the Business Combination, management performed a comprehensive review of the two entities’ accounting policies. As a result of the review, management did not identify any differences between the accounting policies of the two entities that would have a material impact on the unaudited pro forma condensed consolidated combined financial information. As a result, the unaudited pro forma condensed consolidated combined financial information does not assume any differences in accounting policies.

As part of the preparation of these unaudited pro forma condensed consolidated combined financial statements, certain reclassifications were made to align HSAC2’s financial statement presentation with that of Orchestra.

Preferred Stock Conversion

Immediately prior to the consummation of the Business Combination, each share of Orchestra’s pre-merger preferred stock converted into Orchestra common stock. Upon the closing of the Business Combination (after giving effect to the conversion of Orchestra preferred stock into Orchestra common stock), all shares of Orchestra common stock outstanding have been converted into shares of New Orchestra common stock.

Accounting for Stock Option Conversion

The Company accounts for stock-based compensation arrangements with employees and non-employee consultants using a fair value method which requires the recognition of compensation expense for costs related to all stock-based payments, including stock options. As of the Effective Time, each Orchestra option that was outstanding prior to the business combination has been converted into an option to purchase shares of New Orchestra common stock upon substantially the same terms and conditions as were in effect with respect to such option immediately prior to the Effective Time, subject to specific terms and conditions. As there was no change in the terms of the options or material change in fair value, Orchestra did not recognize any incremental stock compensation expense.

Note 3. Adjustments to Unaudited Pro Forma Condensed Consolidated Combined Financial Information

The unaudited pro forma condensed consolidated combined financial information has been prepared to illustrate the effect of the Business Combination and related transactions and has been prepared for informational purposes only.

The following unaudited pro forma condensed consolidated combined financial information has been prepared in accordance with Article 11 of Regulation S-X as amended by the final rule, Release No. 33-10786 “Amendments to Financial Disclosures about Acquired and Disposed Businesses.” Release No. 33-10786 replaces the existing pro forma adjustment criteria with simplified requirements to depict the accounting for the transaction (“Transaction Accounting Adjustments”) and present the reasonably estimable synergies and other transaction effects that have occurred or are reasonably expected to occur (“Management’s Adjustments”). The pro forma adjustments reflecting the consummation of the Business Combination and related transactions are based on certain currently available information and certain estimates, assumptions and methodologies that management believes are reasonable under the circumstances. The unaudited condensed consolidated combined pro forma adjustments, which are described in the accompanying notes, may be revised as additional information becomes available and is evaluated. New Orchestra has elected not to present Management’s Adjustments and will only be presenting Transaction Accounting Adjustments in the unaudited pro forma condensed consolidated combined financial information. There were no pro forma adjustments required to eliminate activities between the companies.

The pro forma condensed combined financial information does not include an income tax adjustment. Upon closing of the Business Combination, it is likely that the combined company will record a valuation allowance against the total U.S. and state deferred tax assets as the recoverability of the tax assets is uncertain. The pro forma combined provision for income taxes does not necessarily reflect the amounts that would have resulted had the combined company filed consolidated income tax returns during the periods presented.

The pro forma basic and diluted earnings per share amounts presented in the unaudited pro forma condensed consolidated combined statements of operations are based upon the number of shares of New Orchestra Common Stock outstanding, assuming the Business Combination and related transactions occurred on the beginning of the earliest period presented. The pro forma basic and diluted earnings per share amounts exclude the impact of the Earnout Shares as the earnout contingencies have not yet been met and because the earnout shares would be anti-dilutive.

Adjustments to Unaudited Pro Forma Condensed Consolidated Combined Balance Sheet:

The adjustments included in the unaudited pro forma condensed consolidated combined balance sheet as of September 30, 2022 are as follows:

- A. Reflects the redemption payment totaling approximately \$16.0 million as a result of the redemption of 1,597,888 HSAC2 Ordinary Shares in connection with the Closing, inclusive of \$0.4 million of available interest at January 26, 2023.
- B. Reflects the reclassification of marketable securities of \$51.8 million held in the trust account to cash and cash equivalents.
- C. Reflects the proceeds of 1,808,512 HSAC2 Ordinary Shares purchased by certain funds managed by RTW Investments, LP pursuant to the Backstop Agreement.
- D. Represents HSAC2 transaction costs of \$2.4 million inclusive of advisory, banking, printing, legal, accounting fees and other professional fees that are expensed as a part of the Business Combination within accumulated deficit. Of the transaction costs, \$1.3 million has already been incurred and reflected in the historical financial statements of HSAC2, of which \$0.1 million had already been paid.
- E. Represents Orchestra transaction costs of \$7.8 million inclusive of advisory, banking, legal and other professional fees that were incurred as a part of the Business Combination within additional paid-in capital. Of the transaction costs, \$2.9 million had already been incurred pre-merger and reflected in the historical financial statements of Orchestra, of which \$0.7 million has already been paid.
- F. Reflects the settlement of \$5.6 million in deferred underwriting fee payable.
- G. Reflects the reclassification of \$1.9 million of Orchestra warrant liabilities to equity. The Orchestra warrants are expected to meet the fixed-for-fixed indexation criteria to be equity classified following the consummation of the Business Combination.
- H. Reflects the reclassification of \$51.7 million of HSAC2 Ordinary Shares subject to possible redemption into permanent equity upon closing of the business combination.
- I. Reflects the conversion of 9,614,229 HSAC2 Ordinary Shares into 9,614,229 shares of New Orchestra Common Stock in the Domestication after reflecting the redemption of 10,835,771 HSAC2 Ordinary Shares in connection with the Extension Proposal and the Closing.
- J. Reflects the recapitalization of Orchestra's outstanding equity and temporary equity comprised of 35,694,179 shares of preferred stock and 2,518,359 shares of common stock, par value of \$0.0001 (aggregate value of \$165.9 million) reflected as an increase in additional paid-in capital.
- K. Reflects the reclassification of HSAC2's historical accumulated deficit.

Adjustments to Unaudited Pro Forma Condensed Consolidated Combined Statements of Operations

The pro forma adjustments included in the unaudited pro forma condensed consolidated combined statements of operations for the nine months ended September 30, 2022 and for the year ended December 31, 2021 are as follows:

- A.1 Reflects elimination of investment income on the trust account.
- B.1 Reflects transactions costs of \$1.1 million as if incurred on January 1, 2021, the date the Business Combination occurred for the purposes of the unaudited pro forma condensed consolidated combined statement of operations. The amount presented is comprised of transaction costs outlined in adjustment (C) that were not yet recognized and expensed in the historical statement of operations as part of the Business Combination.
- C.1 Reflects the reclassification of the Orchestra warrant liabilities to equity as of January 1, 2021 and the elimination of changes in the fair value of the warrant liabilities recorded in the statement of operations. The Orchestra warrants are expected to meet the fixed-for-fixed indexation criteria to be equity classified following the consummation of the Business Combination.
- D.1 Reflects additional stock compensation expense related to the grant of new warrants to purchase an aggregate of 750,000 shares of New Orchestra Common Stock to specified employees and directors of Orchestra.

Note 4. Net Loss per Share

Net loss per share was calculated using the historical weighted average shares outstanding, and the issuance of additional shares in connection with the Business Combination and the related transactions, assuming the shares were outstanding since January 1, 2021. As the Business Combination and the related transactions are being reflected as if they had occurred at the beginning of the period presented, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes that the shares issuable relating to the Business Combination and related have been outstanding for the entirety of all periods presented.

	Nine Months Ended September 30, 2022 ⁽¹⁾	Year Ended December 31, 2021 ⁽¹⁾
	(in thousands, except share and per share data)	
Pro forma net loss	\$ (25,744)	\$ (26,272)
Weighted average shares outstanding - basic and diluted	30,614,079	30,614,079
Net loss per share - basic and diluted	\$ (0.84)	\$ (0.86)
<i>Excluded securities:</i> ⁽²⁾		
Private Warrants	750,000	750,000
Orchestra Warrants	2,325,936	2,325,936
Orchestra Options	3,929,298	3,929,298
Sponsor and related parties shares subject to forfeiture on expiration of Earnout	1,000,000	1,000,000
Earnout Shares	8,000,000	8,000,000

(1) Pro forma net loss per share includes the related pro forma adjustments as referred to within the section “*Adjustments to Unaudited Pro Forma Condensed Consolidated Combined Financial Information.*”

(2) The potentially dilutive outstanding securities were excluded from the computation of pro forma net loss per share, basic and diluted, because their effect would have been anti-dilutive and/or issuance or vesting of such shares is contingent upon the satisfaction of certain conditions which were not satisfied by the end of the periods presented.