

**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): November 2, 2022**

**KURA ONCOLOGY, INC.**  
(Exact name of Registrant as Specified in Its Charter)

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

**001-37620**  
(Commission  
File Number)

**61-1547851**  
(IRS Employer  
Identification No.)

**12730 High Bluff Drive, Suite 400, San Diego, CA**  
(Address of Principal Executive Offices)

**92130**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (858) 500-8800**

**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<b>Common Stock, par value \$0.0001 per share</b>	<b>KURA</b>	<b>The Nasdaq Global Select Market</b>

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

Emerging growth company

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

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

### *Securities Purchase Agreement*

On November 2, 2022, Kura Oncology, Inc. (“Kura” or the “Company”) entered into a Securities Purchase Agreement (the “Purchase Agreement”) with Bristol-Myers Squibb Company (“BMS”). Pursuant to the Purchase Agreement, the Company agreed to issue and sell to BMS in a registered direct offering an aggregate of 1,370,171 shares of the Company’s common stock, par value \$0.0001 per share (the “Common Stock”), at a purchase price of \$18.2459 per share (the “Offering”) for gross proceeds of approximately \$25.0 million. The Company intends to use the net proceeds of the Offering primarily to further advance the Company’s pipeline of product candidates, including continued development of its product candidates ziftomenib, tipifarnib and KO-2806, and pipeline research and development activities. In connection with the Offering, BMS will appoint a member to the Company’s Global Steering Committee. The Offering is anticipated to close on or about November 3, 2022.

The Purchase Agreement contains customary representations, warranties, and agreements by the Company. The foregoing summary of the Purchase Agreement contained herein does not purport to be complete and is qualified in its entirety by reference to the full text of the Purchase Agreement, which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

The shares of Common Stock will be offered and sold by the Company pursuant to an automatic shelf registration statement on Form S-3 (File No. 333-251172), which was filed with the Securities and Exchange Commission (the “SEC”) and became effective on December 7, 2020 (the “Registration Statement”).

A copy of the legal opinion of Cooley LLP relating to the validity of the shares issued in the Offering is filed as Exhibit 5.1 to this Current Report on Form 8-K and is filed with reference to, and is hereby incorporated by reference into, the Registration Statement.

### *Loan and Security Agreement*

Also on November 2, 2022 (the “Effective Date”), the Company entered into a Loan and Security Agreement (the “Loan Agreement”) with the several banks and other financial institutions or entities party thereto (each, a “Lender” and collectively referred to as the “Lenders”) and Hercules Capital, Inc., a Maryland corporation (“Hercules”), in its capacity as administrative agent and collateral agent for itself and the Lenders, pursuant to which the Lenders have agreed to make available to the Company up to \$125.0 million in senior secured term loans (the “Term Loan Facility”), consisting of (i) an initial term loan of up to \$25.0 million, \$10.0 million of which was funded immediately after the Effective Date, (ii) two additional tranches of term loans in the amounts of up to \$35.0 million (the “Tranche 2 Loan”) and \$40.0 million (the “Tranche 3 Loan”), respectively, which will become available to the Company upon the Company’s satisfaction of certain terms and conditions set forth in the Loan Agreement, and (iii) a final tranche of term loans in the amount of up to \$25.0 million (the “Tranche 4 Loan”), subject to the Lenders’ investment committee approval in its sole discretion. The loans under the Loan Agreement mature on the fifth anniversary of the Effective Date (the “Maturity Date”).

The loans under the Loan Agreement bear interest at an annual rate equal to the greater of (i) the prime rate as reported in The Wall Street Journal *minus* 6.25% *plus* 8.65% and (ii) 8.65%. Borrowings under the Loan Agreement are repayable in monthly interest-only payments through (a) initially, November 1, 2024, (b) if the Company satisfies the Interest Only Milestone 1 Conditions (as defined in the Loan Agreement), May 1, 2025, (c) if the Company satisfies the Interest Only Milestone 2 Conditions (as defined in the Loan Agreement), November 1, 2025, and (d) if the Company satisfies the Approval Milestone (as defined in the Loan Agreement), November 1, 2026. After the interest-only payment period, borrowings under the Loan Agreement are repayable in equal monthly payments of principal and accrued interest until the Maturity Date.

At the Company’s option, the Company may prepay all or any portion of the outstanding borrowings under the Loan Agreement. Prepayments made on or prior to the third anniversary of the closing date will be subject to a prepayment fee equal to 1.50% of the principal amount being prepaid. In addition, the Company paid a \$125,000 facility charge upon closing and will pay additional facility charges in connection with any borrowing of the

Tranche 2 Loan, Tranche 3 Loan or Tranche 4 Loan, in each case in the amount of 0.50% of the amount of such tranche of loans. The Loan Agreement also provides for an end of term fee in an amount equal to the greater of (i) \$1,512,500 (which is 6.05% of the maximum amount of the first tranche of loans) or (ii) 6.05% of the aggregate principal amount of loan advances actually made under the Loan Agreement, which fee is due and payable on the earliest to occur of (i) the Maturity Date, (ii) the date that Company prepays the outstanding loans in full, and (iii) the date that the secured obligations become due and payable.

The Company's obligations under the Loan Agreement and the related guarantees thereunder are secured, subject to customary permitted liens and other agreed upon exceptions, by a first-priority perfected security interest in all of the tangible and intangible assets of the Company (except for the Company's intellectual property).

The Loan Agreement also contains a minimum cash covenant, commencing on June 1, 2024, requiring the Company to hold cash in the United States and subject to a first-priority perfected security interest in favor of the Lenders in an amount greater than or equal to (x) 55.0% of the outstanding loan obligations if the Company has not received U.S. Food and Drug Administration ("FDA") approval for ziftomenib, or (y) 35.0% of the outstanding loan obligations if the Company has received FDA approval for ziftomenib, provided that neither (x) nor (y) will apply at any time the Company's market capitalization is equal to or greater than \$1,250,000,000. Additionally, the Loan Agreement contains minimum cash requirements in the event of (i) any Corporate Collaborations (as defined in the Loan Agreement) or (ii) any cash payment in respect of permitted convertible debt subject to the satisfaction of the Redemption Conditions (as defined in the Loan Agreement).

In addition, the Loan Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, and dividends and other distributions, subject to certain exceptions. The Loan Agreement also contains events of default that are customary for financings of this type relating to, among other things, payment defaults, breach of covenants, breach of representations and warranties, cross-default to material indebtedness, bankruptcy-related defaults, judgment defaults, breach of the financial covenants described above, and the occurrence of certain change of control events. Following an event of default and any applicable cure period, a default interest rate equal to the then-applicable interest rate plus 5.0% may be applied to the outstanding principal balance, and the Lenders will have the right upon notice to terminate any undrawn commitments and may accelerate all amounts outstanding under the Loan Agreement, in addition to other remedies available to them as secured creditors of the Company.

In addition, in connection with the entry into the Loan Agreement, the Company issued warrants to certain of the Lenders (collectively, the "Warrants") to acquire a number of shares of Common Stock at an exercise price of \$14.38 per share (the "Warrant Shares"). The Warrants may be exercised through the earlier of (i) the seventh anniversary of November 2, 2022 and (ii) the consummation of certain acquisition transactions involving the Company, as set forth in the Warrants. The number of Warrant Shares for which the Warrants are exercisable and the associated exercise price are subject to certain customary proportional adjustments for fundamental events, including stock splits and reverse stock splits, as set forth in the Warrants.

The foregoing descriptions of the Loan Agreement and the Warrants contained herein do not purport to be complete and are qualified in their entirety by reference to the full text of the Loan Agreement and the form of Warrant Agreement, which are filed herewith as Exhibits 10.2 and 4.1, respectively, and incorporated herein by reference.

#### *Cash Runway*

If the Term Loans are fully drawn, proceeds from the Offering and the Term Loans, together with the Company's existing cash, cash equivalents and short-term investments, are expected to fund the Company's current operating plan into 2026.

#### *Forward-Looking Statements*

*Statements contained under this Item 1.01 regarding matters that are not historical facts are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Because such statements are*

subject to risks and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements, including, but not limited to, statements regarding the completion and timing of the Offering, the expected uses of the net proceeds from the Offering, the Company's cash runway, including its extension into 2026, and the Company's business plans and objectives.

Any forward-looking statements in this Current Report on Form 8-K are based on management's current expectations of future events and are subject to a number of risks and uncertainties that could cause actual results to differ materially and adversely from those set forth in or implied by such forward-looking statements. Risks that contribute to the uncertain nature of the forward-looking statements include: risks related to the Company's ability to close the Offering and to execute on its strategy, the Company's ability to draw the remainder of the tranches under the Loan Agreement, the strength of the Company's balance sheet and the adequacy of cash on hand and other risks associated with the process of discovering, developing and commercializing drugs that are safe and effective for use as human therapeutics, and in the endeavor of building a business around such drugs, as well as those risks and uncertainties set forth more fully under the caption "Risk Factors" in Kura's most recent Annual Report on Form 10-K, as filed with the SEC and quarterly reports on Form 10-Q filed with the SEC, as well as discussions of potential risks, uncertainties and other important factors in Kura's other filings and reports with the SEC. All forward-looking statements contained in this Current Report on Form 8-K speak only as of the date on which they were made. Kura undertakes no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they were made.

**Item 2.03      Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth in Item 1.01 above under the heading "Loan and Security Agreement" is hereby incorporated by reference into Item 2.03.

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

The information set forth in Item 1.01 above that relates to the issuance of the Warrants is hereby incorporated by reference into Item 3.02.

The Warrants described in Item 1.01 above were offered and sold in reliance upon the exemption from registration provided by Section 4(a)(2) under the Securities Act of 1933, as amended (the "Securities Act"), in that the issuance of the Warrants did not involve a public offering.

**Item 7.01.      Regulation FD Disclosure.**

On November 3, 2022, the Company issued a press release titled "Kura Oncology Announces Financing Transactions with Bristol Myers Squibb and Hercules Capital, Providing Access to up to \$150 Million." A copy of the press release is being furnished herewith as Exhibit 99.1 to this Current Report on Form 8-K.

The information under this Item 7.01, including Exhibit 99.1 hereto, is being furnished herewith and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except as expressly set forth by specific reference in such filing.

**Item 9.01.      Financial Statements and Exhibits.**

(d) Exhibits.

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<b>Exhibit No.</b>	<b>Description</b>
4.1	<a href="#"><u>Form of Warrant Agreement issued by Kura Oncology, Inc. on November 2, 2022 to Hercules Capital, Inc. and certain other Lenders.</u></a>
5.1	<a href="#"><u>Opinion of Cooley LLP.</u></a>
10.1	<a href="#"><u>Securities Purchase Agreement dated as of November 2, 2022 by and between Kura Oncology, Inc. and Bristol-Myers Squibb Company.</u></a>
10.2	<a href="#"><u>Loan and Security Agreement dated as of November 2, 2022 by and between Kura Oncology, Inc. and Hercules Capital, Inc.</u></a>
23.1	<a href="#"><u>Consent of Cooley LLP (included in Exhibit 5.1).</u></a>
99.1	<a href="#"><u>Press Release dated November 3, 2022.</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

**SIGNATURES**

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

**KURA ONCOLOGY, INC.**

Date: November 3, 2022

By: /s/ Teresa Bair

**Teresa Bair**  
**Chief Legal Officer**

THIS WARRANT AND THE SHARES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR, SUBJECT TO SECTION 11 HEREOF, AN OPINION OF COUNSEL (WHICH MAY BE COMPANY COUNSEL) REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT, OR ANY APPLICABLE STATE SECURITIES LAWS.

## WARRANT AGREEMENT

To Purchase Shares of the Common Stock of

### **KURA ONCOLOGY, INC.**

Dated as of November 2, 2022 (the "Effective Date")

WHEREAS, Kura Oncology, Inc., a Delaware corporation (the "Company"), has entered into a Loan and Security Agreement of even date herewith (as amended and in effect from time to time, the "Loan Agreement") with Hercules Capital, Inc., a Maryland corporation, in its capacity as administrative and collateral agent (the "Warrantholder"), and the lenders parties thereto;

WHEREAS, pursuant to the Loan Agreement and as additional consideration to the Warrantholder for, among other things, its agreements in the Loan Agreement, the Company has agreed to issue to the Warrantholder this Warrant Agreement, evidencing the right to purchase shares of the Company's Common Stock (this "Warrant", "Warrant Agreement", or this "Agreement");

NOW, THEREFORE, in consideration of the Warrantholder having executed and delivered the Loan Agreement and provided the financial accommodations contemplated therein, and in consideration of the mutual covenants and agreements contained herein, the Company and Warrantholder agree as follows:

#### **SECTION 1. GRANT OF THE RIGHT TO PURCHASE COMMON STOCK.**

(a) For value received, the Company hereby grants to the Warrantholder, and the Warrantholder is entitled, upon the terms and subject to the conditions hereinafter set forth, to subscribe for and purchase, from the Company, up to the aggregate number of fully paid and non-assessable shares of Common Stock (as defined below) as determined pursuant to Section 1(b) below, at a purchase price per share equal to the Exercise Price (as defined below). The number and Exercise Price of such shares are subject to adjustment as provided in Section 8. As used herein, the following terms shall have the following meanings:

"Act" means the Securities Act of 1933, as amended.

"Charter" means the Company's Amended and Restated Certificate of Incorporation, as may be amended and in effect from time to time.

"Common Stock" means the Company's common stock, \$0.0001 par value per share, as presently constituted under the Charter, and any class and/or series of Company

capital stock for or into which such common stock may be converted or exchanged in a reorganization, recapitalization or similar transaction.

“Exercise Price” means \$14.38, subject to adjustment from time to time in accordance with the provisions of this Warrant.

“Liquid Sale” means the closing of a Merger Event in which the consideration received by the Company and/or its stockholders, as applicable, consists solely of cash and/or Marketable Securities.

“Marketable Securities” in connection with a Merger Event means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by the Warrantholder in connection with the Merger Event were the Warrantholder to exercise this Warrant on or prior to the closing thereof is then traded on a national securities exchange or over-the-counter market, and (iii) following the closing of such Merger Event, the Warrantholder would not be restricted from publicly re-selling all of the issuer’s shares and/or other securities that would be received by the Warrantholder in such Merger Event were the Warrantholder to exercise this Warrant in full on or prior to the closing of such Merger Event, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six months from the closing of such Merger Event.

“Merger Event” means any of the following: (i) a sale, lease or other transfer of all or substantially all assets of the Company, (ii) any merger or consolidation involving the Company in which the Company is not the surviving entity or in which the outstanding shares of the Company’s capital stock are otherwise converted into or exchanged for shares of capital stock or other securities or property of another entity, or (iii) any sale by holders of the outstanding voting equity securities of the Company in a single transaction or series of related transactions of shares constituting a majority of the outstanding combined voting power of the Company.

“Purchase Price” means, with respect to any exercise of this Warrant, an amount equal to the then-effective Exercise Price multiplied by the number of shares of Common Stock as to which this Warrant is then exercised.

“Warrant Coverage” means ~~[0.825]~~~~[0.375]~~~~[0.3]~~% times the greater of (i) the Tranche 1 Maximum Amount (as defined in the Loan Agreement) or (ii) the aggregate amount of Term Loan Advances (as defined in the Loan Agreement) made under the Loan Agreement from time to time.

(b) Number of Shares. This Warrant shall be exercisable for a number of shares of Common Stock equal to the quotient derived by dividing (i) the Warrant Coverage by (ii) the Exercise Price, subject to adjustment from time to time in accordance with the provisions of this Warrant.



## SECTION 2. TERM OF THE AGREEMENT.

The term of this Agreement and the right to purchase Common Stock as granted herein shall commence on the Effective Date and, subject to Section 8(a) below, shall be exercisable until 5:00 p.m. (Eastern Time) on the seventh anniversary of the Effective Date.

## SECTION 3. EXERCISE OF THE PURCHASE RIGHTS.

(a) Exercise. The purchase rights set forth in this Agreement are exercisable by the Warrantholder, in whole or in part, at any time, or from time to time, prior to the expiration of the term set forth in Section 2, by tendering to the Company at its principal office a notice of exercise in the form attached hereto as Exhibit I (the “Notice of Exercise”), duly completed and executed. Promptly upon receipt of the Notice of Exercise and the payment of the Purchase Price in accordance with the terms set forth below, and in no event later than three business days thereafter, the Company or its transfer agent shall either (i) issue to the Warrantholder a certificate for the number of shares of Common Stock purchased or (ii) credit the same via book entry to the Warrantholder, and the Company shall execute the acknowledgment of exercise in the form attached hereto as Exhibit II (the “Acknowledgment of Exercise”) indicating the number of shares which remain subject to future purchases under this Warrant, if any.

The Purchase Price may be paid at the Warrantholder’s election either (i) by cash or check, or (ii) by surrender of all or a portion of the Warrant for shares of Common Stock to be exercised under this Agreement and, if applicable, an amended Agreement setting forth the remaining number of shares purchasable hereunder, as determined below (“Net Issuance”). If the Warrantholder elects the Net Issuance method, the Company will issue shares of Common Stock in accordance with the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where: X = the number of shares of Common Stock to be issued to the Warrantholder.  
Y = the number of shares of Common Stock requested to be exercised under this Agreement.  
A = the then-current fair market value of one share of Common Stock at the time of exercise of this Warrant.  
B = the then-effective Exercise Price.

For purposes of the above calculation, the current fair market value of shares of Common Stock shall mean with respect to each share of Common Stock:

(i) at all times when the Common Stock is traded on a national securities exchange, inter-dealer quotation system or over-the-counter bulletin board service, the average of the closing prices over a five-day period ending three days before the day the current fair market value of the securities is being determined;

(ii) if the exercise is in connection with a Merger Event, the fair market value of a share of Common Stock shall be deemed to be the per share value received by the holders of the outstanding shares of Common Stock pursuant to such Merger Event as determined

in accordance with the definitive transaction documents executed among the parties in connection therewith; or

(iii) in cases other than as described in the foregoing clauses (i) and (ii), the current fair market value of a share of Common Stock shall be determined in good faith by the Company's Board of Directors.

Upon partial exercise by either cash, check or Net Issuance, prior to the expiration or earlier termination hereof, the Company shall promptly issue an amended Agreement representing the remaining number of shares purchasable hereunder. All other terms and conditions of such amended Agreement shall be identical to those contained herein, including, but not limited to the Effective Date hereof.

(b) Exercise Prior to Expiration. To the extent this Warrant is not previously exercised as to all shares of Common Stock subject hereto, and if the then-current fair market value of one share of Common Stock is greater than the Exercise Price then in effect, or, in the case of a Liquid Sale, where the value per share of Common Stock (as determined as of the closing of such Liquid Sale in accordance with the definitive agreements executed by the parties in connection with such Merger Event) to be paid to the holders thereof is greater than the Exercise Price then in effect, this Agreement shall be deemed automatically exercised on a Net Issuance basis pursuant to Section 3(a) (even if not surrendered) as of immediately before its expiration determined in accordance with Section 2. For purposes of such automatic exercise, the fair market value of one share of Common Stock upon such expiration shall be determined pursuant to Section 3(a). To the extent this Warrant or any portion hereof is deemed automatically exercised pursuant to this Section 3(b), the Company agrees to promptly notify the Warrantholder of the number of shares of Common Stock if any, the Warrantholder is to receive by reason of such automatic exercise, and to issue or cause its transfer agent to issue a certificate or a book-entry credit to the Warrantholder evidencing such shares.

#### **SECTION 4. RESERVATION OF SHARES.**

During the term of this Agreement, the Company will at all times have authorized and reserved a sufficient number of shares of its Common Stock to provide for the exercise of the rights to purchase Common Stock as provided for herein. If at any time during the term hereof the number of authorized but unissued shares of Common Stock shall not be sufficient to permit exercise of this Warrant in full, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

#### **SECTION 5. NO FRACTIONAL SHARES OR SCRIP.**

No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Agreement, but in lieu of such fractional shares the Company shall make a cash payment therefor in an amount equal to the product of (a) the then fair market value of one share of Common Stock multiplied by (b) the fraction of a share.

#### **SECTION 6. NO RIGHTS AS STOCKHOLDER.**

Without limitation of any provision hereof, the Warrantholder agrees that this Agreement does not entitle the Warrantholder to any voting rights or other rights as a stockholder of the Company prior to the exercise of any of the purchase rights set forth in this Agreement.

## SECTION 7. WARRANTHOLDER REGISTRY.

The Company shall maintain a registry showing the name and address of the registered holder of this Agreement. The Warrantholder's initial address, for purposes of such registry, is set forth in Section 12(g) below. The Warrantholder may change such address by giving written notice of such changed address to the Company.

## SECTION 8. ADJUSTMENT RIGHTS.

The Exercise Price and the number of shares of Common Stock purchasable hereunder are subject to adjustment from time to time, as follows:

(a) Merger Event. In connection with a Merger Event that is a Liquid Sale, this Warrant shall, on and after the closing thereof, automatically and without further action on the part of any party or other person, represent the right to receive the consideration payable on or in respect of all shares of Common Stock that are issuable hereunder as of immediately prior to the closing of such Merger Event less the Purchase Price for all such shares of Common Stock (such consideration to include both the consideration payable at the closing of such Merger Event and all deferred consideration payable thereafter, if any, including, but not limited to, payments of amounts deposited at such closing into escrow and payments in the nature of earn-outs, milestone payments or other performance-based payments), and such Merger Event consideration shall be paid to the Warrantholder as and when it is paid to the holders of the outstanding shares of Common Stock. In connection with a Merger Event that is not a Liquid Sale, the Company shall cause the successor or surviving entity to assume this Warrant and the obligations of the Company hereunder on the closing thereof, and thereafter this Warrant shall be exercisable for the same number and type of securities or other property as the Warrantholder would have received in consideration for the shares of Common Stock issuable hereunder had it exercised this Warrant in full as of immediately prior to such closing, at an aggregate Exercise Price no greater than the aggregate Exercise Price in effect as of immediately prior to such closing, and subject to further adjustment from time to time in accordance with the provisions of this Warrant. The provisions of this Section 8(a) shall similarly apply to successive Merger Events.

(b) Reclassification of Shares. Except for Merger Events subject to Section 8(a), if the Company at any time shall, by combination, reclassification, exchange or subdivision of securities or otherwise, change any of the securities as to which purchase rights under this Agreement exist into the same or a different number of securities of any other class or classes of securities, this Agreement shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under this Agreement immediately prior to such combination, reclassification, exchange, subdivision or other change. The provisions of this Section 8(b) shall similarly apply to successive combination, reclassification, exchange, subdivision or other change.

(c) Subdivision or Combination of Shares. If the Company at any time shall combine or subdivide its Common Stock, (i) in the case of a subdivision, the Exercise Price shall be proportionately decreased and the number of shares for which this Warrant is exercisable shall be proportionately increased, or (ii) in the case of a combination, the Exercise Price shall be proportionately increased and the number of shares for which this Warrant is exercisable shall be proportionately decreased.

(d) Dividends. If the Company at any time while this Agreement is outstanding and unexpired shall:

(i) pay a dividend with respect to the Common Stock payable in additional shares of Common Stock, then the Exercise Price shall be adjusted, from and after the date of determination of stockholders entitled to receive such dividend, to that price determined by multiplying the Exercise Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Common Stock outstanding immediately after such dividend or distribution, and the number of shares of Common Stock for which this Warrant is exercisable shall be proportionately increased; or

(ii) make any other dividend or distribution on or with respect to Common Stock, except any dividend or distribution specifically provided for in any other clause of this Section 8, then, in each such case, provision shall be made by the Company such that the Warrantholder shall receive upon exercise or conversion of this Warrant a proportionate share of any such dividend or distribution as though it were the holder of the Common Stock (or other stock for which the Common Stock is convertible) as of the record date fixed for the determination of the stockholders of the Company entitled to receive such dividend or distribution.

(e) Notice of Certain Events. If: (i) the Company shall declare any dividend or distribution upon its outstanding Common Stock, payable in stock, cash, property or other securities (provided that the Warrantholder in its capacity as lender under the Loan Agreement consents to such dividend); (ii) the Company shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights; (iii) there shall be any Merger Event; or (iv) there shall be any voluntary dissolution, liquidation or winding up of the Company; then, in connection with each such event, the Company shall give the Warrantholder notice thereof at the same time and in the same manner as it gives notice thereof to the holders of outstanding Common Stock. In addition, if at any time the number of shares of Common Stock (or other securities of any other class or classes of securities of the Company for which this Warrant is then exercisable) outstanding is reduced such that the number of shares of Common Stock or other securities issuable upon exercise of this Warrant shall exceed five percent (5%) of the then outstanding class of such securities, then, within three (3) business days of such event, the Company shall give the Warrantholder written notice thereof.

#### **SECTION 9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.**

(a) Reservation of Common Stock. The Company covenants and agrees that all shares of Common Stock that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be validly issued and outstanding, fully paid and non-assessable, and will be free of any taxes, liens, charges or encumbrances of any nature whatsoever; provided, that the Common Stock issuable pursuant to this Agreement may be subject to restrictions on transfer under state and/or federal securities laws. The Company has made available to the Warrantholder true, correct and complete copies of its Charter and bylaws currently in effect. The issuance of certificates or book-entry credit for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Warrantholder for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such exercise and related issuance of shares of Common Stock; provided, that the Company shall not be required to pay any tax which may be

payable in respect of any transfer and the issuance and delivery of any certificate in a name other than that of the Warrantholder. The Company further covenants and agrees that the Company will, at all times during the term hereof, have authorized and reserved, free from preemptive rights, a sufficient number of shares of Common Stock to provide for the exercise of the rights represented by this Warrant.

(b) Due Authority. The execution and delivery by the Company of this Agreement and the performance of all obligations of the Company hereunder, including the issuance to the Warrantholder of the right to acquire the shares of Common Stock, have been duly authorized by all necessary corporate action on the part of the Company. This Agreement: (i) does not violate the Charter or the Company's current bylaws; (ii) does not contravene any law or governmental rule, regulation or order applicable to the Company; and (iii) does not and will not contravene any material provision of, or constitute a material default under, any indenture, mortgage, contract or other instrument to which the Company is a party or by which it is bound. This Agreement constitutes a legal, valid and binding agreement of the Company, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and by general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) Consents and Approvals. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of any state, federal or other governmental authority or agency is required on the part of the Company with respect to the execution, delivery and performance by the Company of its obligations under this Agreement, except for the filing of notices pursuant to Regulation D under the Act and any filing required by applicable state securities law, which filings will be effective by the time required thereby.

(d) Exempt Transaction. Subject to the accuracy of the Warrantholder's representations in Section 10, the issuance of the Common Stock upon exercise of this Agreement will constitute a transaction exempt from (i) the registration requirements of Section 5 of the Act, in reliance upon Section 4(a)(2) thereof, and (ii) the qualification requirements of the applicable state securities laws.

(e) Information Rights. At all times (if any) prior to the earlier to occur of (x) the date on which all shares of Common Stock issued on exercise of this Warrant have been sold, or (y) the expiration or earlier termination of this Warrant, when the Company shall not be required to file reports pursuant to Section 13 or 15(d) of the Exchange Act or shall not have timely filed all such required reports, the Warrantholder shall be entitled to the information rights contained in Section 7.1(b) of the Loan Agreement; provided that the confidentiality provisions contained in Section 11.13 of the Loan Agreement shall apply to any information received under this section, and in any such event Section 7.1(b) and Section 11.13 of the Loan Agreement are hereby incorporated into this Agreement by this reference as though fully set forth herein, provided, however, that the Company shall not be required to deliver a Compliance Certificate once all Indebtedness (as defined in the Loan Agreement) owed by the Company to Warrantholder has been repaid.

(f) Rule 144 Compliance. The Company shall, at all times prior to the earlier to occur of (i) the date of sale or other disposition by Warrantholder of this Warrant or all shares of Common Stock issued on exercise of this Warrant, or (ii) the expiration or earlier termination of this Warrant if the Warrant has not been exercised in full or in part on such date, use all commercially reasonable efforts to timely file all reports required under the Exchange Act and otherwise timely take all actions necessary to permit the Warrantholder to sell or otherwise dispose of this Warrant and the shares of Common Stock issued on exercise hereof pursuant to Rule 144 promulgated

under the Act (“Rule 144”), provided that the foregoing shall not apply in the event of a Merger Event following which the successor or surviving entity is not subject to the reporting requirements of the Exchange Act. If the Warrantholder proposes to sell Common Stock issuable upon the exercise of this Agreement in compliance with Rule 144, then, upon the Warrantholder’s written request to the Company, the Company shall furnish to the Warrantholder, within five (5) business days after receipt of such request, a written statement confirming the Company’s compliance with the filing and other requirements of Rule 144.

#### **SECTION 10. REPRESENTATIONS AND COVENANTS OF THE WARRANTHOLDER.**

This Agreement has been entered into by the Company in reliance upon the following representations and covenants of the Warrantholder:

(a) Investment Purpose. This Warrant and the shares issued on exercise hereof will be acquired for investment and not with a view to the sale or distribution of any part thereof in violation of applicable federal and state securities laws, and the Warrantholder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Warrantholder understands that (i) the Common Stock issuable upon exercise of this Agreement is not, as of the Effective Date, registered under the Act or qualified under applicable state securities laws on the grounds that the issuance contemplated by this Agreement will be exempt from the registration and qualifications requirements thereof, and (ii) the Company’s reliance on exemption from such registration is predicated on the representations set forth in this Section 10.

(c) Financial Risk. The Warrantholder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Accredited Investor. The Warrantholder is an “accredited investor” within the meaning of Rule 501 of Regulation D promulgated under the Act, as presently in effect (“Regulation D”).

(e) No Short Sales. The Warrantholder has not at any time on or prior to the Effective Date engaged in any short sales or equivalent transactions in the Common Stock. Warrantholder agrees that at all times from and after the Effective Date and on or before the expiration or earlier termination of this Warrant, it shall not engage in any short sales or equivalent transactions in the Common Stock.

#### **SECTION 11. TRANSFERS.**

Subject to compliance with applicable federal and state securities laws, this Agreement and all rights hereunder are transferable, in whole or in part, without charge to the holder hereof (except for transfer taxes) upon surrender of this Agreement properly endorsed; provided, that as long as no Event of Default (as defined in the Loan Agreement) has occurred and is continuing, the holder hereof may not, without the Company’s prior written consent, transfer this Agreement or any portion hereof, or any shares issued upon any exercise hereof, to any person or entity who directly competes with the Company (as reasonably determined by Agent upon consultation with Company), it being acknowledged that in all cases, any transfer to an affiliate of the holder hereof shall be allowed. Each taker and holder of this Agreement, by taking or holding the same, consents and agrees that this Agreement, when endorsed in blank, shall be deemed negotiable, and that the holder hereof, when this Agreement shall have been so

endorsed and its transfer recorded on the Company's books, shall be treated by the Company and all other persons dealing with this Agreement as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented by this Agreement. Subject to the first sentence of this Section 11, the transfer of this Agreement shall be recorded on the books of the Company upon receipt by the Company of a notice of transfer in the form attached hereto as Exhibit III (the "Transfer Notice"), at its principal offices and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer. Until the Company receives such Transfer Notice, the Company may treat the registered owner hereof as the owner for all purposes. Notwithstanding anything herein or in any legend to the contrary, the Company shall not require an opinion of counsel in connection with any sale, assignment or other transfer by the Warrantholder of this Warrant (or any portion hereof or any interest herein) or of any shares of Common Stock issued upon any exercise hereof to an affiliate (as defined in Regulation D) of the Warrantholder, provided that such affiliate is an "accredited investor" as defined in Regulation D.

#### **SECTION 12. TAX TREATMENT.**

Capitalized terms used in this Section 12 but not defined in this Warrant shall have the meanings ascribed to such terms in the Loan Agreement. The Warrantholder and the Company acknowledge and agree that (a) this Warrant (and other warrants issued contemporaneously by the Company (collectively, the "Warrants")) and the Loans (and any notes executed and delivered in connection therewith) are intended to be treated as an "investment unit" within the meaning of Section 1273(c)(2) of the Internal Revenue Code of 1986, as amended, and (b) the "issue price" for the interest in any Term Loan Advance held by each Lender and any note issued in connection therewith, shall take into account the fair market value of the Warrants acquired by such Lender on the date of such Term Loan Advance (including for such purpose, any increase in the Warrant Coverage pursuant to any Warrant as a result of such additional Term Loan Advance) as reasonably determined by the Borrower. Each of the Warrantholder and the Company shall prepare and file all federal income tax returns on a basis consistent with the foregoing.

#### **SECTION 13. MISCELLANEOUS.**

(a) Effective Date. The provisions of this Agreement shall be construed and shall be given effect in all respects as if it had been executed and delivered by the Company on the date hereof. This Agreement shall be binding upon any successors or assigns of the Company.

(b) Remedies. In the event of any default hereunder, the non-defaulting party may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including but not limited to an action for damages as a result of any such default, and/or an action for specific performance for any default where the Warrantholder will not have an adequate remedy at law and where damages will not be readily ascertainable.

(c) No Impairment of Rights. The Company will not, by amendment of its Charter or through any other means, avoid or seek to avoid the observance or performance of any of the terms of this Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be reasonably necessary or appropriate in order to protect the rights of the Warrantholder against impairment.

(d) Additional Documents. In the event the Company shall not be required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, the Company agrees to supply such other documents as the Warrantholder may from time to time reasonably request to value this Warrant for Warrantholder's accounting or reporting requirements and/or to evaluate whether to exercise (in cash or a net issuance basis) this Warrant.

(e) Attorneys' Fees. In any litigation, arbitration or court proceeding between the Company and the Warrantholder relating hereto, the prevailing party shall be entitled to reasonable and documented attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Agreement. For the purposes of this Section 12(e), attorneys' fees shall include without limitation fees incurred in connection with the following: (i) contempt proceedings; (ii) discovery; (iii) any motion, proceeding or other activity of any kind in connection with an insolvency proceeding; (iv) garnishment, levy, and debtor and third party examinations; and (v) post-judgment motions and proceedings of any kind, including without limitation any activity taken to collect or enforce any judgment.

(f) Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

(g) Notices. Except as otherwise provided herein, any notice, demand, request, consent, approval, declaration, service of process or other communication that is required, contemplated, or permitted under this Agreement or with respect to the subject matter hereof shall be in writing, and shall be deemed to have been validly served, given, delivered, and received upon the earlier of: (i) personal delivery to the party to be notified, (ii) when sent by email if sent during normal business hours of the recipient, and if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt, and shall be addressed to the party to be notified as follows:

If to the Warrantholder:

[HERCULES CAPITAL, INC.]  
Legal Department  
Attention: Chief Legal Officer  
400 Hamilton Avenue, Suite 310  
Palo Alto, CA 94301  
Email: legal@htgc.com  
Telephone: 650-289-3060

With a copy to:

LATHAM & WATKINS LLP  
Attention: Haim Zaltzman  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111  
Email:  
Telephone:

If to the Company:

KURA ONCOLOGY, INC.  
Attention: Teresa Bair  
12730 High Bluff Drive, Suite 400



San Diego, CA 92130

Email:

Telephone:

With a copy to:

COOLEY LLP

Attention: Charles Bair

10265 Science Center Dr.

San Diego, CA 92121

Email:

Telephone:

or to such other address as each party may designate for itself by like notice.

(h) Entire Agreement; Amendments. This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter hereof, and supersedes and replaces in their entirety any prior proposals, term sheets, letters, negotiations or other documents or agreements, whether written or oral, with respect to the subject matter hereof. None of the terms of this Agreement may be amended except by an instrument executed by each of the parties hereto.

(i) Headings. The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provisions hereof.

(j) Advice of Counsel. Each of the parties represents to each other party hereto that it has discussed (or had an opportunity to discuss) with its counsel this Agreement and, specifically, the provisions of Sections 12(n), 12(o), 12(p), 12(q) and 12(r).

(k) No Strict 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 provisions of this Agreement.

(l) No Waiver. No omission or delay by the Warrantholder at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the Company at any time designated, shall be a waiver of any such right or remedy to which the Warrantholder is entitled, nor shall it in any way affect the right of the Warrantholder to enforce such provisions thereafter during the term of this Agreement.

(m) Survival. All agreements, representations and warranties contained in this Agreement or in any document delivered pursuant hereto shall be for the benefit of the Warrantholder and shall survive the execution and delivery of this Agreement and the expiration or other termination of this Agreement.

(n) Governing Law. This Agreement has been negotiated and delivered to the Warrantholder in the State of California, and shall be deemed to have been accepted by the Warrantholder in the State of California. Delivery of Common Stock to the Warrantholder by the Company under this Agreement is due in the State of California. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

(o) Consent to Jurisdiction and Venue. All judicial proceedings arising in or under or related to this Agreement may be brought in any state or federal court of competent jurisdiction located in the State of California. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (i) consents to personal jurisdiction in Santa Clara County, State of California; (ii) waives any objection as to jurisdiction or venue in Santa Clara County, State of California; (iii) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (iv) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in Section 12(g), and shall be deemed effective and received as set forth in Section 12(g). Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

(p) Mutual Waiver of Jury Trial. Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes arising under or in connection with this Warrant be resolved by a judge applying such applicable laws. EACH OF THE COMPANY AND THE WARRANTHOLDER SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY THE COMPANY AGAINST THE WARRANTHOLDER OR ITS ASSIGNEE OR BY THE WARRANTHOLDER OR ITS ASSIGNEE AGAINST THE COMPANY RELATING TO THIS WARRANT. This waiver extends to all such Claims, including Claims that involve persons or entities other than the Company and the Warrantholder; Claims that arise out of or are in any way connected to the relationship between the Company and the Warrantholder; and any Claims for damages, breach of contract, specific performance, or any equitable or legal relief of any kind, arising out of this Agreement.

(q) Arbitration. If the Mutual Waiver of Jury Trial set forth in Section 12(p) is ineffective or unenforceable, the parties agree that all Claims shall be submitted to binding arbitration in accordance with the commercial arbitration rules of JAMS (the "Rules"), such arbitration to occur before one arbitrator, which arbitrator shall be a retired California state judge or a retired Federal court judge. Such proceeding shall be conducted in Santa Clara County, State of California, with California rules of evidence and discovery applicable to such arbitration. The decision of the arbitrator shall be binding on the parties, and shall be final and nonappealable to the maximum extent permitted by law. Any judgment rendered by the arbitrator may be entered in a court of competent jurisdiction and enforced by the prevailing party as a final judgment of such court.

(r) Pre-arbitration Relief. In the event Claims are to be resolved by arbitration, either party may seek from a court of competent jurisdiction identified in Section 12(o), any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by binding arbitration.

(s) Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts (including by facsimile or electronic delivery (PDF)), and by different parties hereto in separate counterparts, each of which when so delivered shall be deemed an original, but all of which counterparts shall constitute but one and the same instrument.

(t) Specific Performance. The parties hereto hereby declare that it is impossible to measure in money the damages which will accrue to the Warrantholder by reason of the Company's failure to perform any of the obligations under this Agreement and agree that the terms of this Agreement shall be specifically enforceable by the Warrantholder. If the Warrantholder institutes any action or proceeding to specifically enforce the provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense therein that the Warrantholder has an adequate remedy at law, and such person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

(u) Lost, Stolen, Mutilated or Destroyed Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as this Warrant so lost, stolen, mutilated or destroyed. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by anyone.

(v) Legends. To the extent required by applicable laws, this Warrant and the shares of Common Stock issuable hereunder (and the securities issuable, directly or indirectly, upon conversion of such shares of Common Stock, if any) may be imprinted with a restricted securities legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION RELATED THERETO OR, SUBJECT TO SECTION 11 OF THE WARRANT AGREEMENT DATED NOVEMBER 2, 2022, BETWEEN THE COMPANY AND KURA ONCOLOGY, INC., AN OPINION OF COUNSEL (WHICH MAY BE COMPANY COUNSEL) REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR ANY STATE SECURITIES LAWS.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Warrant Agreement to be executed by its officers thereunto duly authorized as of the Effective Date.

COMPANY:

KURA ONCOLOGY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WARRANTHOLDER:

[HERCULES CAPITAL, INC.]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature Page to Warrant Agreement*

**EXHIBIT I**

NOTICE OF EXERCISE

To: \_\_\_\_\_]

- (1) The undersigned Warrantholder hereby elects to purchase [\_\_\_\_\_] shares of the Common Stock of Kura Oncology, Inc., pursuant to the terms of the Warrant Agreement dated November 2, 2022 (the "Warrant Agreement") between Kura Oncology, Inc. and the Warrantholder, and tenders herewith payment of the Purchase Price in full, together with all applicable transfer taxes, if any. [NET ISSUANCE: elects pursuant to Section 3(a) of the Warrant Agreement to effect a Net Issuance.]
- (2) Please issue a certificate or certificates or book-entry credit(s) representing said shares of Common Stock in the name of the undersigned or in such other name as is specified below.

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

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

WARRANTHOLDER:

[HERCULES CAPITAL, INC.]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT II**

**ACKNOWLEDGMENT OF EXERCISE**

The undersigned, Kura Oncology, Inc., hereby acknowledges receipt of the “Notice of Exercise” from [Hercules Capital, Inc.] to purchase [\_\_\_\_] shares of the Common Stock of Kura Oncology, Inc., pursuant to the terms of the Warrant Agreement by and between Kura Oncology, Inc. and the Warrantholder, dated November 2, 2022 (the “Agreement”), and further acknowledges that [\_\_\_\_] shares remain subject to purchase under the terms of the Agreement.

COMPANY:

KURA ONCOLOGY, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT III**  
TRANSFER NOTICE

(To transfer or assign the foregoing Agreement execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Agreement and all rights evidenced thereby are hereby transferred and assigned to

\_\_\_\_\_  
(Please Print)

whose address is \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

\_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_



Charles J. Bair  
T: +1 858 550 6142  
cbair@cooley.com

November 3, 2022

Kura Oncology, Inc.  
12730 High Bluff Drive, Suite 400  
San Diego, CA 92130

Ladies and Gentlemen:

You have requested our opinion, as counsel to Kura Oncology, Inc., a Delaware corporation (the “*Company*”), with respect to certain matters in connection with the offering by the Company of 1,370,171 shares (the “*Shares*”) of the Company’s common stock, par value \$0.0001, pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-251172) (the “*Registration Statement*”), filed with the Securities and Exchange Commission (the “*Commission*”) under the Securities Act of 1933, as amended (the “*Act*”), the prospectus included within the Registration Statement (the “*Base Prospectus*”), and the prospectus supplement dated November 2, 2022, filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations of the Act (together with the Base Prospectus, the “*Prospectus*”).”

In connection with this opinion, we have examined and relied upon the Registration Statement and Prospectus, the Company’s certificate of incorporation and bylaws, each as currently in effect, and originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness of all signatures; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; and the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than by the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion herein is expressed solely with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued against payment therefor in accordance with the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

We consent to the reference to our firm under the caption “Legal Matters” in the Prospectus and to the filing of this opinion as an exhibit to a Current Report on Form 8-K to be filed with the Commission for incorporation by reference into the Registration Statement.

Cooley LLP 10265 Science Center Drive San Diego, CA 92121-1117  
t: +1 858 550 6000 f: +1 858 550-6420 cooley.com





Kura Oncology, Inc.

November 3, 2022

Page Two

This opinion is expressed as of the date hereof, and we disclaim any responsibility to advise you of any changes in the facts stated or assumed herein or of any changes in applicable law.

Sincerely,

Cooley LLP

By: /s/ Charles J. Bair

Charles J. Bair

Cooley LLP 10265 Science Center Drive San Diego, CA 92121-1117

t: +1 858 550 6000 f: +1 858 550-6420 cooley.com

**SECURITIES PURCHASE AGREEMENT**

This Securities Purchase Agreement (this "Agreement") is dated as of November 2, 2022, between Kura Oncology, Inc., a corporation organized under the laws of the State of Delaware (the "Company"), and Bristol-Myers Squibb Company, a corporation organized under the laws of the State of Delaware (the "Purchaser").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, shares of the Company's common stock as more fully described in this Agreement.

WHEREAS, concurrently herewith, the Company and the Purchaser have entered into a Letter Agreement with respect to certain rights granted to the Purchaser by the Company (the "Letter Agreement").

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser agree as follows:

**ARTICLE I.  
DEFINITIONS**

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"Action" shall have the meaning ascribed to such term in Section 3.1(l).

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act.

"Applicable Laws" shall have the meaning ascribed to such term in Section 3.1(u).

"Authorizations" shall have the meaning ascribed to such term in Section 3.1(u).

"Base Prospectus" means the final base prospectus included in the Registration Statement at the time of effectiveness.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which the Trading Market and banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Closing” means the closing of the purchase and sale of Purchased Shares pursuant to Section 2.1.

“Closing Date” means the Trading Day on which all conditions precedent to (i) the Purchaser’s obligations to pay the Subscription Amount and (ii) the Company’s obligations to deliver the Purchased Shares, in each case, have been satisfied or waived, but in no event later than the second (2nd) Trading Day following the date hereof.

“Code” shall have the meaning ascribed to such term in Section 3.1(bb).

“Commission” means the United States Securities and Exchange Commission.

“Common Shares” means the shares of the Company’s common stock, par value \$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Confidential Data” shall have the meaning ascribed to such term in Section 3.1(r).

“Disclosure Time” means, (i) if this Agreement is signed on a day that is not a Trading Day or after 9:00 a.m. (New York City time) and before midnight (New York City time) on any Trading Day, 9:01 a.m. (New York City time) on the Trading Day immediately following the date hereof, and (ii) if this Agreement is signed between midnight (New York City time) and 9:00 a.m. (New York City time) on any Trading Day, no later than 9:01 a.m. (New York City time) on the date hereof.

“Environmental Laws” shall have the meaning ascribed to such term in Section 3.1(z).

“ERISA” shall have the meaning ascribed to such term in Section 3.1(bb).

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

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“FDA” means the U.S. Food and Drug Administration.

“FINRA” shall have the meaning ascribed to such term in Section 3.1(e).

“GAAP” means U.S. generally accepted accounting principles applied on a consistent basis during the periods involved.

“GDPR” shall have the meaning ascribed to such term in Section 3.1(s).

“Global Trade Laws and Regulations” means the U.S. Export Administration Regulations; the U.S. International Traffic in Arms Regulations; the import laws administered by U.S. Customs and Border Protection; the economic sanctions rules and regulations administered by OFAC; the anti-boycott laws and regulations administered by

the U.S. Departments of Commerce and Treasury; the UK Export Control Act 2002; UK Export Control Order 2008/3231; EU Council Regulation 428/2009 (as maintained by the European Union or retained by the United Kingdom); EU Council sanctions regulations, as implemented in EU Member States; sanctions regimes implemented under the UK Sanctions and Anti-Money Laundering Act 2018; Canadian sanctions policies; United Nations sanctions policies; and all relevant regulations made under any of the foregoing.

“Healthcare Laws” shall have the meaning ascribed to such term in Section 3.1(w).

“HIPAA” shall have the meaning ascribed to such term in Section 3.1(s).

“Intellectual Property” shall have the meaning ascribed to such term in Section 3.1(p).

“IT Assets” shall have the meaning ascribed to such term in Section 3.1(r).

“IT Systems and Data” shall have the meaning ascribed to such term in Section 3.1(dd).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Losses” shall have the meaning assigned to such term in Section 4.6(b).

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(m).

“Money Laundering Laws” shall have the meaning ascribed to such term in Section 3.1(qq).

“OFAC” means the U.S. Department of Treasury’s Office of Foreign Asset Control.

“Per Share Purchase Price” equals \$18.2459, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Shares that occur after the date of this Agreement and prior to Closing.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Personal Data” shall have the meaning ascribed to such term in Section 3.1(s).

“Preferred Shares” means the shares in the Company’s preferred stock, par value \$0.0001 per share, issuable in series.

“Privacy Laws” shall have the meaning ascribed to such term in Section 3.1(s).

“Proceeding” means an action, claim, suit, inquiry, notice of violation, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Prospectus Supplement” means the supplement to the Base Prospectus complying with Rule 424(b) of the Securities Act that is filed with the Commission and delivered by the Company to the Purchaser on or prior to Closing, relating to the offer and sale of the Purchased Shares to the Purchaser.

“Purchased Shares” means 1,370,171 Common Shares issuable to the Purchaser pursuant to this Agreement.

“Registration Statement” means the effective registration statement on Form S-3ASR filed with the Commission (File No. 333-251172) pursuant to the Securities Act on December 7, 2020, which became effective automatically upon its filing, relating to the offer and sale from time to time of the Company’s securities, including the Purchased Shares, including amendments, exhibits, schedules and documents incorporated or deemed to be incorporated by reference therein and the documents otherwise deemed to a part thereof pursuant to Rule 430A or 430B under the Securities Act.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Sanctions” shall have the meaning ascribed to such term in Section 3.1(pp).

“Sanctioned Countries” shall have the meaning ascribed to such term in Section 3.1(pp).

“SEC Reports” shall have the meaning ascribed to such term in Section 3.1(i).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Short Sales” means all “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include locating and/or borrowing Common Shares).

“Subscription Amount” means the aggregate amount to be paid by the Purchaser to the Company for the Purchased Shares pursuant to the terms and conditions of this Agreement calculated by multiplying the number of Purchased Shares by the Per Share Purchase Price.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means The Nasdaq Global Select Market (or any successors thereto).

“Transfer Agent” means American Stock Transfer & Trust Company, LLC, and any successor transfer agent of the Company.

## ARTICLE II. PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and the Purchaser agrees to purchase, the Purchased Shares at the Per Share Purchase Price. The Subscription Amount shall be made available for “Delivery Versus Payment” settlement with the Company or its designee. The Company and the Purchaser shall deliver the items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction or waiver of the covenants and conditions set forth in Section 2.2 and Section 2.3, the Closing shall occur remotely or at such physical location as the parties shall mutually agree. Payment of the Subscription Amount for the Purchased Shares shall be made by the Purchaser to the Company by wire transfer of immediately available funds to a bank account designated by the Company against delivery to the Purchaser of the Purchased Shares registered in the Purchaser’s name and address or as otherwise directed to be registered by the Purchaser, including but not limited to delivery through the facilities of The Depository Trust Company Deposit or Withdrawal at Custodian system.

### 2.2 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to the Purchaser the following:

(i) this Agreement duly executed by the Company;

(ii) the Prospectus Supplement;

(iii) a copy of the executed treasury direction to the Transfer Agent instructing the Transfer Agent to deliver the Purchased Shares, registered in the name of the Purchaser or such other registration information as directed by the Purchaser;

(iv) a certificate, dated the Closing Date, signed by an executive officer of the Company (in his or her capacity as an officer and without personal liability), certifying the matters in Sections 2.3(b)(i), (ii) and (iv) below;

(v) a certificate of the secretary of the Company dated as of the Closing Date certifying that (1) attached thereto is a true and complete copy of each of the Company’s constating documents and all resolutions adopted by the Board of Directors of the Company authorizing the execution, delivery and performance of

this Agreement and that all such documents and resolutions are in full force and effect and (2) the incumbency of each officer signing this Agreement and the certificates and the documents to be delivered hereunder;

(vi) the Company's wire instructions, on Company letterhead and signed by the Chief Executive Officer or Chief Financial Officer of the Company;

(vii) a certificate of good standing of the Company, dated within one (1) Business Day of the Closing Date, in form and substance reasonably satisfactory to the Purchaser;

(viii) a customary opinion of the Company's outside legal counsel, dated the Closing Date, relating to the Purchased Shares, in form and substance reasonably satisfactory to the Purchaser; and

(ix) the Purchased Shares (subject to receipt of the Subscription Amount).

(b) On or prior to the Closing Date, the Purchaser shall deliver or cause to be delivered to the Company, the following:

(i) this Agreement duly executed by the Purchaser; and

(ii) the Subscription Amount, with respect to the Purchased Shares purchased by the Purchaser, which shall be made available for "Delivery Versus Payment" settlement with the Company or its designee.

### 2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on the Closing Date of the representations and warranties of the Purchaser contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the Purchaser required to be performed at or prior to the Closing Date shall have been performed; and

(iii) the delivery by the Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The obligations of the Purchaser hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof;

(v) no stop order or cease trade order suspending the effectiveness of the Registration Statement or any part thereof, preventing or suspending the use of the Base Prospectus or the Prospectus Supplement or any part thereof shall have been issued, and no Proceedings for that purpose shall have been initiated or threatened; and

(vi) from the date hereof to the Closing Date, trading in the Common Shares shall not have been suspended by the Commission or the Trading Market, and, at any time prior to the Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of the Purchaser, makes it impracticable or inadvisable to purchase the Purchased Shares at the Closing.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants as of the date hereof and as of the Closing Date to the Purchaser as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) No Subsidiaries. Except as set forth in the SEC Reports, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any corporation, firm, partnership, joint venture, association or other entity.

(b) Organization and Qualification. The Company is an entity duly incorporated, validly existing and in good standing under the laws of the State of Delaware,



with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted and as described in each of the Registration Statement and the Prospectus Supplement. The Company is not in violation or default of any of the provisions of its certificate of incorporation, bylaws or other organizational or charter documents. The Company is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have resulted or reasonably be expected to result, individually or in the aggregate, in: (i) a material adverse effect on the legality, validity or enforceability of this Agreement, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company, or (iii) a material adverse effect on the Company's ability to perform on a timely basis its obligations under this Agreement (any of (i), (ii) or (iii), a "Material Adverse Effect"), and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement by the Company and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith other than in connection with the Required Approvals. This Agreement has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement, the issuance and sale of the Purchased Shares and the consummation by it of the transactions contemplated hereby do not and will not (i) conflict with or violate any provision of the Company's certificate of incorporation, bylaws or other organizational or charter documents, or (ii) contravene or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under any agreement or other instrument binding upon the Company that is material to the Company, or result in the creation of any material Lien upon any of the properties or assets of the Company or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both), or (iii) subject to the Required Approvals, conflict with or result in a material violation of any applicable law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal, and state

securities laws and regulations), or by which any property or asset of the Company is bound or affected. The execution, delivery and performance by the Company of the Letter Agreement and the consummation by it of the transactions contemplated thereby does not and will not (i) conflict with or violate any provision of the Company's certificate of incorporation, bylaws or other organizational or charter documents, or (ii) contravene or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under any agreement or other instrument binding upon the Company that is material to the Company, or result in the creation of any material Lien upon any of the properties or assets of the Company or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both), or (iii) conflict with or result in a material violation of any applicable law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal, and state securities laws and regulations), or by which any property or asset of the Company is bound or affected.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, or the Financial Industry Regulatory Authority ("FINRA"), or other Person in connection with the execution, delivery and performance by the Company of this Agreement, other than: (i) the filings required pursuant to Section 4.2 of this Agreement, (ii) the filing with the Commission of the Prospectus Supplement, (iii) application(s) to each applicable Trading Market for approval for the listing of the Purchased Shares for trading thereon in the time and manner required thereby, and (iv) such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Purchased Shares; Registration. The Purchased Shares are duly authorized and, when issued and paid for in accordance with this Agreement, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens. The Company has prepared and filed the Registration Statement in conformity with the requirements of the Securities Act, including the Base Prospectus, and such amendments and supplements thereto as may have been required to the date of this Agreement. The Registration Statement is effective under the Securities Act and no stop order preventing or suspending the effectiveness of the Registration Statement or suspending or preventing the use of the Prospectus Supplement has been issued by the Commission and no proceedings for that purpose or pursuant to Section 8A under the Securities Act have been instituted or, to the knowledge of the Company, are threatened by the Commission. Promptly after execution and delivery of this Agreement, the Company shall file the Prospectus Supplement with the Commission pursuant to Rule 424(b) within the time period required under Rule 424(b), and in no event later than the Closing Date. At the time the Registration Statement and any amendments thereto became effective, at the date of this Agreement and at the Closing Date, the Registration Statement and any amendments thereto conformed and will conform in all material respects to the requirements of the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading; and the Prospectus Supplement and any amendments or

supplements thereto, as of the date of the Prospectus Supplement or any amendment or supplement thereto and at the Closing Date, conformed and will conform in all material respects to the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder and did not and will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company was at the time of the filing of the Registration Statement and is, as of the date of this Agreement and the Closing, eligible to use an automatically effective registration statement on Form S-3ASR under the Securities Act.

(g) Listing. The Company has filed a Listing of Additional Shares Notification with the Nasdaq Global Select Market with respect to the Purchased Shares.

(h) Capitalization. The capitalization of the Company is as set forth in the SEC Reports. The Company has not issued any securities since its most recently filed audited financial statements, other than pursuant to the exercise of outstanding stock options and the vesting of outstanding restricted stock units under the Company's equity incentive plans and the issuance of securities to service providers pursuant to the Company's Amended and Restated 2014 Equity Incentive Plan and the Company's 2015 Employee Stock Purchase Plan. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by this Agreement. Except as set forth in the SEC Reports, there are no outstanding options, warrants, subscription rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any Common Shares, Preferred Shares or other securities of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional Common Shares, any Preferred Shares or other securities of the Company. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and non-assessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities.

(i) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company (or any predecessor entity thereof) included in the SEC Reports comply in all material respects with applicable accounting

requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(j) Company Not Ineligible Issuer. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the Securities Act) of the Purchased Shares and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rules 164, 405, and 433 under the Securities Act (without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer). Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply, as of the date of such filing, in all material respects with the applicable requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder.

(k) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, (i) there has been no material event, occurrence or development that has been or that could reasonably be expected, individually or in the aggregate, to be adverse to the Company, (ii) the Company has not incurred any material liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company equity incentive plans. Except for the issuance of the Purchased Shares contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its business, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed prior to the date that this representation is made.

(l) Litigation. There is no Proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of this Agreement or the issuance and sale of the Purchased Shares or (ii) could, if there were an unfavorable decision, be or reasonably be expected to be material to the Company. Neither the Company nor any director or officer thereof, nor any fiduciary or administrator for any Company plan, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company.

(m) Absence of Labor Disputes. No labor dispute with the employees of the Company exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers, customers or contractors, which would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

(n) Compliance. Upon the execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Company will not be: (i) in material default under or in material violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a material default by the Company) any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) in material violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) in material violation of any statute, rule, ordinance, regulation or guidance of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters.

(o) Title to Real and Personal Property. The Company has good and marketable title in fee simple (in the case of real property) to, or has valid and marketable rights to lease or otherwise use, all items of real and personal property and assets that are material to the business of the Company, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company or (ii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(p) Title to Intellectual Property. The Company owns, or possesses valid and enforceable licensed rights to use, all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, trade dress, designs, data, database rights, Internet domain names, copyrights, works of authorship, licenses, proprietary information and know-how (including trade secrets and other

unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of its business as currently conducted and as proposed to be conducted (collectively, “Intellectual Property”), and, to the Company’s knowledge, the conduct of its business does not and will not infringe, misappropriate or otherwise conflict in any material respect with any such rights of others. The Intellectual Property of the Company has not been adjudged by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, and the Company is unaware of any facts which would form a reasonable basis for any such adjudication. The Company has not received any notice of any claim of infringement, misappropriation with any intellectual property rights of another, and the Company is unaware of any facts which would form a reasonable basis for any such notice or claim. To the Company’s knowledge: (i) there are no third parties who have rights to any Intellectual Property, except for customary reversionary rights of third-party licensors with respect to Intellectual Property that is disclosed in the SEC Reports as owned by or licensed to the Company; and (ii) there is no infringement by third parties of any Intellectual Property. There is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by others: (A) challenging the Company’s rights in or to any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (B) challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; or (C) asserting that the Company infringes, misappropriates, or otherwise violates, or would, upon the commercialization of any product or service described in the SEC Reports as under development, infringe, misappropriate, or otherwise violate, any intellectual property rights of others, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim. The Company has complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company, and all such agreements are in full force and effect. To the Company’s knowledge, there are no material defects in any of the patents or patent applications included in the Intellectual Property. The Company has taken all reasonable steps to protect, maintain and safeguard their Intellectual Property, including the execution of appropriate nondisclosure, confidentiality agreements and invention assignment agreements and invention assignments with their employees, and to the Company’s knowledge, no employee of the Company is in or has been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement, or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee’s employment with the Company. To the Company’s knowledge, the duty of candor and good faith as required by the United States Patent and Trademark Office during the prosecution of the United States patents and patent applications included in the Intellectual Property have been complied with; and in all foreign offices having similar requirements, all such requirements have been complied with. None of the Company owned Intellectual Property or technology (including information technology and outsourced arrangements) employed by the Company has been obtained or is being used by the Company in violation of any contractual obligation binding on the Company or any of its officers, directors or employees or otherwise in violation of the rights of any persons.

(q) Trade Secrets. The Company has taken reasonable and customary actions to protect its rights in and prevent the unauthorized use and disclosure of material trade secrets and confidential business information (including material confidential source code, ideas, research and development information, know-how, formulas, compositions, technical data, designs, drawings, specifications, research records, records of inventions, test information, financial, marketing and business data, customer and supplier lists and information, pricing and cost information, business and marketing plans and proposals) owned by the Company, and, to the knowledge of the Company, there has been no unauthorized use or disclosure.

(r) IT Assets. Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (i) the computers, software, servers, networks, data communications lines, and other information technology systems owned, licensed, leased or otherwise used by the Company (excluding any public networks) (collectively, the “IT Assets”) operate and perform as is necessary for the operation of the business of the Company as currently conducted and as proposed to be conducted as described in the SEC Reports, and (ii) such IT Assets are not infected by viruses, disabling code or other harmful code. The Company has at all times implemented and maintained all reasonably necessary controls, policies, procedures, and safeguards to maintain and protect its confidential information and the integrity, continuous operation, redundancy and security of all IT Assets and data (including all Personal Data (defined below) sensitive, confidential or regulated data (“Confidential Data”)) used in connection with its business, and there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same.

(s) Data Privacy and Security Laws. The Company is, and at all prior times has been, in compliance in all material respects with all applicable state, federal, and international data privacy and data security laws and regulations, including without limitation HIPAA and the HITECH Act, and the European Union General Data Protection Regulation (“GDPR”) (EU 2016/679) (collectively, the “Privacy Laws”). To address compliance with the Privacy Laws to the extent applicable, the Company has in place, complies with, and takes commercially reasonable steps designed to achieve compliance in all material respects with its policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and transfer of Personal Data. “Personal Data” means (i) a natural person’s name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver’s license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as “personally identifying information” under the Federal Trade Commission Act, as amended; (iii) Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); (iv) “personal data” as defined by GDPR; and (v) any other piece of information that identifies such natural person. At all times, the Company has made all disclosures to users or customers required by applicable Privacy Laws and regulatory rules or requirements, and none of such disclosures have, to the knowledge of the Company, been inaccurate or in violation of any applicable laws and regulatory rules or requirements

in any material respect. The Company further certifies that (a) neither it nor any subsidiary at any time: (i) has received written notice of any actual or potential liability, including, but not limited to security or data privacy breaches or other unauthorized or improper access to, use of, or destruction of its Personal Data owned or controlled by the Company, under or relating to, or actual violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) other than pursuant to its ongoing compliance efforts in the ordinary course of business, is currently conducting, subject to, or paying, in whole or in part, any material investigation, remediation, or other corrective action resulting from the Company's non-compliance with any Privacy Law; or (iii) is a party to any order, decree, settlement agreement, or judgment from a governmental entity that imposes any obligation or liability under any Privacy Law; and (b) it is not aware of any specific events rendering any of the foregoing reasonably likely to occur. The Company is not a "covered entity" or "business associate" as such terms are defined under HIPAA.

(t) No Complaints. There is no complaint to or audit, proceeding, investigation (formal or informal) or claim currently pending against the Company, or to the knowledge of the Company, any of its customers (specific to the customer's use of the products or services of the Company) by any state Attorney General or related office, the Federal Trade Commission, the U.S. Department of Health and Human Services and any office contained therein, or any similar authority in any jurisdiction other than the United States or any other governmental entity, or by any person in respect of the collection, use or disclosure of Personal Data by the Company, and, to the knowledge of the Company, no such complaint, audit, proceeding, investigation or claim is threatened.

(u) FDA Compliance. The Company: (i) is and at all times has been in material compliance with all statutes, rules or regulations of the FDA and other comparable governmental entities applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product under development, manufactured or distributed by the Company ("Applicable Laws"); (ii) has not received any FDA Form 483, notice of adverse finding, warning letter, untitled letter or other correspondence or notice from the FDA or any governmental entity alleging or asserting material noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, exemptions, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("Authorizations"); (iii) possesses all material Authorizations and such Authorizations are valid and in full force and effect and the Company is not in material violation of any term of any such Authorizations; (iv) has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from the FDA or any governmental entity or third party alleging that any product operation or activity is in material violation of any Applicable Laws or Authorizations and has no knowledge that the FDA or any governmental entity or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (v) has not received notice that the FDA or any governmental entity has taken, is taking or intends to take action to limit, suspend, modify or revoke any material Authorizations and has no knowledge that the FDA or any governmental entity is considering such action; and (vi) has filed, obtained, maintained or submitted all material



reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission).

(v) Studies, Tests and Preclinical and Clinical Trials. The studies, tests and preclinical and clinical trials conducted by or on behalf of the Company, to the Company's knowledge, were and, if still ongoing, are being conducted in all material respects in accordance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards and all Authorizations and Applicable Laws, including, without limitation, the Federal Food, Drug and Cosmetic Act and the rules and regulations promulgated thereunder and current Good Clinical Practices and Good Laboratory Practices and any applicable rules, regulations and policies of the jurisdiction in which such trials and studies are being conducted; the descriptions of the results of such studies, tests and trials contained in the SEC Reports are accurate and complete in all material respects and fairly present the data derived from such studies, tests and trials; the Company is not aware of any studies, tests or trials, the results of which the Company believes reasonably call into question the study, test, or trial results described or referred to in the SEC Reports when viewed in the context in which such results are described and the clinical state of development; and, except as disclosed in the SEC Reports, the Company has not received any notices or correspondence from the FDA or any governmental entity requiring the termination or suspension of any studies, tests or preclinical or clinical trials conducted by or on behalf of the Company, other than ordinary course communications with respect to modifications in connection with the design and implementation of such trials, copies of which communications have been made available to you.

(w) Compliance with Health Care Laws. The Company and its officers and directors and, to the Company's knowledge, its employees and agents, are, and at all times have been, in compliance in all material respects with all Health Care Laws. For purposes of this Agreement, "Health Care Laws" means: (i) the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder; (ii) all applicable federal, state, local and foreign health care fraud and abuse laws, including, without limitation, the U.S. Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the U.S. Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal False Statements Law (42 U.S.C. Section 1320a-7b(a)), 18 U.S.C. Sections 286, 287, 1035, 1347, and 1349 the health care fraud criminal provisions under HIPAA, the civil monetary penalties law (42 U.S.C. Section 1320a-7a), the exclusions law (42 U.S.C. Section 1320a-7), the Physician Payments Sunshine Act (42 U.S.C Section 1320-7h), and the laws governing U.S. government funded or sponsored healthcare programs; and (iii) similar local, state, federal, national, supranational and foreign laws the directives and regulations promulgated pursuant to such statutes and any state or non-U.S. counterpart thereof. The Company has not received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any court or arbitrator or governmental or regulatory authority or third party alleging that any product operation or activity is in violation of any Health Care Laws nor, to the Company's knowledge, is any such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action threatened. The Company has filed,

maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Health Care Laws, and all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and accurate on the date filed in all material respects (or were corrected or supplemented by a subsequent submission). Neither the Company nor any of its officers or directors, nor, to the Company's knowledge, its employees or agents is a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any governmental or regulatory authority. Additionally, neither the Company nor any of its employees, officers, directors, or agents has been excluded, suspended or debarred from participation in any U.S. federal health care program or human clinical research or, to the knowledge of the Company, is subject to a governmental inquiry, investigation, proceeding, or other similar action that could reasonably be expected to result in debarment, suspension, or exclusion.

(x) No Undisclosed Relationships. No relationship, direct or indirect, exists between or among the Company, on the one hand, and the directors, officers, stockholders, customers, suppliers or other affiliates of the Company, on the other, that is required by the Securities Act to be described in the SEC Reports and that is not so described in such filings.

(y) Licenses and Permits. To the Company's knowledge, the Company possesses all material licenses, certificates, permits and other authorizations, other than with respect to its Intellectual Property, issued by, and have made all material declarations and filings with, the appropriate and applicable federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of its properties or the conduct of its business as described in SEC Reports; and the Company has not received notice of any material revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course. To the Company's knowledge, no party granting any such licenses, certificates, permits and other authorizations has taken any action to limit, suspend or revoke the same in any material respect. The Company has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission) as required for maintenance of its licenses, certificates, permits and other authorizations that are necessary for the conduct of its business.

(z) Certain Environmental Matters. (i) The Company (x) is in material compliance with all, and has not violated any, applicable federal, state, local and foreign laws (including common law), rules, regulations, requirements, decisions, judgments, decrees, orders and other legally enforceable requirements relating to pollution or the protection of human health or safety, the environment, natural resources, hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"); (y) has received and is in compliance with all material, and has not violated any, permits,

licenses, certificates or other authorizations or approvals required of it under any Environmental Laws to conduct its business; and (z) has not received notice of any actual or potential material liability or obligation under or relating to, or any actual or potential material violation of, any Environmental Laws, including for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice, and (ii) there are no material costs or liabilities associated with Environmental Laws of or relating to the Company; and (iii) (x) there is no proceeding that is pending, or that is known to be contemplated, against the Company under any Environmental Laws in which a governmental entity is also a party, other than such proceeding regarding which it is reasonably believed no monetary sanctions of \$100,000 or more will be imposed, (y) the Company is not aware of any facts or issues regarding compliance with Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that could reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of the Company, and (z) the Company does not anticipate material capital expenditures relating to any Environmental Laws.

(aa) Hazardous Materials. There has been no storage, generation, transportation, use, handling, treatment, Release or threat of Release of Hazardous Materials by, relating to or caused by the Company (or, to the knowledge of the Company, any other entity (including any predecessor) for whose acts or omissions the Company is or would reasonably be expected to be liable) at, on, under or from any property or facility now or previously owned, operated or leased by the Company, or at, on, under or from any other property or facility, in violation of any Environmental Laws or in a manner or amount or to a location that could reasonably be expected to result in any liability under any Environmental Law, except for any violation or liability which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. "Hazardous Materials" means any material, chemical, substance, waste, pollutant, contaminant, compound, mixture, or constituent thereof, in any form or amount, including petroleum (including crude oil or any fraction thereof) and petroleum products, natural gas liquids, asbestos and asbestos containing materials, naturally occurring radioactive materials, brine, and drilling mud, regulated or which can give rise to liability under any Environmental Law. "Release" means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, or migrating in, into or through the environment, or in, into from or through any building or structure.

(bb) Compliance with ERISA. (i) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for which the Company or any member of its "Controlled Group" (defined as any entity, whether or not incorporated, that is under common control with the Company within the meaning of Section 4001(a)(14) of ERISA or any entity that would be regarded as a single employer with the Company under Section 414(b),(c),(m) or (o) of the Internal Revenue Code of 1986, as amended (the "Code")) would have any liability (each, a "Plan") has been maintained in compliance with its terms and the requirements of

any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan, excluding transactions effected pursuant to a statutory or administrative exemption; (iii) for each Plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no Plan has failed (whether or not waived), or is reasonably expected to fail, to satisfy the minimum funding standards (within the meaning of Section 302 of ERISA or Section 412 of the Code) applicable to such Plan; (iv) no Plan is, or is reasonably expected to be, in “at risk status” (within the meaning of Section 303(i) of ERISA) and no Plan that is a “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA is in “endangered status” or “critical status” (within the meaning of Sections 304 and 305 of ERISA) (v) the fair market value of the assets of each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan); (vi) no “reportable event” (within the meaning of Section 4043(c) of ERISA and the regulations promulgated thereunder) has occurred or is reasonably expected to occur; (vii) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified, and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; (viii) neither the Company nor any member of the Controlled Group has incurred, nor reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guarantee Corporation, in the ordinary course and without default) in respect of a Plan (including a “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA); and (ix) none of the following events has occurred or is reasonably likely to occur: (A) a material increase in the aggregate amount of contributions required to be made to all Plans by the Company or its Controlled Group affiliates in the current fiscal year of the Company and its Controlled Group affiliates compared to the amount of such contributions made in the Company’s and its Controlled Group affiliates’ most recently completed fiscal year; or (B) a material increase in the Company’s “accumulated post-retirement benefit obligations” (within the meaning of Accounting Standards Codification Topic 715-60) compared to the amount of such obligations in the Company’s most recently completed fiscal year, except in each case with respect to the events or conditions set forth in (i) through (ix) hereof, as would not, individually or in the aggregate, have a Material Adverse Effect.

(cc) Insurance. The Company has insurance covering its properties, operations, personnel and business, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are generally maintained by companies engaged in the same or similar business and which the Company reasonably believes are adequate to protect the Company and its business; and the Company has not (i) received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business.

(dd) Cybersecurity; Data Protection. (i) There has been no security breach or incident, unauthorized access or disclosure, or other compromise of or relating to the

Company's information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, technology, data and databases (including the data and information of its customers, employees, suppliers, vendors and any third party data maintained, processed or stored by the Company, Personal Data and any such data processed or stored by third parties on behalf of the Company) collectively, "IT Systems and Data"; (ii) the IT Systems and Data are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants; and (iii) the Company has implemented and maintained appropriate controls, policies, procedures, and technical safeguards to maintain and protect its material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and Data (including all Personal Data) reasonably consistent with industry standards and practices or as required by applicable regulatory standards. The Company has been and is presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification.

(ee) Sarbanes-Oxley; Internal Accounting Controls. The Company is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Since the end of the Company's most recent audited fiscal year, there have been (1) no material weaknesses in the Company's internal control over financial reporting (whether or not remediated) and (2) no changes in the Company's internal control over financial reporting that are reasonably likely, individually or in the aggregate, to be material to the Company's internal control over financial reporting.

(ff) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement.

(gg) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Common Shares, will not be or be an Affiliate of, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

(hh) Registration Rights. No Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company, except as otherwise have been validly waived in connection with the filing of the Registration Statement or the Prospectus Supplement.

(ii) Listing and Maintenance Requirements. The Common Shares are registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, at any time since March 6, 2015, received notice from any Trading Market on which the Common Shares is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is, and at all times since March 6, 2015, has been, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Common Shares are currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(jj) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by this Agreement, the Company confirms that neither it nor any other Person acting on its behalf has provided the Purchaser or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information that is not otherwise disclosed in the Prospectus Supplement or the SEC Reports. The Company understands and confirms that the Purchaser will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchaser regarding the Company, its business and the transactions contemplated hereby, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that the Purchaser makes or has made no representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(kk) Payment of Taxes. All federal, state, local and foreign income tax returns of the Company required by law to be filed have been filed and all material taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The Company has filed all other material tax returns

that are required to have been filed by it pursuant to applicable foreign, state, local or other law, and has paid all material taxes due pursuant to such returns or pursuant to any assessment received by the Company, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company.

(ll) Foreign Corrupt Practices. Neither the Company nor any director or officer of the Company, nor, to the knowledge of the Company, any Affiliate, employee, agent or other person acting on behalf of the Company, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company (or made by any person acting on its behalf of which the Company is aware) that is in violation of law, (iv) violated in any material respect any provision of FCPA; or (v) taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) in order to influence official action of such government official, inducing such government official to do or omit to do an act in violation of his or her official duty, or to secure any improper advantage, or to any person in violation of any applicable anti-corruption laws.

(mm) Accountants. The Company's accountants who certified the financial statements and supporting schedules included or incorporated by reference in the Registration Statement, the Prospectus Supplement or otherwise in the SEC Reports is an independent registered public accountant firm within the meaning of the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board (United States) with respect to the Company.

(nn) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of an arm's length purchaser with respect to this Agreement and the transactions contemplated hereby. The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any advice given by the Purchaser or any of their respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is merely incidental to the Purchaser's purchase of the Purchased Shares. The Company further represents to the Purchaser that the Company's decision to enter into this Agreement has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(oo) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has taken, directly or indirectly, any action designed to cause or to

result in the stabilization or manipulation of the price of any security of the Company in a violation of Regulation M under the Exchange Act.

(pp) Sanctions. Neither the Company nor any director or officer of the Company, nor, to the Company's knowledge, any Affiliate, employee or agent of the Company, is an individual or entity that is, or is owned or controlled by one or more Persons that are: (i) currently the target of any sanctions administered or enforced by the U.S. government, including without limitation by the Office of Foreign Assets Control of the U.S. Treasury Department, the United Nations Security Council, the European Union, or Her Majesty's Treasury, including, designation on OFAC's Specially Designated Nationals and Blocked Persons List; and the consolidated list of Persons, Groups and Entities subject to EU Financial Sanctions, as implemented by the EU Common Foreign & Security Policy (collectively, "Sanctions"), (ii) the subject of current, pending, or, to the Company's knowledge, threatened investigation, inquiry or enforcement proceedings for violations of Global Trade Laws and Regulations, or the recipient of a written notice, request, or citation for any actual or potential noncompliance with Global Trade Laws and Regulations; or (iii) located, organized or resident in a country or territory that is the subject of country-wide or territory-wide Sanctions (as of the date of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic region of Ukraine, and the so-called Luhansk People's Republic region of Ukraine) ("Sanctioned Countries"). The Company will not directly or knowingly indirectly use the proceeds of the sale of the Purchased Shares, or knowingly lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partners or other Person, to fund or facilitate any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of comprehensive Sanctions, in each case in violation of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transactions contemplated hereby, whether as an agent, advisor, investor or otherwise) of Sanctions. The Company has not knowingly engaged in, is not now knowingly engaged in, and will not knowingly engage in, any unlawful dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of comprehensive Sanctions.

(qq) Money Laundering. The operations of the Company are and have been conducted at all times in material compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the Bank Secrecy Act as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable money laundering statutes and the applicable rules and regulations of jurisdictions where the Company conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.



(rr) Statements. Neither the Company nor any of its officers, employees or agents has made any untrue statement of a material fact or fraudulent statement to any governmental authority or failed to disclose a material fact required to be disclosed to such governmental authority. All material reports, documents, claims and notices required or requested to be filed, maintained or furnished under any Applicable Regulatory Law by Company, have been so filed, maintained or furnished and were complete and correct in all material respects.

3.2 Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. The Purchaser is an entity duly incorporated, validly existing and in good standing under the laws of the State of Delaware with the requisite power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery of this Agreement and performance by the Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement has been duly executed by the Purchaser, and when delivered by the Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Understandings or Arrangements. The Purchaser is acquiring the Purchased Shares as principal for its own account and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Purchased Shares (this representation and warranty not limiting the Purchaser's right to sell the Purchased Shares in compliance with applicable federal and state securities laws).

(c) Experience of the Purchaser. The Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Purchased Shares, and has so evaluated the merits and risks of such investment. The Purchaser is able to bear the economic risk of an investment in the Purchased Shares and, at the present time, is able to afford a complete loss of such investment.

(d) Access to Information. The Purchaser acknowledges that it has had the opportunity to review this Agreement (including all exhibits and schedules thereto) and the SEC Reports and has been afforded, (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Purchased Shares and the merits

and risks of investing in the Purchased Shares; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(e) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, the Purchaser has not, nor has any Person acting on behalf of or pursuant to any understanding with the Purchaser, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that the Purchaser first received a preliminary term sheet (written or oral) from the Company or any other Person representing the Company setting forth the proposed terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Other than to the Purchaser's representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates, the Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to locating or borrowing shares in order to effect Short Sales or similar transactions in the future.

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect the Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby.

#### **ARTICLE IV.** OTHER AGREEMENTS OF THE PARTIES

4.1 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Purchased Shares for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the Closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

4.2 Securities Laws Disclosure; Publicity. The Company shall (a) by the Disclosure Time, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Current Report on Form 8-K, including this Agreement as an exhibit thereto, with the Commission within the time required by the Exchange Act, in each case in the form mutually agreed to by the Company and the Purchaser. At any time up to the Closing Date, the Company and the Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor the Purchaser shall issue any such press release nor otherwise make any such public statement without the prior written consent

of the Company, with respect to any press release of the Purchaser, or without the prior written consent of the Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication.

4.3 Use of Proceeds. The Company will use the net proceeds as described in the Prospectus Supplement under the section entitled “Use of Proceeds.”

4.4 Listing of Common Shares. The Company hereby agrees to use commercially reasonable efforts to maintain the listing or quotation of the Common Shares on the Trading Market on which it is currently listed.

4.5 Lock-Up. The Purchaser hereby agrees that it will hold and will not sell any of the Purchased Shares (or otherwise make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale of the Purchased Shares) until January 1, 2023. Notwithstanding the foregoing, this Section 4.5 will not preclude (a) distributions of Purchased Shares to general or limited partners, members, shareholders, Affiliates or wholly-owned subsidiaries of the Purchaser or any investment fund or other entity controlled or managed by the Purchaser; *provided*, in each case, that following any such transfer such Purchased Shares will remain subject to the provisions of this Section 4.5; or (b) transfers pursuant to a *bona fide* third party tender offer for all outstanding Common Shares, merger, consolidation or other similar transaction made to all holders of the Company’s securities involving a change of control of the Company (including the entering into any lock-up, voting or similar agreement pursuant to which the Purchaser may agree to transfer, sell, tender or otherwise dispose of Purchased Shares or other such securities in connection with such transaction, or vote any Purchased Shares or other such securities in favor of any such transaction); *provided*, that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Purchased Shares shall remain subject to the provisions of this Section 4.5.

4.6 Survival and Indemnification.

(a) The representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing of the transactions contemplated by this Agreement for the applicable statute of limitations.

(b) The Company agrees to indemnify and hold harmless the Purchaser and its Affiliates, and their respective directors, officers, trustees, members, managers, employees, investment advisors and agents, from and against any and all losses, claims, damages, liabilities and expenses (including without limitation reasonable and documented attorney fees and disbursements and other documented out-of-pocket expenses reasonably incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, “Losses”) to which such Person may become subject as a result of any breach of representation, warranty, covenant or agreement made by or to be performed on the part of the Company under this Agreement, and will reimburse any such Person for all such amounts as they are

incurred by such Person solely to the extent such amounts have been finally judicially determined not to have resulted from such Person's actual fraud or willful misconduct.

(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; *provided* that any Person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (A) the indemnifying party has agreed in writing to pay such fees or expenses, (B) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such Person or (C) in the reasonable judgment of any such Person, based upon written advice of its counsel, a conflict of interest exists between such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person); and *provided, further*, that the failure of any indemnified party to give written notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that 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 of such claim or litigation. No indemnified party will, except with the consent of the indemnifying party, consent to entry of any judgment or enter into any settlement.

#### ARTICLE V. MISCELLANEOUS

5.1 Fees and Expenses. At the Closing, the Company shall reimburse Purchaser for all reasonable and documented out-of-pocket fees and expenses (up to a maximum of \$150,000 for all such reasonable and documented out-of-pocket fees and expenses), including without limitation with respect to Purchaser's advisors, legal counsel, accountants and other experts, if any, and all other reasonable and documented expenses incurred by Purchaser incident to the negotiation, preparation, and execution, of this Agreement and the transactions contemplated hereby. The Company shall pay all Transfer Agent fees, stamp taxes and other taxes and duties levied in connection with the delivery of the Purchased Shares to the Purchaser.

5.2 Entire Agreement. This Agreement and the Letter Agreement contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into this Agreement and the Letter Agreement.

5.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice provided pursuant to this Agreement constitutes, or contains, material, non-public information regarding the Company, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

5.4 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchaser, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any amendment effected in accordance with this Section 5.4 shall be binding upon the Purchaser and the Company.

5.5 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party (other than by merger).

5.7 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

5.8 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective Affiliates, directors, officers, stockholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, borough of Manhattan. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough

of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Agreement), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of this Agreement, then the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5.9 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

5.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.11 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Purchaser and the Company will be entitled to specific performance under this Agreement. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in this Agreement and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.12 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.13 **Construction.** The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise this Agreement and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments thereto. In addition, each and every reference to share prices and shares of common stock in this Agreement shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the common stock that occur after the date of this Agreement.

**5.14 WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**KURA ONCOLOGY, INC.**

By: /s/ Troy E. Wilson  
Name: Troy E. Wilson, Ph.D., J.D.  
Title: President and Chief Executive Officer

Address for Notices:

12730 High Bluff Drive, Suite 400  
San Diego, California 92130  
Attention: Teresa Bair, J.D.  
Email:

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

Cooley LLP  
10265 Science Center Drive  
San Diego, California 92121-1117  
Attention: Charles Bair  
Email:

**BRISTOL-MYERS SQUIBB COMPANY**

By: /s/ Elizabeth Mily  
Name: Elizabeth Mily  
Title: Executive Vice President, Strategy and Business Development

Address for Notice:

Route 206 & Province Line Road  
Princeton, New Jersey 08543-4000  
Attention: Executive Vice President, Strategy and Business Development  
Email: bd-investments@bms.com

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

Route 206 & Province Line Road  
Princeton, New Jersey 08543-4000  
Attention: Senior Vice President, Transactions Law  
Email: transactionslegal@bms.com

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

Covington & Burling LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
Attention: Andrew Ment  
Email:

*[Signature Page to Securities Purchase Agreement]*



## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT is made and dated as of November 1, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”) and is entered into by and among Kura Oncology, Inc., a Delaware corporation, and each of its Subsidiaries from time to time party hereto (hereinafter collectively referred to as “Borrower”), the several banks and other financial institutions or entities from time to time parties to this Agreement (collectively, referred to as the “Lenders”) and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and the Lenders (in such capacity, the “Agent”).

### RECITALS

A. Borrower has requested the Lenders make available to Borrower a loan in an aggregate principal amount of up to One Hundred Twenty-Five Million Dollars (\$125,000,000) (the “Term Loan”); and

B. The Lenders are willing to make the Term Loan on the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, Borrower, Agent and the Lenders agree as follows:

#### SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Unless otherwise defined herein, the following capitalized terms shall have the following meanings:

“Account Control Agreement(s)” means any agreement entered into by and among the Agent, Borrower and a third party bank or other institution (including a Securities Intermediary) in which Borrower maintains a Deposit Account or an account holding Investment Property and which perfects Agent’s first priority security interest in the subject account or accounts.

“ACH Authorization” means the ACH Debit Authorization Agreement in substantially the form of Exhibit H, which account numbers shall be redacted for security purposes if and when filed publicly by Borrower.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, line of business or division or other unit of operation of a Person, (b) the acquisition of fifty percent (50%) or more of the Equity Interests of any Person, whether or not involving a merger, consolidation or similar transaction with such other Person, or otherwise causing any Person to become a Subsidiary of Borrower, or (c) the acquisition of, or the right to use, develop or sell (in each case, including through any exclusive license), any product, product line or Intellectual Property of or from any other Person.

“Advance(s)” means a Term Loan Advance.

“Advance Date” means the funding date of any Advance.

“Advance Request” means a request for an Advance submitted by Borrower to Agent in substantially the form of Exhibit A, which account numbers shall be redacted for security purposes if and when filed publicly by Borrower.

“Affiliate” means (a) any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question, (b) any Person directly or indirectly owning, controlling or holding with power to vote twenty percent (20%) or more of the outstanding voting securities of another Person, or (c) any Person twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held by another Person with power to vote such securities. As used in the definition of “Affiliate,” the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” means this Loan and Security Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Amortization Date” means November 1, 2024; *provided* however, (i) if the Interest Only Milestone 1 Conditions are satisfied, then May 1, 2025, (ii) if the Interest Only Milestone 2 Conditions are satisfied, then November 1, 2025, and (iii) if Borrower has achieved the Approval Milestone, then November 1, 2026.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption, including without limitation the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010 and other similar legislation in any other jurisdictions.

“Anti-Terrorism Laws” means any laws, rules, regulations or orders relating to terrorism or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“Approval Milestone” means Borrower shall have obtained approval of the NDA for Ziftomenib from the FDA, with an approved label that is generally consistent with the label sought in Borrower’s NDA, subject to reasonable verification by Agent (including any supporting documentation requested by Agent).

“Blocked Person” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“Borrower Products” means all products, software, service offerings, technical data or technology currently being designed, manufactured or sold by Borrower or which Borrower intends to sell, license, or distribute in the future including any products or service offerings under development, collectively, together with all products, software, service offerings, technical data or technology that have been sold, licensed or distributed by Borrower since its incorporation.

“Borrower’s Books” means Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, state, local and foreign tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Borrower’s Market Capitalization” means, for any given date of determination, an amount equal to (a) the average of the daily volume weighted average price of Common Stock as reported for each the five (5) trading days preceding such date of determination (it being understood that a “trading day” shall mean a day on which shares of Common Stock trade on the NASDAQ in an ordinary trading session) multiplied by (b) the total number of issued and outstanding shares of Common Stock that are issued and outstanding on the date of the determination and listed on the NASDAQ. Such determination shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

“Business Day” means any day other than Saturday, Sunday and any other day on which banking institutions in the State of California are closed for business.

“Cash” means all cash, cash equivalents and liquid funds.

“Change in Control” means any event, transaction, or occurrence as a result of which any “person” (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing forty-nine percent (49%) or more of the combined voting power of Borrower’s then outstanding securities. In addition, the occurrence of any “change of control”, “fundamental change”, “make-whole fundamental change” or any comparable term under and as defined in any indenture governing any Permitted Convertible Debt shall constitute a “Change in Control”.

“Closing Date” means the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Common Stock” means the common stock, par value \$0.0001 per share, of Kura Oncology.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any Indebtedness, capital lease, dividend, letter of credit or other obligation of another, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any Hedging Agreement; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed, without duplication of the primary obligation, to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement. For the avoidance of doubt, no Permitted Bond Hedge Transaction or Permitted Warrant Transaction will be considered a Contingent Obligation of Borrower.

“Copyright License” means any written agreement granting any right to use any Copyright or Copyright registration, now owneded or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

“Copyrights” means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States of America, any State thereof, or of any other country.

“Corporate Collaborations” means any corporate collaborations, including without limitation: cost-sharing arrangements with collaborative partners, collaborative work on manufacturing process improvements and academic or development collaborations for discovery research projects, arrangements with contract research organizations, preclinical work, animal studies or investigator-sponsored clinical trials or proof of concept studies.

“Cross-Default Reference Obligation” has the meaning assigned to such term in the definition of “Permitted Convertible Debt”.

“Default” means any event, circumstance or condition that has occurred or exists, that would, with the passage of time or the requirement that notice be given or both, become an Event of Default.

“Deposit Accounts” means any “deposit accounts,” as such term is defined in the UCC, and includes any checking account, savings account, or certificate of deposit.

“Disclosure Letter” means that certain letter, dated the date hereof, delivered by Borrower to Agent.

“Disqualified Equity Interests” means any Equity Interests that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are exchangeable), or upon the happening of any event or condition (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests) pursuant to a sinking fund obligation or otherwise on or prior to one hundred eighty (180) days following the Term Loan Maturity Date at the time such Equity Interests are issued (it being understood that if any such redemption is in part, only such part coming into effect prior to one hundred eighty (180) days following the Term Loan Maturity Date shall constitute Disqualified Equity Interests) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Secured Obligations), (b) are redeemable at the option (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Secured Obligations) of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, on or prior to one hundred eighty (180) days following the Term Loan Maturity Date at the time such Equity Interests are issued, (c) provide for scheduled payments of dividends in cash or cash equivalents on or prior to one hundred eighty (180) days following the Term Loan Maturity Date at the time such Equity Interests are issued, or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is one hundred eighty (180) days after the Term Loan Maturity Date.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States of America, any State thereof, the District of Columbia, or any other jurisdiction within the United States of America.

“Due Diligence Fee” means \$50,000, which fee has been paid to the Lenders prior to the Closing Date, and shall be deemed fully earned on such date regardless of the early termination of this Agreement.

“Equity Interests” means, with respect to any Person, the capital stock, partnership or limited liability company interest, or other equity securities or equity ownership interests of such Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Excluded Accounts” means (i) any Deposit Account that is used solely as a payroll account for the employees of Borrower or any of its Subsidiaries or the funds in which consist solely of funds held in trust for any director, officer or employee of such Borrower or Subsidiary or any employee benefit plan maintained by such Borrower or Subsidiary or funds representing deferred compensation for the directors and employees of such Borrower or Subsidiary, collectively not to exceed 200% of the amount to be paid in the ordinary course of business in the then-next payroll cycle (including, without limitation, any bonus payments), (ii) escrow accounts, trust accounts, restricted cash accounts and other Deposit Accounts or Securities Accounts, in each case holding assets that are pledged or otherwise encumbered by Permitted Liens (but only to the extent required to be excluded pursuant to the underlying documents entered into in connection with such Permitted Liens in the ordinary course of business), (iii) accounts containing no (zero) balance so long as the balance in each such account is swept no less frequently than once every Business Day into a Deposit Account subject to an Account Control Agreement, or (iv) any Deposit Account with a balance less than \$750,000; provided, that the aggregate balance of all such Deposit Accounts excluded pursuant to this clause (iv) shall at no time exceed \$750,000.

“FDA” means the U.S. Food and Drug Administration or any successor thereto.

“FDCA” means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., as amended from time to time, and the rules and regulations promulgated thereunder.

“Foreign Subsidiary” means any Subsidiary other than a Domestic Subsidiary.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time.

“Healthcare Laws” means all health care laws applicable to Borrower or any Subsidiary and to the ownership, testing, development, sale, marketing, manufacture, packaging, processing, use, distribution, storage, import, export or disposal of Borrower’s or any Subsidiary’s products or product candidates, including but not limited to, the FDCA, the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under HIPAA (42 U.S.C. Section 1320d et seq.), the exclusion laws (42 U.S.C. § 1320a-7), HIPAA and similar state and foreign privacy and data security laws such as the European Union General Data Protection Regulation, Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), and any and all other comparable state, local, federal or foreign health care laws and the regulations promulgated pursuant to such laws, each as amended from time to time.

“Hedging Agreement” means any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to

protect Borrower or its Subsidiaries against fluctuation in interest rates, currency exchange rates or commodity price.

“HIPAA” means the U.S. Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 17921 et seq.), and all regulations promulgated thereunder.

“IND” means an investigational new drug application submitted to the FDA pursuant to 21 C.F.R. § 312 for allowance to initiate human clinical trials in the United States, including all amendments that may be filed or submitted thereto.

“Indebtedness” means indebtedness of any kind, including (a) all indebtedness for borrowed money or the deferred purchase price of property or services (excluding trade credit entered into in the ordinary course of business due within one-hundred twenty (120) days), including reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, (d) Disqualified Equity Interests, (e) “earnouts”, deferred purchase price and similar payment obligations or continuing obligations of any nature arising out of purchase and sale contracts (excluding any contingent or performance-based milestones, earnouts, or royalties), and (f) all Contingent Obligations. For the avoidance of doubt no Permitted Warrant Transaction shall be considered Indebtedness of Borrower.

“Initial Facility Charge” means One Hundred Twenty Five Thousand Dollars (\$125,000.00), which is payable to the Lenders in accordance with Section 4.1(f).

“Insolvency Proceeding” means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Intellectual Property” means all of Borrower’s Copyrights; Trademarks; Patents; Licenses; trade secrets and inventions; mask works; Borrower’s applications therefor and reissues, extensions, or renewals thereof; and Borrower’s goodwill associated with any of the foregoing, together with Borrower’s rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

“Interest Only Milestone 1 Conditions” shall mean satisfaction of each of the following events, subject to reasonable verification by Agent: (a) no Default or Event of Default shall have occurred; (b) satisfaction of the Tranche 2 Milestone; and (c) Borrower has closed an arm’s length strategic partnership transaction permitted hereunder relating to Borrower’s core Intellectual Property, in which Borrower receives unrestricted (including, not subject to any redemption, clawback, escrow or similar encumbrance or restriction) upfront net proceeds of at least Twenty Million Dollars (\$20,000,000) in the period between October 13, 2022 and October 15, 2024, in each case subject to reasonable verification by Agent (including any supporting documentation requested by Agent).

“Interest Only Milestone 2 Conditions” shall mean satisfaction of each of the following events, subject to reasonable verification by Agent: (a) no Default or Event of Default shall have occurred; (b) satisfaction of the Interest Only Milestone 1 Conditions; (c) Borrower has announced Positive Clinical Data from the KOMET-001 registration-enabling trial evaluating Ziftomenib for the treatment of patients with acute myeloid leukemia; and (d) the FDA has accepted for filing an NDA submission seeking approval for Ziftomenib, in each case subject to reasonable verification by Agent (including any supporting documentation requested by Agent).

“Investment” means (a) any beneficial ownership (including stock, partnership, limited liability company interests, or other securities) of or in any Person, (b) any loan, advance or capital contribution to any Person, or (c) any Acquisition.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreements” means for each Subsidiary, a completed and executed Joinder Agreement in substantially the form attached hereto as Exhibit F.

“KO-2806” means Borrower’s next-generation farnesyl transferase inhibitor product candidate KO-2806.

“Kura Oncology” means Kura Oncology, Inc., a Delaware corporation.

“License” means any Copyright License, Patent License, Trademark License or other license of rights or interests.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, and any lease in the nature of a security interest.

“Loan” means the Advances made under this Agreement.

“Loan Documents” means this Agreement, the promissory notes (if any), the ACH Authorization, the Account Control Agreements, the Joinder Agreements, all UCC financing statements, the Warrant and any other documents executed in connection with the Secured Obligations or the transactions contemplated hereby, as the same may from time to time be amended, modified, supplemented or restated.

“Material Adverse Effect” means a material adverse effect upon: (i) the business, operations, properties, assets or financial condition of Borrower and its Subsidiaries taken as a whole; or (ii) the ability of Borrower to perform or pay the Secured Obligations in accordance with the terms of the Loan Documents, or the ability of Agent or the Lenders to enforce any of its rights or remedies with respect to the Secured Obligations; or (iii) the Collateral or Agent’s Liens on the Collateral or the priority of such Liens.

“Maximum Term Loan Amount” means One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00).

“NDA” means (i) a new drug application submitted to the FDA pursuant to 21 U.S.C. § 355 seeking authorization to market a new drug in the United States and (ii) all supplements and amendments that may be filed or submitted thereto.

“Non-Core Intellectual Property” means any Intellectual Property not material to Borrower’s business upon prior consultation with Agent. For the avoidance of doubt, any Intellectual Property related to or in connection with Ziftomenib, Tipifarnib and KO-2806 shall not constitute Non-Core Intellectual Property.

“OFAC” means the U.S. Department of Treasury Office of Foreign Assets Control.

“OFAC Lists” mean, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“Patent License” means any written agreement granting any right with respect to any invention on which a Patent is in existence or a Patent application is pending, in which agreement Borrower now holds or hereafter acquires any interest.

“Patents” means all letters patent of, or rights corresponding thereto, in the United States of America or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States of America or any other country.

“Permits” means all certifications, registrations, licenses, permits, franchises, approvals, clearances, exemptions, authorizations or consents of any governmental entity, necessary for or used in the conduct or operation Borrower’s or any Subsidiary’s business.

“Permitted Acquisition” means (a) the Acquisition described on Schedule 1B(ii) of the Disclosure Letter with an aggregate cash consideration not to exceed \$25,000,000 and (b) any Acquisition (including Corporate Collaborations constituting Acquisitions), which is conducted in accordance with the following requirements:

(i) of a business or Person or product engaged in a line of business similar, related or complementary to that of Borrower or its Subsidiaries;

(ii) if such Acquisition is structured as a stock acquisition, then the Person so acquired shall either (i) become a wholly-owned Subsidiary of Borrower or of a Subsidiary and Borrower shall comply, or cause such Subsidiary to comply, with 7.13 hereof or (ii) such Person shall be merged with and into Borrower (with Borrower being the surviving entity);

(iii) if such Acquisition is structured as the acquisition or in-licensing of assets, such assets shall be acquired by Borrower, and shall be free and clear of Liens other than Permitted Liens;

(iv) Borrower shall have delivered to the Lenders not less than fifteen (15) nor more than forty five (45) days prior to the date of such Acquisition, notice of such Acquisition together with pro forma projected financial information (to the extent available), copies of then-current drafts of all material documents relating to such acquisition, and historical financial statements (to the extent available) for such acquired entity, division or line of business, in each case in form and substance reasonably satisfactory to the Lenders and demonstrating compliance with the covenants set forth in Section 7.19 hereof on a pro forma basis as if the Acquisition occurred on the first day of the most recent measurement period;

(v) both immediately before and after such Acquisition no Default or Event of Default shall have occurred and be continuing; and

(vi) the aggregate cash consideration paid or payable in respect of such Acquisition (excluding any contingent or performance-based milestones, earnouts, or royalties), together with all other Permitted Acquisitions made during the term of this Agreement, shall not be greater than Ten Million Dollars (\$10,000,000); provided, that, for the avoidance of doubt, the remainder of such purchase price may be paid in Equity Interests of the Borrower or the net cash proceeds of any substantially concurrent offering of Equity Interests of the Borrower, in each case, to the extent permitted hereunder.



“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) relating to the Common Stock (or other securities or property following a merger event or other change of the Common Stock) purchased by Borrower in connection with the issuance of any Permitted Convertible Debt and as may be amended in accordance with its terms; *provided* that the net purchase price of any such call option transaction less the amount received by Borrower in respect of any Permitted Warrant Transaction in connection with such issuance of Permitted Convertible Debt shall not exceed fifteen percent (15%) of the gross proceeds to Borrower from such issuance of Permitted Convertible Debt; *provided further* that terms, conditions and covenants of each such call option transaction are customary for agreements of such type, as determined in good faith by the Borrower.

“Permitted Convertible Debt” means Indebtedness of Borrower that is convertible into a fixed number (subject to customary anti-dilution adjustments, “make-whole” increases and other customary changes thereto), at the option of the holders thereof, of shares of Common Stock (or other securities or property following a merger event or other change of the Common Stock), cash or any combination thereof; *provided* that such Indebtedness shall (a) not require any scheduled amortization or otherwise require payment of principal prior to, or have a scheduled maturity date, earlier than, ninety-one (91) days after the Term Loan Maturity Date (other than the requirement to deliver consideration in satisfaction of conversions), (b) be (i) unsecured or (ii) (A) expressly subordinated to the Secured Obligations pursuant to market standard subordination terms for underwritten offerings of senior subordinated convertible notes and (B) specifically designate this Agreement and all Secured Obligations as “designated senior indebtedness” or similar term so that the subordination terms referred to in the preceding clause (A) specifically refer to such notes as being subordinated to the Secured Obligations pursuant to such subordination terms, (c) be on terms and conditions customary for Indebtedness of such type, as determined in good faith by the Borrower, and (d) not be guaranteed by any Subsidiary of Borrower that has not executed a joinder; *provided further*, that any cross-default or cross-acceleration event of default (each howsoever defined) provision contained therein that relates to indebtedness or other payment obligations of Borrower (or any of its Subsidiaries) (such indebtedness or other payment obligations, a “Cross-Default Reference Obligation”) contains a cure period of at least thirty (30) calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under such Cross-Default Reference Obligation results in an event of default under such cross-default or cross-acceleration provision.

“Permitted Indebtedness” means:

- (i) Indebtedness of Borrower in favor of the Lenders or Agent arising under this Agreement or any other Loan Document;
- (ii) Indebtedness existing on the Closing Date which is disclosed in Schedule 1A to the Disclosure Letter;
- (iii) Indebtedness of up to Five Hundred Thousand Dollars (\$500,000) outstanding at any time secured by a Lien described in clause (vii) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed the cost of the Equipment or software or other intellectual property financed with such Indebtedness;
- (iv) Indebtedness to trade creditors incurred in the ordinary course of business (due within one-hundred twenty (120) days), including such Indebtedness incurred in the ordinary course of business with corporate credit cards, purchase cards and debit cards and other similar instruments in an amount not to exceed One Million Dollars (\$1,000,000) at any time outstanding;

(v) Indebtedness that also constitutes a Permitted Investment or is secured by a Permitted Lien, and Indebtedness consisting of obligations under deferred or contingent consideration arrangements (including, without duplication, earn-outs, milestone payments, royalties and other contingent or deferred obligations as long as such obligations are not evidenced by any "seller notes" or similar Indebtedness in connection with Permitted Acquisitions);

(vi) Subordinated Indebtedness;

(vii) reimbursement obligations in connection with letters of credit that are secured by Cash and issued on behalf of Borrower or a Subsidiary thereof in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) at any time outstanding,

(viii) other Indebtedness in an amount not to exceed One Million Dollars (\$1,000,000) at any time outstanding,

(ix) intercompany Indebtedness as long as each of the obligor and the obligee under such Indebtedness is the Borrower or a Subsidiary that has executed a Joinder Agreement;

(x) Permitted Convertible Debt not to exceed Two Hundred Fifty Million Dollars (\$250,000,000) in aggregate principal amount at any one time outstanding;

(xi) Indebtedness with respect to a Permitted Royalty Transaction that (a) is subordinated to the Secured Obligations pursuant to a subordination or intercreditor agreement on terms and conditions reasonably satisfactory to Agent, (b) does not have a scheduled maturity date earlier than one hundred eighty (180) days after the Term Loan Maturity Date, and (c) is in an aggregate amount not less than Fifty Million Dollars (\$50,000,000);

(xii) Licenses permitted pursuant to the definition of Permitted Transfers or otherwise permitted hereunder, solely to the extent involving the incurrence of Indebtedness;

(xiii) Guarantees of the obligations of suppliers, customers and licensees of the Borrower incurred to third parties for the purpose of enabling such suppliers, customers and licensees to purchase products that will be supplied, or incorporated into products that will be supplied, to the Borrower by such suppliers, customers or licensees, in an amount not to exceed One Million Dollars (\$1,000,000) in the aggregate;

(xiv) Financing of insurance premiums in the ordinary course of business;

(xv) Advances or deposits received in the ordinary course of business from customers or vendors;

(xvi) Indebtedness with respect to performance bonds, appeal bonds and other similar obligations, in an aggregate amount not to exceed \$500,000 at any time outstanding;

(xvii) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(xviii) obligations under any Hedging Agreement incurred for bona-fide risk management purposes in the ordinary course of business and not for speculative purposes;

(xix) Indebtedness assumed pursuant to any Permitted Acquisition; provided that (i) no such Indebtedness shall exceed 10% of the total purchase price paid in connection with such Permitted Acquisition, (ii) the aggregate outstanding principal amount of Indebtedness permitted pursuant to this clause (xx) shall not exceed \$1,000,000 at any time outstanding and (iii) no such Indebtedness was created or incurred in connection with, or in contemplation of, such Permitted Acquisition; or

(xx) extensions, refinancings and renewals of any items of Permitted Indebtedness, provided that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon the Borrower or its Subsidiary, as the case may be.

“Permitted Investment” means:

(i) Investments existing on the Closing Date which are disclosed in Schedule 1B(i) to the Disclosure Letter;

(ii) (a) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof currently having a rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (b) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor’s Corporation or Moody’s Investors Service, (c) certificates of deposit issued by any bank with assets of at least \$500,000,000 maturing no more than one year from the date of investment therein, (d) money market accounts and (e) other Investments described in Borrower’s investment policy (as amended or otherwise modified from time to time as approved by Kura Oncology’s board of directors and the Agent);

(iii) repurchases of stock from former or current employees, directors, or consultants of Borrower under the terms of applicable repurchase agreements at the original issuance price of such securities in an aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000) in any fiscal year, provided that no Event of Default has occurred, is continuing or would exist immediately after giving effect to any such repurchase;

(iv) Investments accepted in connection with Permitted Transfers;

(v) Investments (including debt obligations) (a) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent or doubtful obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower’s business and (b) consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(vi) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, provided that this subparagraph (vi) shall not apply to Investments of Borrower in any Subsidiary;

(vii) Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of Borrower pursuant to employee stock purchase plans or other similar agreements approved by Kura Oncology’s board of directors, not to exceed, in combination with any Investments made pursuant to clause (viii) of this definition, Five Hundred Thousand Dollars (\$500,000) in the aggregate in any fiscal year;

(viii) Investments consisting of travel advances in the ordinary course of business, not to exceed, in combination with any Investments made pursuant to clause (vii) of this definition, Five Hundred Thousand Dollars (\$500,000) in the aggregate in any fiscal year;

(ix) Investments in newly-formed Subsidiaries, provided that each such Subsidiary enters into a Joinder Agreement promptly after its formation by Borrower and execute such other documents as shall be reasonably requested by Agent;

(x) Investments in Foreign Subsidiaries not to exceed \$500,000 during any fiscal year or as approved in advance in writing by Agent;

(xi) Permitted Acquisitions;

(xii) Borrower's entry into (including payments of premiums in connection therewith), and the performance of obligations under, and the receipt of Common Stock upon termination, settlement or unwind of, any Permitted Bond Hedge Transactions and Permitted Warrant Transactions in accordance with their terms;

(xiii) joint ventures or strategic alliances in the ordinary course of Borrower's business, provided that any cash Investments by Borrower do not exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate in any fiscal year;

(xiv) Hedging Agreements permitted under the definition of Permitted Indebtedness;

(xv) Permitted Licenses, to the extent constituting Investments; and

(xvi) additional Investments that do not exceed One Million Dollars (\$1,000,000) in the aggregate.

"Permitted License" means licenses and similar arrangements for the use of Intellectual Property (including Corporate Collaborations not constituting Acquisitions) satisfying each of the following conditions: (a) [reserved], (b) such license could not result in a legal transfer of title of the licensed property, (c) such license is entered into with non-Affiliate third parties and constitutes an arms-length transaction on commercially reasonable terms, and (d) such license is (w) non-exclusive, (x) exclusive as to territory but only as to discrete geographical areas outside of the United States of America in the ordinary course of business, (y) exclusive solely with respect to Non-Core Intellectual Property or (z) exclusive as to any territory including the United States solely with respect to any Corporate Collaborations; provided that, solely with respect to this clause (d)(z), at all times after the consummation of and prior to the termination of any such transaction the Borrower is in compliance with Section 7.19(a)(ii).

"Permitted Liens" means:

(i) Liens in favor of Agent or the Lenders;

(ii) Liens existing on the Closing Date which are disclosed in Schedule 1C to the Disclosure Letter;

(iii) Liens for Taxes, fees, assessments or other governmental charges or levies, either not yet due or being contested in good faith by appropriate proceedings diligently conducted; provided, that Borrower maintains adequate reserves therefor on Borrower's Books in accordance with GAAP (to the extent required thereby);

(iv) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of Borrower's business and imposed without action of such parties; provided, that (A) the payment thereof is not yet required and (B) the aggregate amount of the obligations secured by such liens does not at any time exceed Five Hundred Thousand Dollars (\$500,000);

(v) Liens arising from judgments, decrees or attachments in circumstances which do not constitute an Event of Default hereunder;

(vi) the following deposits, to the extent made in the ordinary course of business: deposits to secure the performance obligations (including by way of deposits to secure letters of credit issued to secure the same) under agreements with contract research organizations (CROs) or other similar commercial contracts, commercial supply and/or manufacturing agreements, deposits under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds;

(vii) Liens on Equipment or software or other intellectual property constituting purchase money Liens and Liens in connection with capital leases securing Indebtedness permitted in clause (iii) of "Permitted Indebtedness";

(viii) Liens incurred in connection with Subordinated Indebtedness;

(ix) leasehold interests in leases or subleases (whether as lessor or lessee thereunder) and licenses or sublicenses granted in the ordinary course of business and not interfering in any material respect with the business of the licensor;

(x) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due;

(xi) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets);

(xii) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms;

(xiii) easements, servitudes, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property;

(xiv) Permitted Licenses;

(xv) Liens solely on the royalty interests purchased pursuant to a Permitted Royalty Transaction and proceeds thereof and Intellectual Property being financed by such facility;

(xvi) (A) Liens on Cash or government securities securing obligations permitted under clause (vii) of the definition of Permitted Indebtedness and (B) security deposits in connection with

real property leases, the combination of (A) and (B) in an aggregate amount not to One Million Dollars (\$1,000,000) at any time;

(xvii) Liens on Cash securing obligations under corporate credit cards permitted under clause (iv) of the definition of Permitted Indebtedness;

(xviii) Liens in favor of financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that (i) such accounts are permitted by this Agreement and (ii) Agent has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts other than Excluded Accounts;

(xix) Liens incurred in connection with sales, transfers, licenses, sublicenses, leases, subleases or other dispositions of assets in the ordinary course of business and permitted by Section 7.8 and, in connection therewith, customary rights and restrictions contained in agreements relating to such transactions pending the completion thereof or during the term thereof, and any option or other agreement to sell, transfer, license, sublicense, lease, sublease or dispose of an asset permitted by Section 7.8;

(xx) Liens in the nature of deposits, or liens on deposit accounts, to secure (i) the performance of tenders, bids, trade and commercial contracts, licenses and leases, statutory obligations, surety bonds, performance bonds, bank guaranties and other obligations of a like nature incurred in the ordinary course of business (including earnest money deposits in respect of any asset acquisition) or (ii) indemnification obligations relating to any disposition; provided that, in each case, such Liens do not secure Indebtedness for borrowed money and are incurred in the ordinary course of business;

(xxi) good faith deposits required in connection with any Permitted Acquisition in the ordinary course of business;

(xxii) to the extent constituting Liens, escrow arrangements securing indemnification obligations associated with any Permitted Acquisition;

(xxiii) Liens securing Indebtedness described in clause (xix) of the definition of Permitted Indebtedness; provided that (i) such Lien is not created in contemplation of or in connection with such Permitted Acquisition pursuant to which such Indebtedness was assumed, (ii) such Lien shall not apply to any other property or assets of Borrower or any Subsidiary other than the assets subject to such Liens immediately prior to the consummation of such Permitted Acquisition, (iii) such Lien shall be limited to specific assets and not all assets or substantially all assets of Borrower or any Subsidiary and (iv) such Lien shall secure only those obligations that it secured immediately prior to the consummation of such Permitted Acquisition;

(xxiv) additional Liens not otherwise permitted hereunder in an aggregate amount not to exceed One Million Dollars (\$1,000,000);  
and

(xxv) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (i) through (xxiv) above; provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

“Permitted Royalty Transaction” means any synthetic royalty participation (and not royalty purchases or buyouts) in the ordinary course of business and on terms, in each case, reasonably satisfactory to Agent, as long as (i) such transaction does not interfere with the security interest granted to Agent pursuant to this Agreement, (ii) such transaction does not result in a transfer of title to any Intellectual Property, (iii) such transaction does not result in a transfer of any Rights to Payment of any Intellectual Property, (iv) the beneficiary is Borrower or a Subsidiary that has executed and delivered to Agent a Joinder Agreement pursuant to Section 7.13 and (v) all fees and payments with respect to such transaction (including, without limitation, with respect to the underlying Intellectual Property and Rights to Payment) are payable to Borrower or such Subsidiary, as applicable, and made to an Account subject to an Account Control Agreement.

“Permitted Transfers” means:

- (i) sales, transfers or other dispositions of Inventory in the ordinary course of business,
- (ii) Permitted Licenses;
- (iii) Permitted Royalty Transactions;
- (iv) dispositions of worn-out, obsolete or surplus Equipment at fair market value in the ordinary course of business and of Intellectual Property not material to Borrower’s business in the ordinary course of business;
- (v) use or transfer of Cash in the ordinary course of business in a manner not prohibited by the terms of this Agreement;
- (vi) Transfers by and among Borrower and any Subsidiary that has executed a Joinder Agreement;
- (vii) Transfers constituting the making of Permitted Investments or the granting of Permitted Liens;
- (viii) sale or issuance of Equity Interests of Kura Oncology in the ordinary course of business not constituting a Change of Control and otherwise in a manner not prohibited by the terms of this Agreement;
- (ix) Transfers in connection with the termination or unwind of any Permitted Bond Hedge Transaction;
- (x) Retirements of abandoned or expired Intellectual Property not material to Borrower’s business; and
- (xi) other Transfers of assets having a fair market value of not more than Five Hundred Thousand Dollars (\$500,000) in the aggregate in any fiscal year.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to Common Stock (or other securities or property following a merger event or other change of the Common Stock) and/or cash (in an amount determined by reference to the price of such Common Stock) sold by Borrower substantially concurrently with any purchase by Borrower of a related Permitted Bond Hedge Transaction and as may be amended in

accordance with its terms; provided that (x) that the terms, conditions and covenants of each such call option transaction are customary for agreements of such type, as determined in good faith by the Borrower and (y) such call option transaction would be classified as an equity instrument in accordance with GAAP.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, other entity or government.

“Positive Clinical Data” means, with respect to a clinical trial, Borrower shall have issued a press release announcing that (i) such clinical trial has achieved its protocol-specified primary efficacy endpoint with statistical significance; and (ii) the investigational product under evaluation was well tolerated, in each case subject to reasonable verification by Agent (including any supporting documentation reasonably requested by Agent).

“Qualified Cash” means Cash held by Borrower subject to an Account Control Agreement.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Receivables” means (i) all of Borrower’s Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, letters of credit, proceeds of any letter of credit, and Letter of Credit Rights, and (ii) all customer lists, software, and business records related thereto.

“Redemption Conditions” means, with respect to any payment of cash in respect of the principal amount of any Permitted Convertible Debt, satisfaction of each of the following events: (a) at the time of such redemption, no Default or Event of Default shall exist or result therefrom, and (b) both immediately before and at all times after such redemption, Borrower’s Qualified Cash shall be not less than 150% of the outstanding Secured Obligations.

“Required Lenders” means at any time, the holders of more than 50% of the aggregate unpaid principal amount of the Term Loan Advances then outstanding.

“Sanctioned Country” means, at any time, a country or territory which is the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“SBA Funding Date” means each date on which a Lender which is an SBIC funds any portion of the Term Loan.



“Secured Obligations” means Borrower’s obligations under this Agreement and any Loan Document (other than the Warrant), including any obligation to pay any amount now owing or later arising.

“Subordinated Indebtedness” means Indebtedness subordinated to the Secured Obligations in amounts and on terms and conditions satisfactory to Agent in its reasonable discretion and subject to a subordination agreement in form and substance satisfactory to Agent in its sole discretion.

“Subsequent Financing” means the closing of any bona fide Borrower financing event with the primary purpose of raising capital which becomes effective after the Closing Date in which Borrower offers to sell its Equity Interests.

“Subsidiary” means an entity, whether a corporation, partnership, limited liability company, joint venture or otherwise, in which Borrower owns or controls, either directly or indirectly, 50% or more of the outstanding voting securities, including each entity listed on Schedule 1 to the Disclosure Letter.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any governmental authority, including any interest, additions to tax or penalties applicable thereto.

“Term Commitment” means as to any Lender, the obligation of such Lender, if any, to make a Term Loan Advance to Borrower in a principal amount not to exceed the amount set forth under the heading “Term Commitment” opposite such Lender’s name on Schedule 1.1.

“Term Loan Advance” means each Tranche 1 Advance, Tranche 2 Advance, Tranche 3 Advance, Tranche 4 Advance and any other Term Loan funds advanced under this Agreement.

“Term Loan Interest Rate” means for any day a per annum rate of interest equal to the greater of either (i) the prime rate as reported in The Wall Street Journal minus 6.25%, plus 8.65%, and (ii) 8.65%.

“Term Loan Maturity Date” means November 1, 2027; provided that if such day is not a Business Day, the Term Loan Maturity Date shall be the immediately preceding Business Day.

“Tipifarnib” means Borrower’s clinical-stage farnesyl transferase inhibitor product candidate tipifarnib.

“Trademark License” means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

“Trademarks” means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States of America, any State thereof or any other country or any political subdivision thereof.

“Tranche 1 Expiration Date” means September 15, 2023.

“Tranche 2 Expiration Date” means March 15, 2024.

“Tranche 2 Facility Charge” means one half of one percent (0.50%) of the Tranche 2 Commitment, which is payable to the Lenders in accordance with Section 4.2(e).

“Tranche 2 Milestone” means satisfaction of each of the following events, subject to reasonable verification by Agent: (a) no Default or Event of Default shall have occurred; (b) Borrower has announced Positive Clinical Data from the phase 1b study evaluating Ziftomenib, clinicaltrials.gov identifier #NCT04067336, for the treatment of relapsed/refractory acute myeloid leukemia and has dosed the first patient in a registration-enabling trial, in each case subject to reasonable verification by Agent (including any supporting documentation requested by Agent); and (c) either (x) Borrower has drawn the Tranche 1 Advance in full or (y) the Tranche 1 Expiration Date has passed.

“Tranche 2 Milestone Date” means the date on which Borrower achieves the Tranche 2 Milestone.

“Tranche 3 Expiration Date” means December 15, 2024.

“Tranche 3 Facility Charge” means one half of one percent (0.50%) of the Tranche 3 Commitment, which is payable to the Lenders in accordance with Section 4.2(f).

“Tranche 3 Milestone” means satisfaction of each of the following events, subject to reasonable verification by Agent: (a) no Default or Event of Default shall have occurred; (b) satisfaction of the Interest-Only Milestone 1; (c) the registration-enabling trial evaluating Ziftomenib for the treatment of acute myeloid leukemia remains ongoing; (d) Borrower has submitted an IND with respect to KO-2806 and the FDA has allowed Borrower to proceed with clinical studies under such IND; (e) a phase 2 study evaluating the combination of a proprietary farnesyl transferase inhibitor and another targeted therapy has been initiated, in each case subject to reasonable verification by Agent (including any supporting documentation requested by Agent); and (f) either (x) Borrower has drawn the Tranche 1 Advance and Tranche 2 Advance in full or (y) the Tranche 2 Expiration Date has passed.

“Tranche 3 Milestone Date” means the date on which Borrower achieves the Tranche 3 Milestone.

“Tranche 4 Facility Charge” means one half of one percent (0.50%) of the Tranche 4 Commitment, which is payable to the Lenders in accordance with Section 4.2(g).

“UCC” means the Uniform Commercial Code as the same is, from time to time, in effect in the State of California; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as the same is, from time to time, in effect in a jurisdiction other than the State of California, then the term “UCC” shall mean the Uniform Commercial Code as in effect, from time to time, in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“Warrant” means any warrant entered into in connection with the Loan, as may be amended, restated or modified from time to time.

“Ziftomenib” means Borrower’s clinical-stage product candidate ziftomenib, the international nonproprietary name for KO-539.

1.2 The following terms are defined in the Sections or subsections referenced opposite such terms:

Defined Term	Section
<b>Agent</b>	Preamble
<b>Assignee</b>	11.14
<b>Borrower</b>	Preamble
<b>Claims</b>	11.11
<b>Collateral</b>	3.1
<b>Confidential Information</b>	11.13
<b>End of Term Charge</b>	2.6
<b>Event of Default</b>	9
<b>Financial Statements</b>	7.1
<b>Indemnified Person</b>	6.3
<b>Lenders</b>	Preamble
<b>Liabilities</b>	6.3
<b>Maximum Rate</b>	2.3
<b>Open Source License</b>	5.10
<b>Participant Register</b>	11.8
<b>Prepayment Charge</b>	2.5
<b>Publicity Materials</b>	11.19
<b>Register</b>	11.7
<b>Rights to Payment</b>	3.1
<b>SBA</b>	7.16
<b>SBIC</b>	7.16
<b>SBIC Act</b>	7.16
<b>Tranche 1 Maximum Amount</b>	2.2(a)(ii)
<b>Tranche 1A Advance</b>	2.2(a)
<b>Tranche 1B Advance</b>	2.2(a)
<b>Tranche 2 Advance</b>	2.2(a)
<b>Tranche 3 Advance</b>	2.2(a)
<b>Tranche 4 Advance</b>	2.2(a)

1.3 Unless otherwise specified, all references in this Agreement or any Annex or Schedule hereto to a “Section,” “subsection,” “Exhibit,” “Annex,” or “Schedule” shall refer to the corresponding Section, subsection, Exhibit, Annex, or Schedule in or to this Agreement or the Disclosure Letter, as applicable. Unless otherwise specifically provided herein, any accounting term used in this Agreement or the other Loan Documents shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP, consistently applied; provided that, no effect shall be given to Accounting Standards Codification 842, Leases (or any other Accounting Standards Codification having similar result or effect) (and related interpretations) to the extent any lease (or similar arrangement) would be required to be treated as a capital lease thereunder where such lease (or arrangement) would have been treated as an operating lease under GAAP as in effect immediately prior to the effectiveness of such Accounting Standards Codification. Unless otherwise defined herein or in the other Loan Documents, terms that are used herein or in the other Loan Documents and defined in the UCC shall have the meanings given to them in the UCC. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable

event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

1.4 Notwithstanding anything to the contrary in this Agreement or any other Loan Document, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. For the avoidance of doubt, and without limitation of the foregoing, Permitted Convertible Debt shall at all times be valued at the full stated principal amount thereof and shall not include any reduction or appreciation in value of the shares deliverable upon conversion thereof.

## **SECTION 2. THE LOAN**

2.1 [Reserved]

2.2 Term Loan.

(a) Advances:

(i) Subject to the terms and conditions of this Agreement, the Lenders will severally (and not jointly) make in an amount not to exceed its respective Term Commitment, and Borrower agrees to draw, a Term Loan Advance of at least Ten Million Dollars (\$10,000,000) but not to exceed Twenty-Five Million Dollars (\$25,000,000) (the "Tranche 1 Maximum Amount") on the Closing Date (the "Tranche 1A Advance").

(ii) If the drawn amount of the Tranche 1A Advance is less than the Tranche 1 Maximum Amount, subject to the terms and conditions of this Agreement, beginning on the Closing Date and continuing through the Tranche 1 Expiration Date, Borrower may request and the Lenders shall severally (and not jointly) make an additional Term Loan Advance in a principal amount equal to the difference between the amount of the Tranche 1A Advance drawn on the Closing Date and the Tranche 1 Maximum Amount, in minimum increments of Five Million Dollars (\$5,000,000) (the "Tranche 1B Advance", and together with the Tranche 1A Advance, each, a "Tranche 1 Advance").

(iii) Subject to the terms and conditions of this Agreement, beginning on the Tranche 2 Milestone Date and continuing through the Tranche 2 Expiration Date, Borrower may request and the Lenders shall severally (and not jointly) make an additional Term Loan Advance in a principal amount of Thirty-Five Million Dollars (\$35,000,000), in minimum increments of Five Million Dollars (\$5,000,000) (the "Tranche 2 Advance").

(iv) Subject to the terms and conditions of this Agreement, beginning on the Tranche 3 Milestone Date and continuing through the Tranche 3 Expiration Date, Borrower may request and the Lenders shall severally (and not jointly) make an additional Term Loan Advance in a principal amount of Forty Million Dollars (\$40,000,000), in minimum increments of Five Million Dollars (\$5,000,000) (the "Tranche 3 Advance").

(v) Subject to the terms and conditions of this Agreement and conditioned on approval by the Lenders' investment committee in its sole and unfettered discretion, on or before the Tranche 3 Expiration Date, Borrower may request an additional Term Loan Advance in a principal amount of Twenty-Five Million Dollars (\$25,000,000), in minimum increments of Five Million Dollars (\$5,000,000) (the "Tranche 4 Advance"). The aggregate outstanding Term Loan Advances may be up to the Maximum Term Loan Amount.

(b) Advance Request. To obtain a Term Loan Advance, Borrower shall complete, sign and deliver an Advance Request (at least one (1) Business Day before the Closing Date and at least five (5) Business Days before each Advance Date other than the Closing Date) to Agent. The Lenders shall fund the Term Loan Advance in the manner requested by the Advance Request provided that each of the conditions precedent set forth in Section 4 and applicable to such Term Loan Advance is satisfied as of the requested Advance Date.

(c) Interest. The principal balance shall bear interest thereon from such Advance Date at the Term Loan Interest Rate based on a year consisting of 360 days, with interest computed daily based on the actual number of days elapsed. The Term Loan Interest Rate will float and change on the day the prime rate changes from time to time.

(d) Payment. Borrower will pay accrued and unpaid interest on each outstanding Term Loan Advance on the first Business Day of each month, beginning the month after the applicable Advance Date for such Term Loan Advance. Commencing with the Amortization Date, and continuing on the first Business Day of each month until the Term Loan Maturity Date, Borrower shall repay the aggregate principal balance of the Term Loan Advances that are outstanding on the day immediately preceding the Amortization Date, in equal monthly installments of principal and interest (mortgage style) beginning on the Amortization Date and continuing on the first Business Day of each month thereafter until the Secured Obligations (other than inchoate indemnity or reimbursement obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) are repaid. The entire Term Loan principal balance and all accrued but unpaid interest hereunder, shall be due and payable on the Term Loan Maturity Date. Borrower shall make all payments under this Agreement without setoff, recoupment or deduction and regardless of any counterclaim or defense. If a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately preceding Business Day. The Lenders will initiate debit entries to Borrower's account as authorized on the ACH Authorization (i) on each payment date of all periodic obligations payable to the Lenders under each Term Loan Advance and (ii) reasonable and documented out-of-pocket legal fees and costs incurred by Agent or the Lenders in connection with Section 11.12 of this Agreement; provided that, with respect to clause (i) above, in the event that the Lenders or Agent inform Borrower in writing that the Lenders will not initiate a debit entry to Borrower's account for a certain amount of the periodic obligations due on a specific payment date, Borrower shall pay to the Lenders (or to Agent, for the ratable benefit of the Lenders) such amount of periodic obligations in full in immediately available funds on such payment date; provided, further, that, with respect to clause (i) above, if the Lenders or Agent inform Borrower in writing that the Lenders will not initiate a debit entry as described above later than the date that is three (3) Business Days prior to such payment date, Borrower shall pay to the Lenders (or to Agent, for the ratable benefit of the Lenders) such amount of periodic obligations in full in immediately available funds on the date that is three (3) Business Days after the date on which the Lenders or Agent notify Borrower of such; provided, further, that, with respect to clause (ii) above, in the event that the Lenders or Agent informs Borrower that the Lenders will not initiate a debit entry to Borrower's account for certain amount of such out-of-pocket legal fees and costs incurred by Agent or the Lenders, Borrower shall pay to the Lenders such amount in full

in immediately available funds within five (5) Business Days of Agent or the Lenders furnishing to Borrower an invoice for such out-of-pocket legal fees and costs incurred by Agent or the Lenders.

2.3 Maximum Interest. Notwithstanding any provision in this Agreement or any other Loan Document, it is the parties' intent not to contract for, charge or receive interest at a rate that is greater than the maximum rate permissible by law that a court of competent jurisdiction shall deem applicable hereto (which under the laws of the State of California shall be deemed to be the laws relating to permissible rates of interest on commercial loans) (the "Maximum Rate"). If a court of competent jurisdiction shall finally determine that Borrower has actually paid to the Lenders an amount of interest in excess of the amount that would have been payable if all of the Secured Obligations had at all times borne interest at the Maximum Rate, then such excess interest actually paid by Borrower shall be applied as follows: first, to the payment of the Secured Obligations consisting of the outstanding principal; second, after all principal is repaid, to the payment of the Lenders' accrued interest, costs, reasonable and documented expenses, professional fees and any other Secured Obligations; and third, after all Secured Obligations are repaid, the excess (if any) shall be refunded to Borrower.

2.4 Default Interest. In the event any payment is not paid on the scheduled payment date (other than a failure to pay due solely to an administrative or operational error of Agent or the Lenders or Borrower's bank if Borrower had the funds to make the payment when due and makes the payment within three (3) Business Days following Borrower's knowledge of such failure to pay), an amount equal to five percent (5%) of the past due amount shall be payable on demand. In addition, upon the occurrence and during the continuation of an Event of Default hereunder, all outstanding Secured Obligations, including principal, interest, compounded interest, and reasonable and documented out-of-pocket professional fees, shall bear interest at a rate per annum equal to the rate set forth in Section 2.2(c) plus four percent (4%) per annum. In the event any interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded at the rate set forth in Section 2.2(c) or Section 2.4, as applicable.

2.5 Prepayment. At its option, Borrower may prepay all or a portion of the outstanding Advances by paying the entire principal balance (or such portion thereof), all accrued and unpaid interest thereon, together with a prepayment charge equal to the following percentage of the Advance amount being prepaid: with respect to each Advance, if such Advance amounts are prepaid in any of the first thirty-six (36) months following the Closing Date, 1.50% and thereafter, 0% (the "Prepayment Charge"). If at any time Borrower elects to make a prepayment, and at such time, there are outstanding Advances under multiple Tranches, the Prepayment Charge shall be determined by applying the amount of such prepayment in the following order: first, to the outstanding principal amount (and accrued but unpaid interest thereon) of Advances outstanding under the Tranche with the latest initial funding date; second, to the outstanding principal amount (and accrued but unpaid interest thereon) of Advances outstanding under the Tranche with the next latest initial funding date and so on until the entire principal balance of all Advances made hereunder (and all accrued but unpaid interest thereon) is paid in full. Borrower agrees that the Prepayment Charge is a reasonable calculation of the Lenders' lost profits in view of the difficulties and impracticality of determining actual damages resulting from an early repayment of the Advances. Borrower shall prepay the outstanding amount of all principal and accrued interest through the prepayment date and the Prepayment Charge upon the occurrence of a Change in Control or any other prepayment hereunder. Notwithstanding the foregoing, Agent and the Lenders agree to waive the Prepayment Charge if Agent and the Lenders (in their sole and absolute discretion) agree in writing to refinance the Advances prior to the Term Loan Maturity Date. Any amounts paid under this Section shall be applied by Agent to the then unpaid amount of any Secured Obligations (including principal and interest) in such order and priority as Agent may choose in its sole discretion. In connection with any

prepayment of all outstanding Secured Obligations in accordance with the terms herein, Borrower may request to terminate this Agreement and the Term Commitments upon such repayment of all outstanding Secured Obligations by written notice to Agent. For the avoidance of doubt, if a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately preceding Business Day.

2.6 End of Term Charge. On the earliest to occur of (i) the Term Loan Maturity Date, (ii) the date that Borrower prepays the outstanding Secured Obligations (other than any inchoate indemnity or reimbursement obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) in full, or (iii) the date that the Secured Obligations become due and payable, Borrower shall pay the Lenders a charge in an amount equal to 6.05% of the greater of (a) the Tranche 1 Maximum Amount or (b) the aggregate principal amount of Advances actually made pursuant to this Agreement (the "End of Term Charge"). Notwithstanding the required payment date of such End of Term Charge, it shall be deemed earned by the Lenders as of the Closing Date. For the avoidance of doubt, if a payment hereunder becomes due and payable on a day that is not a Business Day, the due date thereof shall be the immediately preceding Business Day.

2.7 Pro Rata Treatment. Each payment (including prepayment) on account of any fee and any reduction of the Term Loan Advances shall be made pro rata according to the Term Commitments of the relevant Lender.

2.8 Taxes; Increased Costs. Borrower, the Agent and the Lenders each hereby agree to the terms and conditions set forth on Addendum 1 attached hereto.

2.9 Treatment of Prepayment Charge and End of Term Charge. Except as otherwise required by applicable Tax law, Borrower agrees that any Prepayment Charge and any End of Term Charge payable shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, and Borrower agrees that it is reasonable under the circumstances currently existing and existing as of the Closing Date. The Prepayment Charge and the End of Term Charge shall also be payable in the event the Secured Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure, or by any other means. Borrower expressly waives (to the fullest extent it may lawfully do so) the provisions of any present or future statute or law that prohibits or may prohibit the collection of the foregoing Prepayment Charge and End of Term Charge in connection with any such acceleration. Borrower agrees (to the fullest extent that each may lawfully do so): (a) each of the Prepayment Charge and the End of Term Charge is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (b) each of the Prepayment Charge and the End of Term Charge shall be payable notwithstanding the then prevailing market rates at the time payment is made; (c) there has been a course of conduct between the Lenders and Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Charge and the End of Term Charge as a charge (and not interest) in the event of prepayment or acceleration; and (d) Borrower shall be estopped from claiming differently than as agreed to in this paragraph. Borrower expressly acknowledges that its agreement to pay each of the Prepayment Charge and the End of Term Charge to the Lenders as herein described was on the Closing Date and continues to be a material inducement to the Lenders to provide the Term Loan Advances.

### **SECTION 3. SECURITY INTEREST**

3.1 As security for the prompt and complete payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, Borrower grants to Agent a security interest in all of Borrower's right, title, and interest in, to and under all of Borrower's personal property and other assets including without limitation the following (except as set forth herein) whether now existing or hereafter acquired (collectively, the "Collateral"): (a) Receivables; (b) Equipment; (c) Fixtures; (d) General Intangibles (other than Intellectual Property); (e) Inventory; (f) Investment Property; (g) Deposit Accounts; (h) Cash; (i) Goods; (j) Chattel Paper; (k) Documents; (l) Instruments; (m) Letter-of-Credit Rights; (n) Commercial Tort Claims and all other tangible and intangible personal property of Borrower whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Borrower and wherever located, and any of Borrower's property in the possession or under the control of Agent; and, to the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing; provided, however, that the Collateral shall include all Accounts and General Intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the Intellectual Property (the "Rights to Payment"). Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of the date of this Agreement, include the Intellectual Property to the extent necessary to permit perfection of Agent's security interest in the Rights to Payment.

3.2 Notwithstanding the broad grant of the security interest set forth in Section 3.1, above, the Collateral shall not include (a) any property, right or asset held by Borrower to the extent that a grant of a security interest therein is prohibited by any Requirement of Law of a Governmental Authority or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property, right or asset, (b) nonassignable licenses or contracts, or licenses or contracts which by their terms require consent to assignment from the licensor thereof or another party or provide that an assignment or grant of a security interest therein would violate or invalidate such license or contract or create a right of termination in favor of any other party thereto (other than to the extent that any such term would be rendered ineffective pursuant to applicable law, including, without limitation, Sections 9406, 9407 and 9408 of the UCC); (c) any cash collateral deposit subject to a Permitted Lien hereunder, if the grant of a security interest with respect to such property pursuant to this Agreement would be prohibited by the agreement creating such Permitted Lien or would otherwise constitute a default thereunder or create a right of termination a party thereto (other than Borrower), provided that upon the termination and release of such cash collateral, such property shall automatically be included in the Collateral; (d) any Excluded Account, (e) interests in joint ventures that constitute Permitted Investments pursuant to customary restrictions and conditions contained in agreements governing such joint ventures in the ordinary course of business, provided that Borrower has exercised its good faith best efforts to not agree to such contractual limitations and (f) assets as to Agent and Borrower agree that the costs of obtaining or perfecting such security interest are excessive in relation to the benefit to the Lenders of the security to be afforded thereby.

3.3 The security interest granted in Section 3.1 shall continue until the Secured Obligations (other than any inchoate indemnity or reimbursement obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and Agent has no further commitment or obligation hereunder or under the other Loan Documents to make any further Advances, and shall thereupon terminate, and Lender shall, at Borrower's expense, take all actions reasonably requested by Borrower to evidence such termination.



#### **SECTION 4. CONDITIONS PRECEDENT TO LOAN**

The obligations of the Lenders to make the Loan hereunder are subject to the satisfaction by Borrower of the following conditions:

4.1 Initial Advance. On or prior to the Closing Date, Borrower shall have delivered to Agent the following:

- (a) executed copies of the Loan Documents (other than the Warrant, which shall be an original), Account Control Agreements, and all other documents and instruments reasonably required by Agent to effectuate the transactions contemplated hereby or to create and perfect the Liens of Agent with respect to all Collateral, in all cases in form and substance reasonably acceptable to Agent;
- (b) a legal opinion of Borrower's counsel in form and substance reasonably acceptable to Agent,
- (c) certified copy of resolutions of Borrower's board of directors evidencing approval of (i) the Loan and other transactions evidenced by the Loan Documents; and (ii) the Warrant and transactions evidenced thereby;
- (d) certified copies of the Certificate of Incorporation and the Bylaws, as amended through the Closing Date, of Borrower;
- (e) a certificate of good standing for Borrower from its state of incorporation and similar certificates from all other jurisdictions in which it does business and where the failure to be qualified would have a Material Adverse Effect;
- (f) payment of the Due Diligence Fee, Initial Facility Charge and reimbursement of Agent's and the Lenders' current expenses reimbursable pursuant to this Agreement, which amounts may be deducted from the initial Advance;
- (g) all certificates of insurance and copies of each insurance policy required hereunder; and
- (h) such other documents as Agent may reasonably request.

4.2 All Advances. On each Advance Date:

- (a) Agent shall have received (i) an Advance Request for the relevant Advance as required by Section 2.2(b), each duly executed by Borrower's Chief Executive Officer or principal accounting officer, and (ii) any other documents Agent may reasonably request.
- (b) The representations and warranties set forth in this Agreement shall be true and correct in all material respects on and as of the applicable Advance Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.
- (c) Borrower shall be in compliance with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and at the time of and immediately after such Advance no Event of Default shall have occurred and be continuing.

(d) Each Advance Request shall be deemed to constitute a representation and warranty by Borrower on the relevant Advance Date as to the matters specified in paragraphs (b) and (c) of this Section 4.2 and as to the matters set forth in the Advance Request.

(e) With respect to any Tranche 2 Advance, Borrower shall have (x) achieved the Tranche 2 Milestone and (y) paid the Tranche 2 Facility Charge (which may, at the election of Borrower, be netted from proceeds of the Tranche 2 Advance).

(f) With respect to any Tranche 3 Advance, Borrower shall have (x) achieved the Tranche 3 Milestone and (y) paid the Tranche 3 Facility Charge (which may, at the election of Borrower, be netted from proceeds of the Tranche 3 Advance).

(g) With respect to any Tranche 4 Advance, Borrower shall have (x) received approval to draw such Tranche 4 Advance from the Lenders' investment committee in its sole and unfettered discretion and (y) paid the Tranche 4 Facility Charge (which may, at the election of Borrower, be netted from proceeds of the Tranche 4 Advance).

4.3 No Default. As of the Closing Date and each Advance Date, (i) no fact or condition exists that constitutes (or would, with the passage of time, the giving of notice, or both constitute) an Event of Default and (ii) no event that has had or would reasonably be expected to have a Material Adverse Effect has occurred and is continuing.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES OF BORROWER**

Borrower represents and warrants that:

5.1 Corporate Status. Borrower is a corporation duly organized, legally existing and in good standing under the laws its state of incorporation, and is duly qualified as a foreign corporation in all jurisdictions in which the nature of its business or location of its properties require such qualifications and where the failure to be qualified could reasonably be expected to have a Material Adverse Effect. Borrower's present name, former names (if any), locations, place of formation, taxpayer identification number, organizational identification number and other information are correctly set forth in Schedule 5.1 to the Disclosure Letter, as may be updated by Borrower in a written notice (including any Compliance Certificate) provided to Agent after the Closing Date.

5.2 Collateral. Borrower owns or otherwise has the rights to use the Collateral and owns, or has rights to, the Intellectual Property, free of all Liens, except for Permitted Liens. Borrower has the power and authority to grant to Agent a Lien in the Collateral as security for the Secured Obligations.

5.3 Consents. Borrower's execution, delivery and performance of this Agreement and all other Loan Documents, and Borrower's execution of the Warrant, (i) have been duly authorized by all necessary corporate action of Borrower, (ii) will not result in the creation or imposition of any Lien upon the Collateral, other than Permitted Liens and the Liens created by this Agreement and the other Loan Documents, (iii) do not violate any provisions of Borrower's Certificate or Articles of Incorporation (as applicable), bylaws, or any, law, regulation, order, injunction, judgment, decree or writ to which Borrower is subject and (iv) except as described on Schedule 5.3 to the Disclosure Letter, do not violate any material contract or agreement or require the consent or approval of any other Person which has not already been obtained. The individual or individuals executing the Loan Documents and the Warrant are duly authorized to do so.

5.4 Material Adverse Effect. Since December 31, 2021, no event that has had or would reasonably be expected to have a Material Adverse Effect has occurred and is continuing.

5.5 Actions Before Governmental Authorities. There are no actions, suits or proceedings at law or in equity or by or before any governmental authority now pending or, to the knowledge of Borrower, threatened in writing against or affecting Borrower or its property, that is reasonably expected to result in a Material Adverse Effect.

5.6 Laws. Neither Borrower nor any of its Subsidiaries is in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any governmental authority to which Borrower or such Subsidiaries are subject, where such violation or default is reasonably expected to result in a Material Adverse Effect. Borrower is not in default in any manner under any material provision of any agreement or instrument evidencing material Indebtedness, or any other material agreement to which it is a party or by which it is bound.

Neither Borrower nor any of its Subsidiaries is an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower’s nor any of its Subsidiaries’ properties or assets have been used by Borrower or such Subsidiary or, to Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or, to Borrower’s knowledge, any of Borrower’s or its Subsidiaries’ Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. None of the funds to be provided under this Agreement shall be used, directly or indirectly, (a) for any activities in violation of any applicable anti-money laundering, economic sanctions and anti-bribery laws and regulations laws and regulations or (b) for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.7 Information Correct and Current. No written information, report, Advance Request, financial statement, exhibit or schedule furnished, by or on behalf of Borrower to Agent in

connection with any Loan Document or included therein or delivered pursuant thereto (in each case, other than forecasts, projections and other forward-looking statements and information of a general economic or industry nature) contained, or, when taken as a whole, contains or will contain any material misstatement of fact or, when taken together with all other such written information or documents, omitted, omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not materially misleading at the time such statement was made or deemed made. Additionally, any and all financial or business projections provided by Borrower to Agent, whether prior to or after the Closing Date, shall be (i) provided in good faith and based on the most current data and information available to Borrower at the time delivered, and (ii) the most current of such projections provided to Borrower's board of directors, provided that it is understood that the forecasts, projections and other forward-looking statements and information of a general economic or industry nature are based on assumptions made in good faith but are subject to significant uncertainties and contingencies, many of which are beyond the control of Borrower, and that actual results may differ significantly and no assurances are provided by Borrower for any projections made or given.

5.8 Tax Matters. Except as set forth on Schedule 5.8 to the Disclosure Letter, (a) Borrower and its Subsidiaries have filed all federal and state income Tax returns and other material Tax returns that they are required to file (taking into account any timely filed extensions), (b) Borrower and its Subsidiaries have duly paid all federal and state income Taxes and other material Taxes or installments thereof that they are required to pay as and when due, except Taxes in an amount not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate or being contested in good faith by appropriate proceedings and for which Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP, and (c) to the best of Borrower's knowledge, no proposed or pending Tax assessments, deficiencies, audits or other proceedings with respect to Borrower or any Subsidiary have had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9 Intellectual Property Claims. Borrower is the sole owner of, or otherwise has the right to use, the Intellectual Property material to Borrower's business. Except as described on Schedule 5.9 to the Disclosure Letter (as may be amended or supplemented by Borrower from time to time by written notice to Agent), (i) each of the material registered Copyrights, registered Trademarks and issued Patents is valid and enforceable, (ii) no material part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and (iii) no claim has been made to Borrower that any material part of the Intellectual Property violates the rights of any third party. The Perfection Certificate delivered to Agent on the Closing Date includes a true, correct and complete list of each of Borrower's Patents, registered Trademarks, registered Copyrights, and material agreements under which Borrower licenses Intellectual Property from third parties (other than shrink-wrap software licenses or other "off-the-shelf" licenses or open-source software), together with application or registration numbers, as applicable, owned by Borrower or any Subsidiary, in each case as of the Closing Date. Borrower is not in material breach of, nor has Borrower failed to perform any material obligations under, any of the foregoing contracts, licenses or agreements and, to Borrower's knowledge, no third party to any such contract, license or agreement is in material breach thereof or has failed to perform any material obligations thereunder.

5.10 Intellectual Property. Except as described on Schedule 5.10 to the Disclosure Letter (as may be amended or supplemented by Borrower from time to time by written notice to Agent), Borrower has all material rights with respect to Intellectual Property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower. Without limiting the generality of the foregoing, and in the case of Licenses, except for restrictions that are unenforceable under Division 9 of the UCC, Borrower has the right, to the

extent required to operate Borrower's business, to freely transfer, license or assign Intellectual Property necessary or material in the operation or conduct of Borrower's business as currently conducted and proposed to be conducted by Borrower, without condition, restriction or payment of any kind (other than license payments in the ordinary course of business) to any third party, and Borrower owns or has the right to use, pursuant to valid licenses, all software development tools, library functions, compilers and all other third-party software and other items that are material to Borrower's business and used in the design, development, promotion, sale, license, manufacture, import, export, use or distribution of Borrower Products except customary covenants in inbound license agreements and equipment leases where Borrower is the licensee or lessee.

No material software or other materials used by Borrower or any of its Subsidiaries (or used in any Borrower Products or any Subsidiaries' products) are subject to an open-source or similar license (including but not limited to the General Public License, Lesser General Public License, Mozilla Public License, or Affero License) (collectively, "Open Source Licenses") in a manner that would cause such software or other materials to have to be (i) distributed to third parties at no charge or a minimal charge (royalty-free basis); (ii) licensed to third parties to modify, make derivative works based on, decompile, disassemble, or reverse engineer; or (iii) used in a manner that requires disclosure or distribution in source code form.

5.11 Borrower Products. Except as described on Schedule 5.11 to the Disclosure Letter (as may be amended or supplemented by Borrower from time to time by written notice to Agent), no material Intellectual Property owned by Borrower or Borrower Product has been or is subject to any actual or, to the knowledge of Borrower, threatened litigation in writing, proceeding (including any proceeding in the United States Patent and Trademark Office or any corresponding foreign office or agency) or outstanding decree, order, judgment, settlement agreement or stipulation that restricts in any material manner Borrower's use, transfer or licensing thereof or that could reasonably be expected to adversely affect the validity, use or enforceability thereof. There is no decree, order, judgment, agreement, stipulation, arbitral award or other provision entered into in connection with any litigation or proceeding that obligates Borrower to grant licenses or ownership interest in any future material Intellectual Property related to the operation or conduct of the business of Borrower or Borrower Products. Borrower has not received any written notice or claim, or, to the knowledge of Borrower, oral notice or claim, challenging or questioning Borrower's ownership in any material Intellectual Property (or written notice of any claim challenging or questioning the ownership in any licensed Intellectual Property of the owner thereof) or suggesting that any third party has any claim of legal or beneficial ownership with respect thereto nor, to Borrower's knowledge, is there a reasonable basis for any such claim, in each case to where such notice or claim would reasonably be expected to have a Material Adverse Effect. Neither Borrower's use of its Intellectual Property nor the production and sale of Borrower Products infringes the Intellectual Property or other rights of others in any material respect.

5.12 Financial Accounts. Schedule 5.12 to the Disclosure Letter, as may be updated by Borrower in a written notice provided to Agent after the Closing Date, is a true, correct and complete list of (a) all banks and other financial institutions at which Borrower or any Subsidiary maintains Deposit Accounts and (b) all institutions at which Borrower or any Subsidiary maintains an account holding Investment Property, and such exhibit correctly identifies the name, address and telephone number of each bank or other institution, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

5.13 Employee Loans. Except as permitted hereunder, Borrower has no outstanding loans to any employee, officer or director of Borrower nor has Borrower guaranteed the payment of any loan made to an employee, officer or director of Borrower by a third party.

5.14 Investments and Subsidiaries. Borrower does not own any stock, partnership interest or other securities of any Person, except for Permitted Investments. Attached as Schedule 1 to the Disclosure Letter, as may be updated by Borrower in a written notice provided after the Closing Date, is a true, correct and complete list of each Subsidiary.

#### 5.15 Regulatory Matters.

(a) Borrower, each Subsidiary, and to the knowledge of Borrower, their respective directors, officers, employees, and agents are, and at all times within the last three years have been, in compliance with all applicable Healthcare Laws, except where failures to so comply would not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Borrower has not received any written notification, correspondence, or any other communication from any governmental authority asserting non-compliance by, or liability of, Borrower or any Subsidiary under any applicable Healthcare Laws, except where such non-compliance would not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Borrower is not a party to or has any ongoing reporting obligations pursuant to or under any order by a governmental authority or corporate integrity agreements, deferred prosecution agreements, monitoring agreements, consent decrees, settlement orders, plans of correction or similar agreements with or imposed by any governmental authority.

Neither Borrower or any Subsidiary, nor any officers, employees or, to the knowledge of Borrower, agents of Borrower or any Subsidiary has been excluded, suspended or debarred from any government healthcare program or convicted of any crime or engaged in any conduct that would reasonably be expected to result in debarment under any applicable Healthcare Law, and, to the knowledge of Borrower, no such Action is currently contemplated, proposed or pending.

(b) Borrower and each Subsidiary has obtained and maintained all Permits, including any Permits required pursuant to any applicable Healthcare Laws, and all of such Permits are in full force and effect, except where failures to possess or maintain the same, would not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Borrower and each Subsidiary has fulfilled and performed all of its material obligations with respect to the Permits, and, to the knowledge of Borrower, no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or result in any other impairment of the rights of the holder of any Permit, except where such revocations, terminations or impairments would not, whether individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) All clinical or preclinical studies, tests or trials that have been or are being conducted by or on behalf of, or sponsored by, Borrower or any Subsidiary, or in which Borrower's or any Subsidiary's products or product candidates have participated, and which have been or will be submitted to the FDA or other regulatory authorities in connection with applications for Permits, were and, if still pending, are being conducted in compliance in all material respects with all applicable Healthcare Laws. No investigational new drug application or other allowance to commence a clinical trial filed with or submitted to the FDA or other governmental authority by or on behalf of Borrower or any Subsidiary has been terminated or suspended by the FDA or other such governmental authority, and neither the FDA nor any applicable governmental authority has commenced, or to the knowledge of Borrower, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by or on behalf of Borrower or any Subsidiary.

### **SECTION 6. INSURANCE; INDEMNIFICATION**

6.1 Coverage. Borrower shall cause to be carried and maintained commercial general liability insurance, on an occurrence form, against risks customarily insured against by businesses of Borrower's size in Borrower's line of business in similar locations. Such risks shall include the risks of bodily injury, including death, property damage, personal injury, advertising injury, and contractual liability per the terms of the indemnification agreement found in Section 6.3. Borrower must maintain a minimum of \$1,000,000 of commercial general liability insurance for each occurrence and \$2,000,000 in the aggregate. Borrower has and agrees to maintain a minimum of \$2,000,000 of directors' and officers' insurance for each occurrence and \$5,000,000 in the aggregate. So long as there are any Secured Obligations outstanding (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement), Borrower shall also cause to be carried and maintained insurance upon the Collateral, insuring against special risks of physical loss or damage howsoever caused, in an amount not less than the full replacement cost of the Collateral, provided that such insurance may be subject to standard exceptions and deductibles. If Borrower fails to obtain the insurance called for by this Section 6.1 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Agent may obtain such insurance or make such payment, and all amounts so paid by Agent are immediately due and payable, bearing interest at the then highest rate applicable to the Secured Obligations, and secured by the Collateral. Agent will make reasonable efforts to provide Borrower with notice of Agent obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Agent are deemed an agreement to make similar payments in the future or Agent's waiver of any Event of Default.

6.2 Certificates. Borrower shall deliver to Agent certificates of insurance that evidence Borrower's compliance with its insurance obligations in Section 6.1 and the obligations contained in this Section 6.2. Borrower's insurance certificate shall state Agent (shown as "Hercules Capital, Inc., as Agent") is an additional insured for commercial general liability, a lenders loss payable for all risk property damage insurance, subject to the insurer's approval, and a lenders loss payable for property insurance and additional insured for liability insurance for any future insurance that Borrower may acquire from such insurer. Attached to the certificates of insurance will be additional insured endorsements for liability and lender's loss payable endorsements for all risk property damage insurance. All certificates of insurance will provide for a minimum of thirty (30) days advance written notice to Agent of cancellation (other than cancellation for non-payment of premiums, for which ten (10) days' advance written notice shall be sufficient). Any failure of Agent to scrutinize such insurance certificates for compliance is not a waiver of any of Agent's rights, all of which are reserved. Borrower shall provide Agent with copies of each insurance policy, and upon entering or amending any insurance policy required hereunder, Borrower shall provide Agent with copies of such policies and shall promptly deliver to Agent updated insurance certificates with respect to such policies.

6.3 Indemnity. Borrower agrees to indemnify and hold Agent, the Lenders and their officers, directors, employees, agents, in-house attorneys, representatives and shareholders (each, an "Indemnified Person") harmless from and against any and all third-party claims, reasonable and documented out-of-pocket costs, expenses, damages and liabilities (including such claims, costs, expenses, damages and liabilities based on liability in tort, including strict liability in tort), including reasonable and documented out-of-pocket attorneys' fees and disbursements and other costs of investigation or defense (including those incurred upon any appeal) (collectively, "Liabilities"), that may be instituted or asserted against or incurred by such Indemnified Person as the result of credit having been extended, suspended or terminated under this Agreement and the other Loan Documents or the administration of such credit, or in connection with or arising out of the transactions contemplated hereunder and thereunder, or any actions or failures to act in connection therewith, or

arising out of the disposition or utilization of the Collateral, excluding in all cases Liabilities to the extent such Liabilities arise solely out of gross negligence or willful misconduct of any Indemnified Person or changes in income tax rates. This Section 6.3 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. In no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). This Section 6.3 shall survive the repayment of indebtedness under, and otherwise shall survive the expiration or other termination of, this Agreement.

## **SECTION 7. COVENANTS OF BORROWER**

Borrower agrees as follows:

7.1 Financial Reports. Borrower shall furnish to Agent the financial statements and reports listed hereinafter (the "Financial Statements"):

(a) if Borrower's Market Capitalization is less than Seven Hundred Fifty Million Dollars (\$750,000,000) as of the last day of any calendar month, within thirty (30) days after the end of each month, (x) unaudited interim and year-to-date financial statements as of the end of such month (prepared on a consolidated and consolidating basis, if applicable), including balance sheet and related statements of income and cash flows, all certified by Borrower's Chief Executive Officer or principal accounting officer to the effect that they have been prepared in accordance with GAAP, except (i) for the absence of footnotes, (ii) that they are subject to normal year-end adjustments, and (iii) they do not contain certain non-cash items that are customarily included in quarterly and annual financial statements and (y) a Compliance Certificate in the form of Exhibit E;

(b) if Borrower's Market Capitalization is equal to or greater than Seven Hundred Fifty Million Dollars (\$750,000,000) as of the last day of any calendar month, within forty-five (45) days after the end of each quarter of each fiscal year, (x) unaudited interim and year-to-date financial statements as of the end of such calendar quarter (prepared on a consolidated and consolidating basis, if applicable), including balance sheet and related statements of income and cash flows accompanied by a report detailing any material contingencies (including the commencement of any material litigation by or against Borrower) or any other occurrence that would reasonably be expected to have a Material Adverse Effect, certified by Borrower's Chief Executive Officer or principal accounting officer to the effect that they have been prepared in accordance with GAAP, except (i) for the absence of footnotes, and (ii) that they are subject to normal year-end adjustments and (y) a Compliance Certificate in the form of Exhibit E;

(c) within ninety (90) days after the end of each fiscal year, (x) unqualified (other than a going concern qualification based on Borrower having negative profits or based on a determination that Borrower has less than twelve (12) months liquidity) audited financial statements as of the end of such year (prepared on a consolidated and consolidating basis, if applicable), including balance sheet and related statements of income and cash flows, and setting forth in comparative form the corresponding figures for the preceding fiscal year, certified by a firm of independent certified public accountants selected by Borrower and reasonably acceptable to Agent (provided that Borrowers' accounting firm as of the Closing Date, and any other nationally recognized accounting firm, shall be acceptable), accompanied by any management report from such accountants and (y) a Compliance Certificate in the form of Exhibit E;



(d) within 10 days after the end of each month, a summary of the account balances of each of Borrower's Deposit Accounts as of the last day of such month, delivered by email to Lake McGuire at [lmcguire@htgc.com](mailto:lmcguire@htgc.com) or to such successor Person(s) as Agent may designate in writing from time to time;

(e) promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports that Kura Oncology has made generally available to holders of its common stock and copies of any regular, periodic and special reports or registration statements that Kura Oncology files with the Securities and Exchange Commission or any governmental authority that may be substituted therefor, or any national securities exchange;

(f) together with the Compliance Certificate delivered following the end of each fiscal quarter of Borrower, copies of all notices, minutes, consents and other materials that Kura Oncology provided to its directors in connection with meetings of Kura Oncology's board of directors during such fiscal quarter; provided that in all cases Kura Oncology may exclude (i) confidential compensation and personnel employment information, (ii) materials that are related to Kura Oncology's strategy, negotiating position or other matters materially relating to this Agreement or any other Loan Documents or any permitted refinancings thereof, and (iii) such information is subject to attorney-client privilege with respect to pending or threatened litigation;

(g) Borrower's annual budget for each fiscal year, promptly following its approval by Kura Oncology's board of directors, and in any event, on or prior to the date that is 60 days after the start of such fiscal year;

(h) notice of any Commercial Tort Claim or Letter-of-Credit Rights held by Borrower or any Guarantor, in each case in an amount greater than Five Hundred Thousand Dollars (\$500,000), and of the general details thereof; and

(i) prompt (but in any event within two (2) Business Days) notice if Borrower or any Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering.

The executed Compliance Certificate and all Financial Statements required to be delivered pursuant to this Section 7.1 shall be sent via e-mail to [financialstatements@htgc.com](mailto:financialstatements@htgc.com) with a copy to [legal@htgc.com](mailto:legal@htgc.com) and [cbarnes@htgc.com](mailto:cbarnes@htgc.com), [bgironda@htgc.com](mailto:bgironda@htgc.com) and [lmcguire@htgc.com](mailto:lmcguire@htgc.com) provided, that if e-mail is not available or sending such Financial Statements via e-mail is not possible, they shall be faxed to Agent at: (650) 473-9194, attention Account Manager: Kura Oncology, Inc.

Notwithstanding the foregoing, documents required to be delivered under Sections 7.1(a), (b), (c) and (e) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which (i) Borrower emails a link thereto to Agent or (ii) Borrower files any such documents with the SEC and such documents are publicly available on the SEC's EDGAR filing system or any successor thereto.

7.2 Management Rights. Borrower shall permit any representative that Agent or the Lenders authorizes, including its attorneys and accountants, to inspect the Collateral and examine and make copies and abstracts of the books of account and records of Borrower at reasonable times and upon reasonable notice during normal business hours; provided, however, that so long as no Event of Default has occurred and is continuing, such examinations shall be limited to no more often

than once per fiscal year. In addition, in connection with such inspections and upon reasonable two (2) Business Days' prior written notice, any such representative shall have the right to meet with management and officers of Borrower to discuss such books of account and records. In addition, Agent or the Lenders shall be entitled at reasonable times and intervals and upon reasonable two (2) Business Days' prior written notice to consult with and advise the management and officers of Borrower concerning significant business issues affecting Borrower. Such consultations shall not unreasonably interfere with Borrower's business operations. The parties intend that the rights granted Agent and the Lenders shall constitute "management rights" within the meaning of 29 C.F.R. Section 2510.3-101(d)(3)(ii), but that any advice, recommendations or participation by Agent or the Lenders with respect to any business issues shall not be deemed to give Agent or the Lenders, nor be deemed an exercise by Agent or the Lenders of, control over Borrower's management or policies.

7.3 Further Assurances. Borrower shall from time to time execute, deliver and file, alone or with Agent, any financing statements, security agreements, collateral assignments, notices, control agreements, promissory notes or other documents to perfect, give the highest priority to Agent's Lien on the Collateral (subject to Permitted Liens) or otherwise evidence Agent's rights herein. Borrower shall from time to time procure any instruments or documents as may be reasonably requested by Agent, and take all further action that may be necessary, or that Agent may reasonably request, to perfect and protect the Liens granted hereby and thereby in accordance with the Loan Documents. If Borrower shall at any time acquire a Commercial Tort Claim, Borrower shall grant to the Agent a security interest therein and in the proceeds thereof pursuant to documentation to be in form and substance satisfactory to Agent. In addition, and for such purposes only, Borrower hereby authorizes Agent to execute and deliver on behalf of Borrower and to file such financing statements (including an indication that the financing statement covers "all assets or all personal property other than intellectual property" of Borrower in accordance with Section 9-504 of the UCC), collateral assignments, notices, control agreements, security agreements and other documents without the signature of Borrower either in Agent's name or in the name of Agent as agent and attorney-in-fact for Borrower. Borrower shall protect and defend Borrower's title to the Collateral and Agent's Lien thereon against all Persons claiming any interest adverse to Borrower or Agent other than Permitted Liens.

7.4 Indebtedness. Borrower shall not create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness, or prepay any Indebtedness or take any actions which impose on Borrower an obligation to prepay any Indebtedness, except for (a) the conversion of Indebtedness into equity securities and the payment of cash in lieu of fractional shares in connection with such conversion, (b) purchase money Indebtedness pursuant to its then applicable payment schedule, (c) prepayment by any Subsidiary of (i) intercompany Indebtedness owed by such Subsidiary to any Borrower, or (ii) if such Subsidiary is not a Borrower, intercompany Indebtedness owed by such Subsidiary to another Subsidiary that is not a Borrower, (d) prepayment of Indebtedness permitted under clauses (i), (iii), (iv), (vii), (ix), (xiv), (xviii) and (xix) of the definition of Permitted Indebtedness, or (e) as otherwise permitted hereunder or approved in writing by Agent.

Notwithstanding anything to the contrary in the foregoing, the issuance of, performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, redemption (including, for the avoidance of doubt, the redemption of Permitted Convertible Debt upon satisfaction of a condition related to the stock price of the Common Stock), settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, Common Stock, any combination thereof or, following a merger event or other change of the Common Stock, other securities or property), or the satisfaction of any

condition that would permit or require any of the foregoing, any Permitted Convertible Debt shall not constitute a prepayment of Indebtedness by Borrower for the purposes of this Section 7.4; *provided* that principal payments in cash (other than cash in lieu of fractional shares) shall only be allowed if the Redemption Conditions are satisfied in respect of such payment; *provided* further that, to the extent both (a) the aggregate amount of cash payable upon conversion or payment of any Permitted Convertible Debt (excluding any required payment of interest with respect to such Permitted Convertible Debt and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) exceeds the aggregate principal amount thereof and (b) such conversion or payment does not trigger or correspond to an exercise or early unwind or settlement of a corresponding portion of the Permitted Bond Hedge Transactions relating to such Permitted Convertible Debt (including, for the avoidance of doubt, the case where there is no Permitted Bond Hedge Transaction relating to such Permitted Convertible Debt), the payment of such excess cash shall not be permitted by the preceding sentence.

Notwithstanding the foregoing and anything else to the contrary in this Agreement, Borrower may repurchase, exchange or induce the conversion of Permitted Convertible Debt by delivery of shares of Common Stock and/or a different series of Permitted Convertible Debt and/or by payment of cash (in an amount that does not exceed the proceeds received by Borrower from the substantially concurrent issuance of Common Stock and/or Permitted Convertible Debt plus the net cash proceeds, if any, received by Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, pursuant to the immediately following proviso plus any accrued and unpaid interest on such Permitted Convertible Debt).

7.5 Collateral. Borrower shall at all times (a) keep the Collateral, the Intellectual Property and all other property and assets used in Borrower's business or in which Borrower now or hereafter holds any interest free and clear from any legal process or Liens whatsoever (except for Permitted Liens), and (b) shall give Agent prompt written notice of any known legal process adverse to the Collateral, the Intellectual Property, or such other property and assets, in each case, with a value in excess of Five Hundred Thousand Dollars (\$500,000), or any Liens thereon, provided however, that the Collateral and such other property and assets may be subject to Permitted Liens except that there shall be no Liens whatsoever on Intellectual Property (except for Permitted Liens). Borrower shall not agree with any Person other than Agent or the Lenders not to encumber its property other than in connection with Permitted Liens. Borrower shall not enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Borrower to create, incur, assume or suffer to exist any Lien upon any of its property (including Intellectual Property), whether now existing or hereafter acquired, to secure its obligations under the Loan Documents to which it is a party other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or capital lease obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) any Permitted License, and (d) customary restrictions on the assignment, sublicense or sublease of leases, licenses and other agreements. Borrower shall cause its Subsidiaries to protect and defend such Subsidiary's title to its assets from and against all Persons claiming any interest adverse to such Subsidiary, and Borrower shall cause its Subsidiaries at all times to keep such Subsidiary's property and assets free and clear from any known legal process or Liens whatsoever (except for Permitted Liens), and shall give Agent prompt written notice of any legal process adverse to such Subsidiary's assets, in each case, with a value in excess of One Million Dollars (\$1,000,000).

7.6 Investments. Borrower shall not directly or indirectly acquire or own, or make any Investment in or to any Person, or permit any of its Subsidiaries to do so, other than Permitted Investments.

Notwithstanding the foregoing, and for the avoidance of doubt, this Section 7.6 shall not prohibit the conversion by holders of (including any payment upon conversion, whether in cash, Common Stock or a combination thereof), or required payment of any principal or premium on (including, for the avoidance of doubt, the redemption of Permitted Convertible Debt upon satisfaction of any condition related to the stock price of Borrower's Common Stock) or required payment of any interest with respect to, any Permitted Convertible Debt in each case, in accordance with the terms of the indenture or other instrument governing such Permitted Convertible Debt; provided that, to the extent both (a) the aggregate amount of cash payable upon conversion or payment of any Permitted Convertible Debt (excluding any required payment of interest with respect to such Permitted Convertible Debt and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) exceeds the aggregate principal amount thereof and (b) such conversion or payment does not trigger or correspond to an exercise or early unwind or settlement of a corresponding portion of the Permitted Bond Hedge Transactions relating to such Permitted Convertible Debt (including, for the avoidance of doubt, the case where there is no Permitted Bond Hedge Transaction relating to such Permitted Convertible Debt), the payment of such excess cash shall not be permitted by the preceding sentence; provided further that principal payments in cash (other than cash in lieu of fractional shares) shall only be allowed if the Redemption Conditions are satisfied in respect of such redemption.

7.7 Distributions. Borrower shall not, and shall not allow any Subsidiary to, (a) repurchase or redeem any class of stock or other Equity Interest other than (i) pursuant to employee, officer, director or consultant repurchase plans or other similar agreements, provided, however, in each case the repurchase or redemption price does not exceed the original consideration paid for such stock or Equity Interest, (ii) repurchases of such shares, stock or Equity Interest deemed to occur upon exercise of stock options or warrants if such repurchased shares, stock or Equity Interest represents a portion of the exercise price of such options or warrants, (iii) repurchases of such shares, stock or Equity Interest deemed to occur upon the withholding of a portion of such shares, stock or Equity Interest granted or awarded to a current or former officer, director, employee or consultant to pay for the Taxes payable by such Person upon such grant or award (or upon vesting thereof), (iv) purchases of capital stock pledged as collateral for loans to employees, provided that such purchases do not exceed One Hundred Thousand Dollars (\$100,000) in the aggregate, (v) purchases of fractional shares of capital stock arising out of stock dividends, splits or combinations or business combinations or in connection with exercises or conversions of options, warrants and other convertible securities, (vi) the payment of the net purchase price in respect of any Permitted Bond Hedge Transaction with the proceeds of the issuance of Permitted Convertible Debt and (vii) the settlement, unwind or other termination of all or any portion of any Permitted Warrant Transaction by (x) set-off against the concurrent settlement, unwind or other termination of all or any portion of any Permitted Bond Hedge Transaction or (y) delivery of shares of Common Stock, or (b) declare or pay any cash dividend or make any other cash distribution on any class of stock or other Equity Interest, except that a Subsidiary may pay dividends or make other distributions to Borrower or any Subsidiary of Borrower, or (c) (A) other than Permitted Investments, lend money to any employees, officers or directors or (B) guarantee the payment of any such loans granted by a third party in excess of \$100,000 in the aggregate, or (d) waive, release or forgive any Indebtedness owed by any employees, officers or directors in excess of \$100,000 in the aggregate.

Notwithstanding the foregoing, and for the avoidance of doubt, this Section 7.7 shall not prohibit the conversion by holders of (including any payment upon conversion, whether in cash, Common Stock or a combination thereof), or required payment of any principal or premium on (including, for the avoidance of doubt, in respect of the redemption of Permitted Convertible Debt upon satisfaction of a condition related to the stock price of the Common Stock) or required payment of any interest with respect to, any Permitted Convertible Debt in each case, in accordance with the terms of the

indenture governing such Permitted Convertible Debt; provided that principal payments in cash (other than cash in lieu of fractional shares) shall only be allowed if the Redemption Conditions are satisfied in respect of such payment; provided further that, to the extent both (a) the aggregate amount of cash payable upon conversion or payment of any Permitted Convertible Debt (excluding any required payment of interest with respect to such Permitted Convertible Debt and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) exceeds the aggregate principal amount thereof and (b) such conversion or payment is not offset by an exercise or early unwind or settlement of a corresponding portion of the Permitted Bond Hedge Transactions relating to such Permitted Convertible Debt (including, for the avoidance of doubt, the case where there is no Permitted Bond Hedge Transaction relating to such Permitted Convertible Debt), the payment of such excess cash shall not be permitted by the preceding sentence.

Notwithstanding the foregoing and anything else to the contrary in this Agreement, Borrower may repurchase, exchange or induce the conversion of Permitted Convertible Debt by delivery of shares of Common Stock and/or a different series of Permitted Convertible Debt and/or by payment of cash (in an amount that does not exceed the proceeds received by Borrower from the substantially concurrent issuance of Common Stock and/or Permitted Convertible Debt plus the net cash proceeds, if any, received by Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, pursuant to the immediately following proviso plus any accrued and unpaid interest on such Permitted Convertible Debt).

Notwithstanding the foregoing, and for the avoidance of doubt, this Section 7.7 shall not prohibit (x) Borrower's entry into (including the payment of premium) any Permitted Bond Hedge Transaction (or the settlement or termination thereof) or (y) Borrower's settlement of any Permitted Warrant Transaction by (i) delivery of shares of Common Stock or (ii) netting or set-off against the related Permitted Bond Hedge Transaction.

7.8 Transfers. Except for Permitted Transfers, Borrower shall not, and shall not allow any Subsidiary to, voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any material portion of its assets.

7.9 Mergers and Consolidations. Borrower shall not merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with or into any other business organization (other than mergers or consolidations of (a) a Subsidiary which is not a Borrower into another Subsidiary or into Borrower or (b) a Borrower into another Borrower), or enter into any Acquisition, other than Permitted Acquisitions.

7.10 Taxes. Borrower shall, and shall cause each of its Subsidiaries to, pay when due all Taxes of any nature whatsoever now or hereafter imposed or assessed against Borrower or such Subsidiary or the Collateral or upon Borrower's (or such Subsidiary's) ownership, possession, use, operation or disposition thereof or upon Borrower's (or such Subsidiary's) rents, receipts or earnings arising therefrom, other than such Taxes that do not, individually or in the aggregate, exceed Fifty Thousand Dollars (\$50,000). Borrower shall, and shall cause each of its Subsidiaries to, accurately file on or before the due date therefor (taking into account proper extensions) all federal and state income Tax returns and other material Tax returns required to be filed. Notwithstanding the foregoing, Borrower and its Subsidiaries may contest, in good faith and by appropriate proceedings diligently conducted, Taxes for which Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP.

7.11 Corporate Changes. Neither Borrower nor any Subsidiary shall change its corporate name, legal form or jurisdiction of formation without fifteen (15) days' prior written notice to Agent. Neither Borrower nor any Subsidiary shall suffer a Change in Control or engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Closing Date or any business similar, reasonably related or complementary thereto. Neither Borrower nor any Subsidiary shall relocate its chief executive office or its principal place of business unless: (i) it has provided prior written notice to Agent; and (ii) such relocation shall be within the continental United States of America. Neither Borrower nor any Subsidiary shall relocate any tangible items of Collateral (other than (v) relocations of Collateral temporarily for sales, testing or demonstration purposes in the ordinary course of business, (w) relocations of biopharmaceutical compounds and therapeutic materials in the ordinary course of business in connection with clinical trials and development arrangements, (x) sales of Inventory in the ordinary course of business, (y) relocations of Equipment having an aggregate value of up to Five Hundred Thousand Dollars (\$500,000) in any fiscal year, and (z) relocations of Collateral from a location described on Schedule 5.1 to the Disclosure Letter to another location described on Schedule 5.1 to the Disclosure Letter) unless (i) it has provided prompt written notice to Agent, (ii) such relocation is within the continental United States of America and, (iii) if such relocation is to a landlord or third party bailee, it has delivered a landlord waiver and consent or a bailee agreement, as the case may be, in form and substance reasonably acceptable to Agent.

7.12 Deposit Accounts. Neither Borrower nor any Subsidiary shall maintain any Deposit Accounts, or accounts holding Investment Property, except with respect to which Agent has an Account Control Agreement, provided that no Account Control Agreement shall be required for any Excluded Account.

7.13 Future Subsidiaries. Borrower shall notify Agent of each Subsidiary formed subsequent to the Closing Date and, within fifteen (15) days of formation, shall cause any such Subsidiary to execute and deliver to Agent a Joinder Agreement.

7.14 Notification of Event of Default. Borrower shall notify Agent promptly, and in any case within two (2) Business Days of Borrower obtaining knowledge, of the occurrence of any Event of Default.

7.15 One or more affiliates of Agent have received a license from the U.S. Small Business Administration ("SBA") to extend loans as a small business investment company ("SBIC") pursuant to the Small Business Investment Act of 1958, as amended, and the associated regulations (collectively, the "SBIC Act"). Portions of the Loan to Borrower may be by a Lender that is a SBIC. Addendum 2 to this Agreement outlines various responsibilities of Agent, each Lender and Borrower associated with a loan made by a SBIC, and such Addendum 2 is hereby incorporated in this Agreement.

7.16 Use of Proceeds. Borrower agrees that the proceeds of the Loans shall be used solely to refinance existing indebtedness, to pay related fees and expenses in connection with this Agreement and for working capital and general corporate purposes. The proceeds of the Loans will not be used in violation of Anti-Corruption Laws or applicable Sanctions.

7.17 [RESERVED].

7.18 Compliance with Laws.

Borrower shall maintain, and shall cause its Subsidiaries to maintain, compliance in all material respects with all applicable laws, rules or regulations (including any law, rule or regulation with respect to the making or brokering of loans or financial accommodations), and shall, or cause its Subsidiaries to, obtain and maintain all required material governmental authorizations, approvals, licenses, franchises, permits or registrations reasonably necessary in connection with the conduct of Borrower's business.

Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

None of Borrower, any of its Subsidiaries or any of their respective directors, officers or employees, or to the knowledge of Borrower, any agent for Borrower or its Subsidiaries that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Loan, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

#### 7.19 Financial Covenants.

##### (a) Minimum Cash.

(i) Commencing June 1, 2024, Borrower shall maintain Qualified Cash in an amount greater than or equal to (x) if Borrower has not yet achieved the Approval Milestone, fifty-five percent (55%) of the outstanding Secured Obligations or (y) if Borrower has achieved the Approval Milestone, thirty-five percent (35%) of the outstanding Secured Obligations, inclusive of any Qualified Cash amounts maintained in accordance with Section 7.19(a)(ii) and (iii).

(ii) At all times after the consummation of and prior to the termination of any Corporate Collaboration described in clause (d)(z) of the definition of Permitted License, Borrower shall maintain Qualified Cash in an amount greater than or equal to fifty-five percent (55%) of the outstanding Secured Obligations, inclusive of any Qualified Cash amounts maintained in accordance with Section 7.19(a)(i) and (iii).

(iii) If Borrower makes any cash payment in respect of Permitted Convertible Debt subject to satisfaction of the Redemption Conditions, Borrower shall, at all times

thereafter, maintain Qualified Cash in the amount required by the defined term “Redemption Conditions”, inclusive of any Qualified Cash amounts maintained in accordance with Section 7.19(a)(i) and (ii).

Notwithstanding the foregoing, Section 7.19(a)(i) shall cease to apply during any period in which Borrower’s Market Capitalization is equal to or greater than One Billion Two Hundred Fifty Million Dollars (\$1,250,000,000).

7.20 Intellectual Property. Each Borrower shall (i) protect, defend and maintain the validity and enforceability of its material Intellectual Property; (ii) promptly advise Agent in writing of material infringements known to Borrower of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrowers’ business to be abandoned, forfeited or dedicated to the public without Agent’s written consent, in each case subject to Borrower’s reasonable discretion and standard commercial practices.

7.21 Transactions with Affiliates. Borrower shall not and shall not permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction of any kind with any Affiliate of Borrower or such Subsidiary on terms that are less favorable to Borrower or such Subsidiary, as the case may be, than those that might be obtained in an arm’s length transaction from a Person who is not an Affiliate of Borrower or such Subsidiary other than (i) Permitted Investments, (ii) reasonable and customary fees paid to members of the board, and (iii) board-approved compensation arrangements for officers and other employees.

## **SECTION 8. RIGHT TO INVEST**

8.1 To the extent consistent with applicable securities laws (including gun jumping prohibitions), Borrower shall provide (or in the case of a Subsequent Financing that is a registered offering, Borrower shall use its commercially reasonable efforts to provide) the Lenders or their permitted assignees or nominees, designated as such in writing to Borrower, the opportunity, in their discretion, to participate in each Subsequent Financing in an amount, in the aggregate for all Lenders and their permitted assignees or nominees, of up to Ten Million Dollars (\$10,000,000), less any amounts previously invested by the Lenders or their permitted assignees or nominees pursuant to this Section 8.1, in such Subsequent Financing on the same terms, conditions and pricing afforded to other investors participating in such Subsequent Financing; provided that the Lenders and their permitted assignees or nominees may not, collectively, invest more than five percent (5%) of the total amount offered in each such Subsequent Financing. If the Lenders (or their permitted assignees or nominees) elect to participate in any Subsequent Financing, the Lenders (or their permitted assignees or nominees, as applicable) participating in such Subsequent Financing agree to become a party to the agreements executed by the other investors participating in such Subsequent Financing, including with respect to obligations of confidentiality or as may otherwise be required by the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Securities and Exchange Commission thereunder. Borrower, or an investment bank or underwriter engaged on Borrower’s behalf, shall provide the Lenders or their permitted assignees or nominees at least three (3) Business Days’ written notice of any planned Subsequent Financing and the opportunity to exercise the right to invest under this Section 8.1 with respect to any such Subsequent Financing. This Section 8.1, and all rights and obligations hereunder, shall terminate upon the earliest to occur of (a) termination of this Agreement or (b) such time that the Lenders or their permitted assignees or nominees have purchased \$10,000,000 of Borrower’s Equity Interests in the aggregate in Subsequent Financings.

## **SECTION 9. EVENTS OF DEFAULT**



The occurrence of any one or more of the following events shall be an Event of Default:

9.1 Payments. Borrower fails to pay any amount due under this Agreement or any of the other Loan Documents on the due date; provided, however, that an Event of Default shall not occur on account of a failure to pay due solely to an administrative or operational error of Agent or the Lenders or Borrower's bank if Borrower had the funds to make the payment when due and makes the payment within three (3) Business Days following Borrower's knowledge of such failure to pay; or

9.2 Covenants. Borrower breaches or defaults in the performance of any covenant or Secured Obligation under this Agreement, or any of the other Loan Documents, and (a) with respect to a default under any covenant under this Agreement (other than under Sections 6, 7.1, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.16, 7.18, 7.19, 7.20, and 7.21) or any other Loan Document, such default continues for more than thirty (30) days after the earlier of the date on which (i) Agent or the Lenders have given notice of such default to Borrower and (ii) Borrower has actual knowledge of such default or (b) with respect to a default under any of Sections 6, 7.1, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.16, 7.18, 7.19, 7.20, and 7.21, the occurrence of such default; or

9.3 Material Adverse Effect. A circumstance has occurred that constitutes a Material Adverse Effect; provided that, solely for purposes of this Section 9.3, the following events shall not, in each case in and of itself, constitute a Material Adverse Effect: (a) a change in or discontinuation of a strategic partnership or other collaboration or license arrangement so long as the same does not affect the ability of Borrower to perform the Secured Obligations or (b) failure to achieve the Approval Milestone, Tranche 2 Milestone or Tranche 3 Milestone so long as the same does not affect the ability of Borrower to perform the Secured Obligations; or

9.4 Representations. Any representation or warranty made by Borrower in any Loan Document or in the Warrant shall have been false or misleading in any material respect when made or when deemed made; or

9.5 Insolvency. Borrower (A) (i) shall make an assignment for the benefit of creditors; or (ii) shall be unable to pay its debts as they become due, or be unable to pay or perform under the Loan Documents, or shall become insolvent; or (iii) shall file a voluntary petition in bankruptcy; or (iv) shall file any petition, answer, or document seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation pertinent to such circumstances; or (v) shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Borrower or of all or any substantial part (i.e., 33-1/3% or more) of the assets or property of Borrower; or (vi) shall cease operations of its business as its business has normally been conducted, or terminate substantially all of its employees; or (vii) Borrower or its directors or majority shareholders shall take any action initiating any of the foregoing actions described in clauses (i) through (vi); or (B) either (i) forty-five (45) days shall have expired after the commencement of an involuntary action against Borrower seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, without such action being dismissed or all orders or proceedings thereunder affecting the operations or the business of Borrower being stayed; or (ii) a stay of any such order or proceedings shall thereafter be set aside and the action setting it aside shall not be timely appealed; or (iii) Borrower shall file any answer admitting or not contesting the material allegations of a petition filed against Borrower in any such proceedings; or (iv) the court in which such proceedings are pending shall enter a decree or order granting the relief sought in any such proceedings; or (v) forty-five (45) days shall have expired after the appointment, without the

consent or acquiescence of Borrower, of any trustee, receiver or liquidator of Borrower or of all or any substantial part of the properties of Borrower without such appointment being vacated; or

9.6 Attachments; Judgments. Any material portion of Borrower's assets is attached or seized, or a levy is filed against any such assets, or a judgment or judgments by a court of competent jurisdiction is or are entered for the payment of money (not covered by independent third party insurance as to which liability has not been rejected by such insurance carrier), individually or in the aggregate, of at least \$1,000,000 and such judgement remains unsatisfied, unvacated or unstayed for a period of forty-five (45) days after the entry thereof, or Borrower is enjoined or in any way prevented by court order from conducting any material part of its business; or

9.7 Other Obligations. The occurrence and continuation of any default that exists beyond any applicable grace and/or cure periods under any agreement or obligation of Borrower involving any Indebtedness in excess of \$1,000,000 which has resulted in a right by the holder of such Indebtedness, whether exercised or not, to accelerate the maturity of such Indebtedness, or the event that any early payment is required or unwinding or termination occurs with respect to any Permitted Bond Hedge Transaction or Permitted Warrant Transaction, or any condition giving rise to the foregoing is met, in each case, with respect to which Borrower or its Affiliate is the "affected party" or "defaulting party" under the terms of such Permitted Bond Hedge Transaction or Permitted Warrant Transaction, if a Material Adverse Effect would reasonably be expected to result from such default, early payment, unwinding or termination.

## **SECTION 10. REMEDIES**

10.1 General. Upon the occurrence and during the continuance of any one or more Events of Default, to the extent not prohibited by applicable law, Agent may, and at the direction of the Required Lenders shall, accelerate and demand payment of all or any part of the Secured Obligations together with a Prepayment Charge and declare them to be immediately due and payable (provided, that upon the occurrence of an Event of Default of the type described in Section 9.5, all of the outstanding Secured Obligations (including, without limitation, the Prepayment Charge and the End of Term Charge) shall automatically be accelerated and made due and payable, in each case without any further notice or act). Borrower hereby irrevocably appoints Agent as its lawful attorney-in-fact to: only exercisable following the occurrence and during the continuance of an Event of Default, (i) sign Borrower's name on any invoice or bill of lading for any account or drafts against account debtors; (ii) demand, collect, sue, and give releases to any account debtor for monies due, settle and adjust disputes and claims about the accounts directly with account debtors, and compromise, prosecute, or defend any action, claim, case, or proceeding about any Collateral (including filing a claim or voting a claim in any bankruptcy case in Agent's or Borrower's name, as Agent may elect); (iii) make, settle, and adjust all claims under Borrower's insurance policies; (iv) pay, contest or settle any Lien, charge, encumbrance, security interest, or other claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (v) transfer the Collateral into the name of Agent or a third party as the UCC permits; and (vi) receive, open and dispose of mail addressed to Borrower; (vii) endorse Borrower's name on any checks, payment instruments, or other forms of payment or security; and (viii) notify all account debtors to pay Agent directly. Borrower hereby appoints Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all outstanding Secured Obligations have been satisfied in full and the Loan Documents (other than the Warrant) have been terminated. Agent's foregoing appointment as Borrower's attorney in fact, and all of Agent's rights and powers, coupled with an interest, are irrevocable until all Secured Obligations (other than inchoate indemnity or reimbursement obligations and any other obligations

which, by their terms, are to survive the termination of this Agreement) have been fully repaid and performed and the Loan Documents (other than the Warrant) have been terminated. Agent may, and at the direction of the Required Lenders shall, exercise all rights and remedies with respect to the Collateral under the Loan Documents or otherwise available to it under the UCC and other applicable law, including the right to release, hold, sell, lease, liquidate, collect, realize upon, or otherwise dispose of all or any part of the Collateral and the right to occupy, utilize, process and commingle the Collateral. All Agent's rights and remedies shall be cumulative and not exclusive.

10.2 Collection; Foreclosure. Upon the occurrence and during the continuance of any Event of Default, Agent may, and at the direction of the Required Lenders shall, at any time or from time to time, apply, collect, liquidate, sell in one or more sales, lease or otherwise dispose of, any or all of the Collateral, in its then condition or following any commercially reasonable preparation or processing, in such order as Agent may elect. Any such sale may be made either at public or private sale at its place of business or elsewhere. Borrower agrees that any such public or private sale may occur upon ten (10) calendar days' prior written notice to Borrower. Agent may require Borrower to assemble the Collateral and make it available to Agent at a place designated by Agent that is reasonably convenient to Agent and Borrower. The proceeds of any sale, disposition or other realization upon all or any part of the Collateral shall be applied by Agent in the following order of priorities:

First, to Agent and the Lenders in an amount sufficient to pay in full Agent's and the Lenders' reasonable and documented out-of-pocket costs and professionals' and advisors' fees and expenses as described in Section 11.12;

Second, to the Lenders in an amount equal to the then unpaid amount of the Secured Obligations (including principal, interest, and any default rate interest), in such order and priority as Agent may choose in its sole discretion; and

Finally, after the full and final payment in Cash of all of the Secured Obligations (other than inchoate obligations), to any creditor holding a junior Lien on the Collateral, or to Borrower or its representatives or as a court of competent jurisdiction may direct.

Agent shall be deemed to have acted reasonably in the custody, preservation and disposition of any of the Collateral if it complies with the obligations of a secured party under the UCC.

10.3 No Waiver. Agent shall be under no obligation to marshal any of the Collateral for the benefit of Borrower or any other Person, and Borrower expressly waives all rights, if any, to require Agent to marshal any Collateral.

10.4 Cumulative Remedies. The rights, powers and remedies of Agent hereunder shall be in addition to all rights, powers and remedies given by statute or rule of law and are cumulative. The exercise of any one or more of the rights, powers and remedies provided herein shall not be construed as a waiver of or election of remedies with respect to any other rights, powers and remedies of Agent.

## **SECTION 11. MISCELLANEOUS**

11.1 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent and duration of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11.2 Notice. Except as otherwise provided herein, any notice, demand, request, consent, approval, declaration, service of process or other communication (including the delivery of Financial Statements) that is required, contemplated, or permitted under the Loan Documents or with respect to the subject matter hereof shall be in writing, and shall be deemed to have been validly served, given, delivered, and received upon the earlier of: (i) the day of transmission by electronic mail or hand delivery or delivery by an overnight express service or overnight mail delivery service; or (ii) the third calendar day after deposit in the United States of America mails, with proper first class postage prepaid, in each case addressed to the party to be notified as follows:

(a) If to Agent:

HERCULES CAPITAL, INC.  
Legal Department  
Attention: Chief Legal Officer and Lake Thomas McGuire  
400 Hamilton Avenue, Suite 310  
Palo Alto, CA 94301  
email: legal@htgc.com  
Telephone: 650-289-3060

(b) If to the Lenders:

HERCULES TECHNOLOGY III, L.P.  
Legal Department  
Attention: Chief Legal Officer and Lake Thomas McGuire  
400 Hamilton Avenue, Suite 310  
Palo Alto, CA 94301  
email: legal@htgc.com  
Telephone: 650-289-3060

(c) If to Borrower:

Kura Oncology, Inc.  
Attention: Tom Doyle  
12730 High Bluff Drive, Suite 400  
San Diego, CA 92130  
email:  
Telephone:

with a copy to:

Kura Oncology, Inc.  
Attention: Teresa Bair  
12730 High Bluff Drive, Suite 400  
San Diego, CA 92130  
email:  
Telephone:

with a copy to:

Cooley LLP  
Attention: Charles Bair

10265 Science Center Drive  
San Diego, CA 92121-1117  
email:  
Telephone:

or to such other address as each party may designate for itself by giving notice in conformity with this Section 11.2.

### 11.3 Entire Agreement; Amendments.

(a) This Agreement and the other Loan Documents constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and thereof, and supersede and replace in their entirety any prior proposals, term sheets, non-disclosure or confidentiality agreements, letters, negotiations or other documents or agreements, whether written or oral, with respect to the subject matter hereof or thereof (including Agent's revised proposal letter dated October 13, 2022).

(b) Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 11.3(b). The Required Lenders and Borrower party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Agent and Borrower party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of Borrower hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest (or fee payable hereunder) or extend the scheduled date of any payment thereof, in each case without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 11.3(b) without the written consent of such Lender; (C) reduce any percentage specified in the definition of Required Lenders, consent to the assignment or transfer by Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release a Borrower from its obligations under the Loan Documents, in each case without the written consent of all Lenders; or (D) amend, modify or waive any provision of Section 11.18 or Addendum 3 without the written consent of the Agent. Any such waiver and any such amendment, supplement or modification shall apply equally to each Lender and shall be binding upon Borrower, the Lender, the Agent and all future holders of the Loans.

11.4 No Strict 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 provisions of this Agreement.

11.5 No Waiver. The powers conferred upon Agent and the Lenders by this Agreement are solely to protect its rights hereunder and under the other Loan Documents and its interest in the Collateral and shall not impose any duty upon Agent or the Lenders to exercise any such powers.

No omission or delay by Agent or the Lenders at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms, covenants or provisions hereof by Borrower at any time designated, shall be a waiver of any such right or remedy to which Agent or the Lenders is entitled, nor shall it in any way affect the right of Agent or the Lenders to enforce such provisions thereafter.

11.6 Survival. All agreements, representations and warranties contained in this Agreement and the other Loan Documents or in any document delivered pursuant hereto or thereto shall be for the benefit of Agent and the Lenders and shall survive the execution and delivery of this Agreement for so long as any Secured Obligations (other than any inchoate indemnity or reimbursement obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) remain outstanding. Sections 6.3, 11.13, 11.14, 11.15 and 11.17 shall survive the termination of this Agreement.

11.7 Successors and Assigns. The provisions of this Agreement and the other Loan Documents shall inure to the benefit of and be binding on Borrower and its permitted assigns (if any). Borrower shall not assign its obligations under this Agreement or any of the other Loan Documents without Agent's express prior written consent, and any such attempted assignment shall be void and of no effect. Agent and the Lenders may assign, transfer, or endorse its rights hereunder and under the other Loan Documents with prior notice to Borrower (except if an Event of Default has occurred and is continuing or such assignment is to an Affiliate of Lender or Agent, in which case no notice shall be required), and all of such rights shall inure to the benefit of Agent's and the Lenders' successors and assigns; provided that as long as no Event of Default has occurred and is continuing, neither Agent nor any Lender may assign, transfer or endorse its rights hereunder or under the Loan Documents to any party that is a direct competitor of Borrower (as reasonably determined by Agent upon consultation with Borrower) or any investment fund specializing in distressed debt, it being acknowledged that in all cases, any transfer to an Affiliate of any Lender or Agent shall be allowed. Notwithstanding the foregoing, (x) in connection with any assignment by a Lender as a result of a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Agent and the Lenders may assign, transfer or indorse its rights hereunder and under the other Loan Documents to any Person or party and (y) in connection with a Lender's own financing or securitization transactions, the restrictions set forth herein shall not apply and Agent and the Lenders may assign, transfer or indorse its rights hereunder and under the other Loan Documents to any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such assignee as Agent reasonably shall require. The Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of the Lender(s), and the Term Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrower, the Agent and the Lender(s) shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

11.8 Participations. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register. Borrower agrees that each participant shall be entitled to the benefits of the provisions in Addendum 1 attached hereto (subject to the requirements and limitations therein, including the requirements under Section 7 of Addendum 1 attached hereto (it being understood that the documentation required under Section 7 of Addendum 1 attached hereto shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.7; provided that such participant shall not be entitled to receive any greater payment under Addendum 1 attached hereto, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation.

11.9 Governing Law. This Agreement and the other Loan Documents have been negotiated and delivered to Agent and the Lenders in the State of California, and shall have been accepted by Agent and the Lenders in the State of California. Payment to Agent and the Lenders by Borrower of the Secured Obligations is due in the State of California. This Agreement and the other Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

11.10 Consent to Jurisdiction and Venue. All judicial proceedings (to the extent that the reference requirement of Section 11.11 is not applicable) arising in or under or related to this Agreement or any of the other Loan Documents may be brought in any state or federal court located in the State of California. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (a) consents to nonexclusive personal jurisdiction in Santa Clara County, State of California; (b) waives any objection as to jurisdiction or venue in Santa Clara County, State of California; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement or the other Loan Documents. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in Section 11.2, and shall be deemed effective and received as set forth in Section 11.2. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

11.11 Mutual Waiver of Jury Trial / Judicial Reference.

(a) Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert Person and the parties wish

applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF BORROWER, AGENT AND THE LENDERS SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY BORROWER AGAINST AGENT, THE LENDERS OR THEIR RESPECTIVE ASSIGNEE OR BY AGENT, THE LENDERS OR THEIR RESPECTIVE ASSIGNEE AGAINST BORROWER. This waiver extends to all such Claims, including Claims that involve Persons other than Agent, Borrower and the Lenders; Claims that arise out of or are in any way connected to the relationship among Borrower, Agent and the Lenders; and any Claims for damages, breach of contract, tort, specific performance, or any equitable or legal relief of any kind, arising out of this Agreement, any other Loan Document.

(b) If the waiver of jury trial set forth in Section 11.11(a) is ineffective or unenforceable, the parties agree that all Claims shall be resolved by reference to a private judge sitting without a jury, pursuant to Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Santa Clara County, California. Such proceeding shall be conducted in Santa Clara County, California, with California rules of evidence and discovery applicable to such proceeding.

(c) In the event Claims are to be resolved by judicial reference, either party may seek from a court identified in Section 11.10, any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by judicial reference.

11.12 Professional Fees. Borrower promises to pay Agent's and the Lenders' reasonable and documented out-of-pocket fees and expenses necessary to finalize the Loan Documents, including but not limited to reasonable and documented out-of-pocket attorneys' fees, UCC searches, filing costs, and other miscellaneous expenses; provided that that the amount of such costs and expenses obligated to be paid by Borrower shall not exceed \$250,000; provided, further that the Due Diligence Fee will be applied in its entirety toward such fees and expenses. In addition, Borrower promises to pay any and all reasonable and documented out-of-pocket attorneys' and other professionals' fees and expenses incurred by Agent and the Lenders after the Closing Date in connection with or related to: (a) the Loan; (b) the administration, collection, or enforcement of the Loan; (c) the amendment or modification of the Loan Documents; (d) any waiver, consent, release, or termination under the Loan Documents; (e) the protection, preservation, audit, field exam, sale, lease, liquidation, or disposition of Collateral or the exercise of remedies with respect to the Collateral; (f) any legal, litigation, administrative, arbitration, or out of court proceeding in connection with or related to Borrower or the Collateral, and any appeal or review thereof; and (g) any bankruptcy, restructuring, reorganization, assignment for the benefit of creditors, workout, foreclosure, or other action related to Borrower, the Collateral, the Loan Documents, including representing Agent or the Lenders in any adversary proceeding or contested matter commenced or continued by or on behalf of Borrower's estate, and any appeal or review thereof.

11.13 Confidentiality. Agent and the Lenders acknowledge that certain items of Collateral and information provided to Agent and the Lenders by Borrower are confidential and proprietary information of Borrower, if and to the extent such information either (x) is marked as confidential by Borrower at the time of disclosure, or (y) should reasonably be understood to be confidential (the "Confidential Information"). Accordingly, Agent and the Lenders agree that any Confidential Information it may obtain in the course of acquiring, administering, or perfecting Agent's security interest in the Collateral shall not be disclosed to any other Person or entity in any manner



whatsoever, in whole or in part, without the prior written consent of Borrower, except that Agent and the Lenders may disclose any such information: (a) to its Affiliates and its partners, investors, lenders, directors, officers, employees, agents, advisors, counsel, accountants, representative and other professional advisors if Agent or the Lenders in their sole discretion determines that any such party should have access to such information in connection with such party's responsibilities in connection with the Loan or this Agreement and, provided that such recipient of such Confidential Information either (i) agrees to be bound by the confidentiality provisions of this paragraph or (ii) is otherwise subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information which are no less restrictive than the terms of this Section 11.13; (b) if such information is generally available to the public or to the extent such information becomes publicly available other than as a result of a breach of this Section or becomes available to Agent or any Lender, or any of their respective Affiliates on a non-confidential basis from a source other than Borrower; (c) if required or appropriate in any report, statement or testimony submitted to any governmental authority having or claiming to have jurisdiction over Agent or the Lenders and any rating agency; (d) if required or appropriate in response to any summons or subpoena or in connection with any litigation, to the extent permitted or deemed advisable by Agent's or the Lenders' counsel; (e) to comply with any legal requirement or law applicable to Agent or the Lenders or demanded by any governmental authority; (f) to the extent reasonably necessary in connection with the exercise of, or preparing to exercise, or the enforcement of, or preparing to enforce, any right or remedy under any Loan Document (including Agent's sale, lease, or other disposition of Collateral after the occurrence and during the continuance of an Event of Default), or any action or proceeding relating to any Loan Document; (g) to any participant or assignee of Agent or the Lenders or any prospective participant or assignee, provided, that such participant or assignee or prospective participant or assignee is subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information which are no less restrictive than the terms of this Section 11.13; (h) otherwise to the extent consisting of general portfolio information that does not identify Borrower; or (i) otherwise with the prior written consent of Borrower; provided, that any disclosure made in violation of this Agreement shall not affect the obligations of Borrower or any of its Affiliates or any guarantor under this Agreement or the other Loan Documents. Agent's and the Lenders' obligations under this Section 11.13 shall supersede all of their respective obligations under the Non-Disclosure Agreement.

11.14 Assignment of Rights. Borrower acknowledges and understands that Agent or the Lenders may, subject to Section 11.7, sell and assign all or part of its interest hereunder and under the Loan Documents to any Person or entity (an "Assignee"). After such assignment the term "Agent" or "Lender" as used in the Loan Documents shall mean and include such Assignee, and such Assignee shall be vested with all rights, powers and remedies of Agent and the Lenders hereunder with respect to the interest so assigned; but with respect to any such interest not so transferred, Agent and the Lenders shall retain all rights, powers and remedies hereby given. No such assignment by Agent or the Lenders shall relieve Borrower of any of its obligations hereunder. the Lenders agrees that in the event of any transfer by it of the promissory note(s) (if any), it will endorse thereon a notation as to the portion of the principal of the promissory note(s), which shall have been paid at the time of such transfer and as to the date to which interest shall have been last paid thereon.

11.15 Revival of Secured Obligations. This Agreement and the Loan Documents shall remain in full force and effect and continue to be effective if any petition is filed by or against Borrower for liquidation or reorganization, if Borrower becomes insolvent or makes an assignment for the benefit of creditors, if a receiver or trustee is appointed for all or any significant part of Borrower's assets, or if any payment or transfer of Collateral is recovered from Agent or the Lenders. The Loan Documents and the Secured Obligations and Collateral security shall continue to be

effective, or shall be revived or reinstated, as the case may be, if at any time payment and performance of the Secured Obligations or any transfer of Collateral to Agent, or any part thereof is rescinded, avoided or avoidable, reduced in amount, or must otherwise be restored or returned by, or is recovered from, Agent, the Lenders or by any obligee of the Secured Obligations, whether as a “voidable preference,” “fraudulent conveyance,” or otherwise, all as though such payment, performance, or transfer of Collateral had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, avoided, avoidable, restored, returned, or recovered, the Loan Documents and the Secured Obligations shall be deemed, without any further action or documentation, to have been revived and reinstated except to the extent of the full, final, and indefeasible payment to Agent or the Lenders in Cash.

11.16 Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so delivered shall be deemed an original, but all of which counterparts shall constitute but one and the same instrument.

11.17 No Third Party Beneficiaries. No provisions of the Loan Documents are intended, nor will be interpreted, to provide or create any third-party beneficiary rights or any other rights of any kind in any Person other than Agent, the Lenders and Borrower unless specifically provided otherwise herein, and, except as otherwise so provided, all provisions of the Loan Documents will be personal and solely among Agent, the Lenders and Borrower.

11.18 Agency. Agent and each Lender hereby agree to the terms and conditions set forth on Addendum 3 attached hereto. Borrower acknowledges and agrees to the terms and conditions set forth on Addendum 3 attached hereto.

11.19 Publicity. None of the parties hereto nor any of its respective member businesses and Affiliates shall, without the other parties’ prior written consent (which shall not be unreasonably withheld or delayed), publicize or use (a) the other party’s name (including a brief description of the relationship among the parties hereto), logo or hyperlink to such other parties’ web site, separately or together, in written and oral presentations, advertising, promotional and marketing materials, client lists, public relations materials or on its web site (together, the “Publicity Materials”); (b) the names of officers of such other parties in the Publicity Materials; and (c) such other parties’ name, trademarks, servicemarks in any news or press release concerning such party; provided however, notwithstanding anything to the contrary herein, no such consent shall be required (i) to the extent necessary to comply with the requests of any regulators, legal requirements or laws applicable to such party, pursuant to any listing agreement with any national securities exchange (so long as such party provides prior notice to the other party hereto to the extent reasonably practicable) and (ii) to comply with Section 11.13.

11.20 Electronic Execution of Certain Other Documents. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transaction Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

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(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, Borrower, Agent and the Lender have duly executed and delivered this Loan and Security Agreement as of the day and year first above written.

**BORROWER:**

KURA ONCOLOGY, INC.

Signature:     /s/ Troy Wilson      
Print Name: Troy Wilson  
Title: President and Chief Executive Officer

Accepted in Palo Alto, California:

**AGENT:**

HERCULES CAPITAL, INC.

Signature:     /s/ Seth Meyer      
Print Name: Seth Meyer  
Title: Chief Financial Officer

**LENDER:**

HERCULES CAPITAL IV, L.P.,

By: Hercules Technology SBIC  
Management, LLC, its General Partner  
By: Hercules Capital, Inc., its Manager

Signature:     /s/ Seth Meyer      
Print Name: Seth Meyer  
Title: Chief Financial Officer

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**LENDER:**

HERCULES PRIVATE CREDIT FUND 1 L.P.

By: Hercules Adviser LLC, its Investment Adviser

Signature:           /s/ Seth Meyer          

Print Name: Seth Meyer

Title: Chief Financial Officer

**LENDER:**

HERCULES PRIVATE GLOBAL VENTURE GROWTH  
FUND I L.P.

By: Hercules Adviser LLC, its Investment Adviser

Signature:           /s/ Seth Meyer          

Print Name: Seth Meyer

Title: Chief Financial Officer

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**TABLE OF EXHIBITS AND SCHEDULES**

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Addendum 3:	Agent and Lender Terms
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Exhibit J-1:	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit J-2:	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit J-3:	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit J-4:	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
Schedule 1.1	Commitments

ADDENDUM 1 to LOAN AND SECURITY AGREEMENT

TAXES; INCREASED COSTS

1. **Defined Terms.** For purposes of this Addendum 1:

- a. “**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.
- b. “**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Term Commitment pursuant to a law in effect on the date on which (A) such Lender acquires such interest in the Loan or Term Commitment or (B) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2 or Section 4 of this Addendum 1, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient’s failure to comply with Section 7 of this Addendum 1 and (iv) any withholding Taxes imposed under FATCA.
- c. “**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Code.
- d. “**Foreign Lender**” means a Lender that is not a U.S. Person.
- e. “**Indemnified Taxes**” means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (ii) to the extent not otherwise described in clause (i), Other Taxes.
- f. “**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).
- g. “**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

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- h. **“Recipient”** means the Agent or any Lender, as applicable.
- i. **“Withholding Agent”** means Borrower and the Agent.
2. **Payments Free of Taxes.** Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2 or Section 4 of this Addendum 1) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.
3. **Payment of Other Taxes by Borrower.** Borrower shall timely pay to the relevant governmental authority in accordance with applicable law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.
4. **Indemnification by Borrower.** Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under Section 2 of this Addendum 1 or this Section 4) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. In addition, Borrower agrees to pay, and to save the Agent and any Lender harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all excise, sales or other similar taxes (excluding taxes imposed on or measured by the net income of the Agent or such Lender) that may be payable or determined to be payable with respect to any of the Collateral.
5. **Indemnification by the Lenders.** Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (a) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (b) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 11.8 of the Agreement relating to the maintenance of a Participant Register, and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this Section 5.
6. **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a governmental authority pursuant to the provisions of this Addendum 1, Borrower shall deliver to the

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Agent the original or a certified copy of a receipt issued by such governmental authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

7. **Status of Lenders.**

- a. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and the Agent, at the time or times reasonably requested by Borrower or the Agent, such properly completed and executed documentation reasonably requested by Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or the Agent as will enable Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 7(b)(i), 7(b)(ii) and 7(b)(iv) of this Addendum 1) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.
- b. Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,
  - i. any Lender that is a U.S. Person shall deliver to Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;
  - ii. any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Agent), whichever of the following is applicable:
    - A. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
    - B. executed copies of IRS Form W-8ECI;
    - C. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit J-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10

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percent shareholder” of Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to Borrower as described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

- D. to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of each such direct and indirect partner;
- iii. any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or the Agent to determine the withholding or deduction required to be made; and
- iv. if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or the Agent as may be necessary for Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iv), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.
- c. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Agent in writing of its legal inability to do so.
8. **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to the provisions of this Addendum 1 (including by the payment of additional amounts pursuant to the provisions of this Addendum 1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under the provisions of this Addendum 1 with respect to the Taxes

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giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant governmental authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 8 (plus any penalties, interest or other charges imposed by the relevant governmental authority) in the event that such indemnified party is required to repay such refund to such governmental authority. Notwithstanding anything to the contrary in this Section 8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 8 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

9. **Increased Costs.** If any change in applicable law shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result shall be to increase the cost to such Recipient of making, converting to, continuing or maintaining any Term Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Recipient (whether of principal, interest or any other amount), then, upon the request of such Recipient, Borrower will pay to such Recipient such additional amount or amounts as will compensate such Recipient for such additional costs incurred or reduction suffered. Notwithstanding the foregoing, the Borrower shall not be required to compensate a Recipient pursuant to this Section 9 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Recipient notifies the Borrower of the change in law giving rise to such increased costs or reductions, and of such Recipient's intention to claim compensation therefor (except that, if the change in law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).
10. **Tax Treatment.** For United States federal and applicable state and local income Tax purposes, the parties acknowledge and agree that the Term Loan Advances are being issued with original issue discount within the meaning of Section 1273 of the Code and shall take all Tax reporting positions consistent with the foregoing unless otherwise required by a governmental authority.
11. **Survival.** Each party's obligations under the provisions of this Addendum 1 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Term Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

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## ADDENDUM 2 to LOAN AND SECURITY AGREEMENT

(a) *Borrower's Business*. For purposes of this Addendum 2, Borrower shall be deemed to include its "affiliates" as defined in Title 13 Code of Federal Regulations Section 121.103. Borrower represents and warrants to Agent and the Lenders as of each SBA Funding Date and covenants to Agent and the Lenders for a period of one year after each SBA Funding Date or for such longer period as set forth below with respect to subsections 2, 3, 4, 5, 6 and 7 below, as follows:

1. **Size Status.** Borrower's primary NAICS code is 325412, and Borrower has less than 1,250 employees in the aggregate;
2. **No Relender.** Borrower's primary business activity does not involve, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair;
3. **No Passive Business.** Borrower is engaged in a regular and continuous business operation (excluding the mere receipt of payments such as dividends, rents, lease payments, or royalties). Borrower's employees are carrying on the majority of day to day operations. Borrower will not pass through substantially all of the proceeds of the Loan to another entity;
4. **No Real Estate Business.** Borrower is not classified under North American Industry Classification System (NAICS) codes 531110 (lessors of residential buildings and dwellings), 531120 (lessors of nonresidential buildings except miniwarehouses), 531190 (lessors of other real estate property), 237210 (land subdivision), or 236117 (new housing for-sale builders). Borrower is not classified under NAICS codes 236118 (residential remodelers), 236210 (industrial building construction), or 236220 (commercial and institutional building construction), if Borrower is primarily engaged in construction or renovation of properties on its own account rather than as a hired contractor. Borrower is not classified under NAICS codes 531210 (offices of real estate agents and brokers), 531311 (residential property managers), 531312 (nonresidential property managers), 531320 (offices of real estate appraisers), or 531390 (other activities related to real estate), unless it derives at least 80 percent of its revenue from non-Affiliate sources. The proceeds of the Loan will not be used to acquire or refinance real property unless Borrower (x) is acquiring an existing property and will use at least 51 percent of the usable square footage for its business purposes; (y) is building or renovating a building and will use at least 67 percent of the usable square footage for its business purposes; or (z) occupies the subject property and uses at least 67 percent of the usable square footage for its business purposes.
5. **No Project Finance.** Borrower's assets are not intended to be reduced or consumed, generally without replacement, as the life of its business progresses, and the nature of Borrower's business does not require that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets (e.g., real estate development projects and oil and gas wells). The primary purpose of the

Loan is not to fund production of a single item or defined limited number of items, generally over a defined production period, where such production will constitute the majority of the activities of Borrower (e.g., motion pictures and electric generating plants).

6. No Farm Land Purchases. Borrower will not use the proceeds of the Loan to acquire farm land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.
7. No Foreign Investment. The proceeds of the Loan will not be used substantially for a foreign operation. Borrower will not have, on or within one year after each SBA Funding Date and each other Loan provided by a Lender that is an SBIC more than 49 percent of its employees or tangible assets located outside the United States of America.

(b) *Small Business Administration Documentation.* Agent and the Lenders acknowledge that Borrower completed, executed and delivered to Agent prior to each SBA Funding Date SBA Forms 480, 652 and 1031 (Parts A and B) together with a business plan showing Borrower's financial projections (including balance sheets and income and cash flows statements) for the period described therein and a written statement (whether included in the purchase agreement or pursuant to a separate statement) from Agent regarding its intended use of proceeds from the sale of securities to the Lenders (the "Use of Proceeds Statement"). Borrower represents and warrants to Agent and the Lenders that the information regarding Borrower and its affiliates set forth in the SBA Form 480, Form 652 and Form 1031 and the Use of Proceeds Statement delivered as of each SBA Funding Date is accurate and complete.

(c) *Inspection.* The following covenants contained in this Section (c) are intended to supplement and not to restrict the related provisions of the Loan Documents. Subject to the preceding sentence, once per year at reasonable times not disruptive to Borrower's business, Borrower will permit, for so long as the Lenders hold any debt or equity securities of Borrower, Agent, the Lenders or their representative, at Agent's or the Lenders' expense, and examiners of the SBA to visit and inspect the properties and assets of Borrower, to examine its books of account and records, and to discuss Borrower's affairs, finances and accounts with Borrower's officers, senior management and accountants, all at such reasonable times as may be requested by Agent or the Lenders or the SBA.

(d) *Annual Assessment.* Upon request of Agent or Lender, promptly after the end of each calendar year (but in any event prior to February 28 of each year) and at such other times as may be reasonably requested by Agent or the Lenders, Borrower will deliver to Agent a written assessment of the economic impact of the Lenders' investment in Borrower, specifying the full-time equivalent jobs created or retained in connection with the investment, the impact of the investment on the businesses of Borrower in terms of expanded revenue and taxes, other economic benefits resulting from the investment (such as technology development or commercialization, minority business development, or expansion of exports) and such other information as may be required regarding Borrower in connection with the filing of the Lenders' SBA Form 468. The Lenders will assist Borrower with preparing such assessment. In addition to any other rights granted hereunder, Borrower will grant Agent and the Lenders and the SBA access (during regular business hours and upon reasonable prior notice) to Borrower's books and records for the purpose of verifying the use of such proceeds. Borrower also will furnish or cause to be furnished to Agent

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and the Lenders such other information regarding the business, affairs and condition of Borrower as Agent or the Lenders may from time to time reasonably request, and such information shall be certified by the President, Chief Executive Officer or principal accounting officer of Borrower to the extent requested by Agent or Lender for compliance with the SBIC Act.

(e) *Use of Proceeds.* Borrower will use the proceeds from the Loan only for purposes set forth in Section 7.17. Borrower will deliver to Agent from time to time promptly following Agent's request, a written report, certified as correct by Borrower's principal accounting officer, verifying the purposes and amounts for which proceeds from the Loan have been disbursed. Borrower will supply to Agent such additional information and documents as Agent reasonably requests with respect to its use of proceeds and will, to the extent required by Section 7.2, permit Agent and the Lenders and the SBA to have access (during regular business hours and upon reasonable prior notice) to any and all Borrower records and information and personnel as Agent deems necessary to verify how such proceeds have been or are being used, and to assure that the proceeds have been used for the purposes specified in Section 7.17.

(f) *Activities and Proceeds.* Neither Borrower nor any of its affiliates (if any) will engage in any activities or use directly or indirectly the proceeds from the Loan for any purpose for which a small business investment company is prohibited from providing funds by the SBIC Act, including 13 C.F.R. §107.720. The Borrower shall not, nor shall it cause or permit any of its subsidiaries to, without obtaining the prior written approval of Agent, change within one (1) year of the date hereof the Borrower's or any such subsidiary's business activities from that conducted on the date hereof to a business activity from which a licensee under the SBIC Act is prohibited from providing funds by the SBIC Act. The Borrower agrees that any such change in its or any such subsidiary's business activities without such prior written consent of Agent shall constitute a material breach of the obligations of the Borrower under this Addendum 2.

(g) [Reserved].

(h) *Compliance and Resolution.* Borrower agrees that a failure to comply with Borrower's obligations under this Addendum, or any other set of facts or circumstances where it has been asserted by any governmental regulatory agency (or Agent or the Lenders believe that there is a substantial risk of such assertion) that Agent, the Lenders and their affiliates are not entitled to hold, or exercise any significant right with respect to, any securities issued to the Lenders by Borrower, will constitute a breach of the obligations of Borrower under the financing agreements among Borrower, Agent and the Lenders. In the event of (i) a failure to comply with Borrower's obligations under this Addendum; or (ii) an assertion by any governmental regulatory agency (or Agent or the Lenders believe that there is a substantial risk of such assertion) of a failure to comply with Borrower's obligations under this Addendum, then (i) Agent, the Lenders and Borrower will meet and resolve any such issue in good faith to the satisfaction of Borrower, Agent, the Lenders, and any governmental regulatory agency, and (ii) upon request of the Lenders or Agent, Borrower will cooperate and assist with any assignment of the financing agreements among Hercules Technology III, L.P. and Hercules Capital, Inc.

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### ADDENDUM 3 to LOAN AND SECURITY AGREEMENT

#### Agent and Lender Terms

(a) Each Lender hereby irrevocably appoints Hercules Capital, Inc. to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) Each Lender agrees to indemnify the Agent in its capacity as such (to the extent not reimbursed by Borrower and without limiting the obligation of Borrower to do so), according to its respective Term Commitment percentages (based upon the total outstanding Term Commitments) in effect on the date on which indemnification is sought under this Addendum 3, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Agent under or in connection with any of the foregoing; The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

(c) Agent in Its Individual Capacity. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each such Person serving as Agent hereunder in its individual capacity.

(d) Exculpatory Provisions. The Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent shall not:

- (i) be subject to any fiduciary or other implied duties, regardless of whether any default or any Event of Default has occurred and is continuing;
- (ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Lenders, provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law; and
- (iii) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Agent shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Agent or any of its Affiliates in any capacity.

(e) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Lenders or as the Agent shall believe in good faith shall be necessary, under the circumstances or (ii) in the absence of its own gross negligence or willful misconduct.

(f) The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent. Reliance by Agent. Agent may rely, and shall be fully protected in acting, or refraining to act, upon, any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, bond or other paper or document that it has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of cables, teletypes and telexes, to have been sent by the proper party or parties. In the absence of its gross negligence or willful misconduct, Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to Agent and conforming to the requirements of this Agreement or any of the other Loan Documents. Agent may consult with counsel, and any opinion or legal advice of such counsel shall be full and complete authorization and protection in respect of any action taken, not taken or suffered by Agent hereunder or under any Loan Documents in accordance therewith. Agent shall have the right at any time to seek instructions concerning the administration of the Collateral from any court of competent jurisdiction. Agent shall not be under any obligation to exercise any of the rights or powers granted to Agent by this Agreement and the other Loan Documents at the request or direction of the Lenders unless Agent shall have been provided by the Lenders with adequate security and indemnity against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction.

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**EXHIBIT A**  
**ADVANCE REQUEST**

To: Agent:

Date: \_\_\_\_\_, 202[ ]

Hercules Capital, Inc. (the "Agent")  
400 Hamilton Avenue, Suite 310  
Palo Alto, CA 94301  
email: legal@htgc.com  
Attn: Lake Thomas McGuire

Kura Oncology, Inc. ("Borrower") hereby requests from Hercules Capital, Inc. ("Lender") an Advance in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Advance Amount") on \_\_\_\_\_, \_\_\_\_\_ (the "Advance Date") pursuant to the Loan and Security Agreement among Borrower, Agent and the Lender, dated November 1, 2022 (the "Agreement"). Capitalized words and other terms used but not otherwise defined herein are used with the same meanings as defined in the Agreement.

Please:

(a) Issue a check payable to Borrower \_\_\_\_\_

or

(b) Wire Funds to Borrower's account \_\_\_\_\_ [IF FILED PUBLICLY, ACCOUNT INFO REDACTED FOR SECURITY PURPOSES]

Bank: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
ABA Number: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
To Verify Wire Info: \_\_\_\_\_  
Email address: \_\_\_\_\_

Borrower represents that the conditions precedent to the Advance set forth in the Agreement are satisfied and shall be satisfied upon the making of such Advance, including but not limited to: (i) that no event that has had or would reasonably be expected to have a Material Adverse Effect has occurred and is continuing; (ii) that the representations and warranties set forth in the Agreement are and shall be true and correct in all material respects on and as of the Advance Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date; (iii) that Borrower is in compliance with all the terms and provisions set forth in each Loan Document on its part to be observed or performed; and (iv) that as of the Advance Date, no fact or condition exists that constitutes (or would, with the passage of time, the giving of notice, or both constitute) an Event of Default under the Loan Documents. Borrower understands and acknowledges that Agent has the right to review the financial information supporting this representation and, based upon such review in its sole discretion, the Lender may decline to fund the requested Advance.

Borrower hereby represents that Borrower's corporate status and locations have not changed since the date of the Agreement or, if the Attachment to this Advance Request is completed, are as set forth in the Attachment to this Advance Request.

Borrower agrees to notify Agent promptly before the funding of the Loan if any of the matters which have been represented above shall not be true and correct on the Borrowing Date and if Agent has received no such notice before the Advance Date then the statements set forth above shall be deemed to have been made and shall be deemed to be true and correct as of the Advance Date.

Executed as of [            ], 20[    ].

BORROWER: KURA ONCOLOGY, INC.

SIGNATURE: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

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**ATTACHMENT TO ADVANCE REQUEST**

Dated: \_\_\_\_\_

Borrower hereby represents and warrants to Agent that Borrower's current name and organizational status is as follows:

- Name: [            ]
- Type of organization: [            ]
- State of organization: [            ]
- Organization file number: [            ]

Borrower hereby represents and warrants to Agent that the street addresses, cities, states and postal codes of its current locations are as follows:

[•]

Borrower hereby represents and warrants to Agent that the Advance Amount does not exceed the Maximum Term Loan Amount as follows:

- a. Advance Amount: \$ \_\_\_\_\_
- b. Maximum Term Loan Amount: \$125,000,000
- c. Is clause a. less than or equal to clause b.? Yes/Compliant \_\_\_\_\_ No/Non-Compliant \_\_\_\_\_

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**EXHIBIT B**  
**[RESERVED]**

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**EXHIBIT C**  
**[RESERVED]**

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**EXHIBIT D**  
**[RESERVED]**

**EXHIBIT E**  
**COMPLIANCE CERTIFICATE**

Hercules Capital, Inc. (as “Agent”)  
400 Hamilton Avenue, Suite 310  
Palo Alto, CA 94301

Reference is made to that certain Loan and Security Agreement dated November 1, 2022 and the Loan Documents (as defined therein) entered into in connection with such Loan and Security Agreement all as may be amended from time to time (hereinafter referred to collectively as the “Loan Agreement”) by and among Hercules Capital, Inc. (the “Agent”), the several banks and other financial institutions or entities from time to time party thereto (collectively, the “Lender”) and Kura Oncology, Inc. (the “Company”) as Borrower. All capitalized terms not defined herein shall have the same meaning as defined in the Loan Agreement.

The undersigned is an Officer of the Company, knowledgeable of all Company financial matters, and is authorized to provide certification of information regarding the Company, hereby certifies, in such capacity, that in accordance with the terms and conditions of the Loan Agreement, the Company is in compliance for the period ending \_\_\_\_\_ of all covenants, conditions and terms and hereby reaffirms that all representations and warranties contained therein are true and correct on and as of the date of this Compliance Certificate with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, after giving effect in all cases to any standard(s) of materiality contained in the Loan Agreement as to such representations and warranties. Attached are the required documents supporting the above certification. The undersigned further certifies that these are prepared in accordance with GAAP (except for the absence of footnotes with respect to unaudited financial statement and subject to normal year-end adjustments) and are consistent from one period to the next except as explained below.

REPORTING REQUIREMENT	REQUIRED	CHECK IF ATTACHED
Interim Financial Statements	If Borrower’s Market Capitalization is less than \$750,000,000 – Monthly within 30 days	
Interim Financial Statements	If Borrower’s Market Capitalization is equal to or greater than \$750,000,000 – Quarterly within 45 days	
Audited Financial Statements	FYE within 90 days	

**ACCOUNTS OF BORROWER AND ITS SUBSIDIARIES AND AFFILIATES**

The undersigned hereby also confirms the below disclosed accounts represent all depository accounts and securities accounts presently open in the name of each Borrower or Borrower’s Subsidiary/Affiliate (other than Excluded Accounts), as applicable.

Each new account that has been opened since delivery of the previous Compliance Certificate is designated below with a “\*”.

	<b>Depository AC #</b>	<b>Financial Institution</b>	<b>Account Type (Depository / Securities)</b>	<b>Last Month Ending Account Balance</b>	<b>Purpose of Account</b>
<b>BORROWER</b>					
<b>Name/Address:</b>	1				
	2				
	3				
	4				
	5				
	6				
	7				
<b>SUBSIDIARY / AFFILIATE</b>					
<b>Name/Address</b>	1				
	2				
	3				
	4				
	5				
	6				
	7				

Financial Covenants.

1. Is Borrower’s Market Capitalization equal to or greater than \$1,250,000,000?



Yes: No further action needed.

No: Complete (A) or (B) below.

Complete either (A) or (B) depending on whether the Approval Milestone has been achieved on the date of delivery of this Compliance Certificate, and please attach supporting documentation:

**(A)** 7.19(a)(i)(x) – Minimum Cash (commencing June 1, 2024, if the Approval Milestone has not been achieved).

(I) Qualified Cash: \$ \_\_\_\_\_

(II) 55% of the Secured Obligations: \$ \_\_\_\_\_

Is item (I) above greater than or equal to item (II)?

Yes: In compliance with Section 7.19(a)(i)(x)

No: Not in compliance with Section 7.19(a)(i)(x)

OR

**(B)** 7.19(a)(i)(y) – Minimum Cash (commencing June 1, 2024, if the Approval Milestone has been achieved).

(I) Qualified Cash: \$ \_\_\_\_\_

(II) 35% of the Secured Obligations: \$ \_\_\_\_\_

Is item (I) above greater than or equal to item (II)?

Yes: In compliance with Section 7.19(a)(i)(y)

No: Not in compliance with Section 7.19(a)(i)(y)

2. Are any Corporate Collaborations (as described in clause (d)(z) of the definition of Permitted License) currently in effect?

No: No further action needed.

Yes: Complete (A) below.

**(A)** 7.19(a)(ii) – Minimum Cash (with respect to Corporate Collaborations).

(I) Qualified Cash: \$ \_\_\_\_\_

(II) 55% of the Secured Obligations: \$ \_\_\_\_\_

Is item (I) above greater than or equal to item (II)?

Yes: In compliance with Section 7.19(a)(ii)

\_\_\_ No: Not in compliance with Section 7.19(a)(ii)

3. Has Borrower made any cash payments in respect of Permitted Convertible Debt subject to satisfaction of the Redemption Conditions?

\_\_\_ No: No further action needed.

\_\_\_ Yes: Complete (A) below.

(A) 7.19(a)(iii) – Minimum Cash (with respect to payments of Permitted Convertible Debt).

(I) Qualified Cash: \$ \_\_\_\_\_

(II) 150% of the Secured Obligations: \$ \_\_\_\_\_

Is item (I) above greater than or equal to item (II)?

\_\_\_ Yes: In compliance with Section 7.19(a)(iii)

\_\_\_ No: Not in compliance with Section 7.19(a)(iii)

Very Truly Yours,

Kura Oncology, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT F**

**FORM OF JOINDER AGREEMENT**

This Joinder Agreement (the "Joinder Agreement") is made and dated as of [ ], 20[ ], and is entered into by and between \_\_\_\_\_, a \_\_\_\_\_ corporation ("Subsidiary"), and HERCULES CAPITAL, INC., a Maryland corporation (as "Agent").

**RECITALS**

A. Subsidiary's Affiliate, Kura Oncology, Inc. ("Company") has entered into that certain Loan and Security Agreement dated November 1, 2022, with the several banks and other financial institutions or entities from time to time party thereto as lender (collectively, the "Lenders") and the Agent, as such agreement may be amended (the "Loan Agreement"), together with the other agreements executed and delivered in connection therewith;

B. Subsidiary acknowledges and agrees that it will benefit both directly and indirectly from Company's execution of the Loan Agreement and the other agreements executed and delivered in connection therewith;

**AGREEMENT**

NOW THEREFORE, Subsidiary and Agent agree as follows:

1. The recitals set forth above are incorporated into and made part of this Joinder Agreement. Capitalized terms not defined herein shall have the meaning provided in the Loan Agreement.
2. By signing this Joinder Agreement, Subsidiary shall be bound by the terms and conditions of the Loan Agreement the same as if it were Borrower (as defined in the Loan Agreement) under the Loan Agreement, mutatis mutandis, provided however, that (a) with respect to (i) Section 5.1 of the Loan Agreement, Subsidiary represents that it is an entity duly organized, legally existing and in good standing under the laws of [ ], (b) neither Agent nor the Lenders shall have any duties, responsibilities or obligations to Subsidiary arising under or related to the Loan Agreement or the other Loan Documents, (c) that if Subsidiary is covered by Company's insurance, Subsidiary shall not be required to maintain separate insurance or comply with the provisions of Sections 6.1 and 6.2 of the Loan Agreement, and (d) that as long as Company satisfies the requirements of Section 7.1 of the Loan Agreement, Subsidiary shall not have to provide Agent separate Financial Statements. To the extent that Agent or the Lenders has any duties, responsibilities or obligations arising under or related to the Loan Agreement or the other Loan Documents, those duties, responsibilities or obligations shall flow only to Company and not to Subsidiary or any other Person or entity. By way of example (and not an exclusive list): (i) Agent's providing notice to Company in accordance with the Loan Agreement or as otherwise agreed among Company, Agent and the Lenders shall be deemed provided to Subsidiary; (ii) a Lender's providing an Advance to Company shall be deemed an Advance to Subsidiary; and (iii) Subsidiary shall have no right to request an Advance or make any other demand on the Lenders.
3. Subsidiary agrees not to certificate its equity securities without Agent's prior written consent, which consent may be conditioned on the delivery of such equity securities to Agent in order to perfect Agent's security interest in such equity securities.
4. Subsidiary acknowledges that it benefits, both directly and indirectly, from the Loan Agreement, and hereby waives, for itself and on behalf on any and all successors in interest (including without limitation any assignee for the benefit of creditors, receiver, bankruptcy trustee or itself as debtor-in-possession under any bankruptcy proceeding) to the fullest extent provided by law, any and all claims, rights or

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defenses to the enforcement of this Joinder Agreement on the basis that (a) it failed to receive adequate consideration for the execution and delivery of this Joinder Agreement or (b) its obligations under this Joinder Agreement are avoidable as a fraudulent conveyance.

5. As security for the prompt, complete and indefeasible payment when due (whether on the payment dates or otherwise) of all the Secured Obligations, Subsidiary grants to Agent a security interest in all of Subsidiary's right, title, and interest in and to the Collateral.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SUBSIDIARY:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_  
email: \_\_\_\_\_

AGENT:

HERCULES CAPITAL, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:  
400 Hamilton Ave., Suite 310  
Palo Alto, CA 94301  
email: legal@htgc.com  
Telephone: 650-289-3060

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**EXHIBIT G**

RESERVED

**EXHIBIT H**  
**ACH DEBIT AUTHORIZATION AGREEMENT**

Hercules Capital, Inc.  
400 Hamilton Avenue, Suite 310  
Palo Alto, CA 94301

Re: Loan and Security Agreement dated November 1, 2022 (the "Agreement") by and among Kura Oncology, Inc. ("Borrower") and Hercules Capital, Inc., as agent ("Company") and the lenders party thereto (collectively, the "Lenders")

In connection with the above referenced Agreement, Borrower hereby authorizes the Company to initiate debit entries for (i) the periodic payments due under the Agreement and (ii) out-of-pocket legal fees and costs incurred by Agent or the Lenders pursuant to Section 11.12 of the Agreement to Borrower's account indicated below.

Borrower authorizes the depository institution named below to debit to such account.

[IF FILED PUBLICLY, ACCOUNT INFO REDACTED FOR SECURITY PURPOSES]

DEPOSITORY NAME	BRANCH
CITY	STATE AND ZIP CODE
TRANSIT/ABA NUMBER	ACCOUNT NUMBER

This authority will remain in full force and effect so long as any amounts are due under the Agreement.

\_\_\_\_\_  
(Borrower)

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

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**EXHIBIT I**

RESERVED



**EXHIBIT J-1**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Loan and Security Agreement dated as of November 1, 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Kura Oncology, Inc., a Delaware corporation, and each of its Subsidiaries (as defined in the Loan Agreement) (hereinafter collectively referred to as the "Borrower"), the several banks and other financial institutions or entities from time to time parties to the Loan Agreement (collectively, referred to as the "Lenders"), and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and the Lenders (in such capacity, the "Agent").

Pursuant to the provisions of Addendum 1 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and Borrower with a correct and complete certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form). By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any material respect, the undersigned shall promptly so inform Borrower and the Agent in writing and deliver promptly to Borrower and the Agent an updated certificate or other appropriate documentation (including any new documentation reasonably requested by Borrower or the Agent) or promptly notify Borrower and the Agent in writing of its inability to do so, and (2) the undersigned shall have at all times furnished Borrower and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, such a certificate described in (2) of the preceding sentence shall be updated and provided by the undersigned to the Agent and Borrower prior to the next applicable payment date following a change described in (1) of the preceding sentence.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

Date: \_\_\_\_\_, 20\_\_

[NAME OF LENDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J-2**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Loan and Security Agreement dated as of November 1, 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Kura Oncology, Inc., a Delaware corporation, and each of its Subsidiaries (as defined in the Loan Agreement) (hereinafter collectively referred to as the "Borrower"), the several banks and other financial institutions or entities from time to time parties to the Loan Agreement (collectively, referred to as the "Lenders"), and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and the Lenders (in such capacity, the "Agent").

Pursuant to the provisions of Addendum 1 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a correct and complete certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form). By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any material respect, the undersigned shall promptly so inform such Lender in writing and deliver promptly to such Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such Lender) or promptly notify such Lender in writing of its inability to do so, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, such a certificate described in (2) of the preceding sentence shall be updated and provided by the undersigned to its participating Lender prior to the next applicable payment date following a change described in (1) of the preceding sentence.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

Date: \_\_\_\_\_, 20\_\_

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J-3**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Loan and Security Agreement dated as of November 1, 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Kura Oncology, Inc., a Delaware corporation, and each of its Subsidiaries (as defined in the Loan Agreement) (hereinafter collectively referred to as the "Borrower"), the several banks and other financial institutions or entities from time to time parties to the Loan Agreement (collectively, referred to as the "Lenders"), and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and the Lenders (in such capacity, the "Agent").

Pursuant to the provisions of Addendum 1 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a correct and complete IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any material respect, the undersigned shall promptly so inform such Lender and deliver promptly to such Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such Lender) or promptly notify such Lender in writing of its inability to do so, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, such a certificate described in (2) of the preceding sentence shall be updated and provided by the undersigned to its participating Lender prior to the next applicable payment date following a change described in (1) of the preceding sentence.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

Date: \_\_\_\_\_, 20\_\_

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J-4**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Loan and Security Agreement dated as of November 1, 2022 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Kura Oncology, Inc., a Delaware corporation, and each of its Subsidiaries (as defined in the Loan Agreement) (hereinafter collectively referred to as the "Borrower"), the several banks and other financial institutions or entities from time to time parties to the Loan Agreement (collectively, referred to as the "Lenders"), and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and the Lenders (in such capacity, the "Agent").

Pursuant to the provisions of Addendum 1 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Loan Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and Borrower with a correct and complete IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any material respect, the undersigned shall promptly so inform Borrower and the Agent in writing and deliver promptly to Borrower and the Agent an updated certificate or other appropriate documentation (including any new documentation reasonably requested by Borrower or the Agent) or promptly notify Borrower and the Agent in writing of its inability to do so, and (2) the undersigned shall have at all times furnished Borrower and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, such a certificate described in (2) of the preceding sentence shall be updated and provided by the undersigned to the Agent and Borrower prior to the next applicable payment date following a change described in (1) of the preceding sentence.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

Date: \_\_\_\_\_, 20\_\_

[NAME OF LENDER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1.1**  
**COMMITMENTS**

<b>LENDERS</b>	<b>Tranche 1A Commitment</b>	<b>Tranche 1B Commitment</b>	<b>Tranche 2 Commitment</b>	<b>Tranche 3 Commitment</b>	<b>Tranche 4 Commitment*</b>	<b>TERM COMMITMENT</b>
Hercules Capital, Inc.	—	\$ 8,250,000	\$19,250,000	\$22,000,000	\$25,000,000	\$ 74,500,000
Hercules Capital IV, L.P.	\$ 5,500,000	—	—	—	—	\$ 5,500,000
Hercules Private Credit Fund 1 LP	\$ 2,500,000	\$ 3,750,000	\$ 8,750,000	\$10,000,000	—	\$ 25,000,000
Hercules Private Global Venture Growth Fund I LP	\$ 2,000,000	\$ 3,000,000	\$ 7,000,000	\$ 8,000,000	—	\$ 20,000,000
<b>TOTAL COMMITMENTS</b>	<b>\$10,000,000</b>	<b>\$15,000,000</b>	<b>\$35,000,000</b>	<b>\$40,000,000</b>	<b>\$25,000,000</b>	<b>\$ 125,000,000</b>

\*Funding of Tranche 4 is subject to approval by Lenders' investment committee in its sole discretion.



**Kura Oncology Announces Financing Transactions with Bristol Myers Squibb and Hercules Capital, Providing Access to up to \$150 Million**

- \$25 million equity investment from Bristol Myers Squibb at \$18.25 per share –
- Term loan facility from Hercules Capital provides up to \$125 million –
- Proceeds extend Kura’s cash runway into 2026, if term loan is fully drawn –

**SAN DIEGO, Nov. 3, 2022** – Kura Oncology, Inc. (Nasdaq: KURA), a clinical-stage biopharmaceutical company committed to realizing the promise of precision medicines for the treatment of cancer, today announced a \$25 million equity investment from Bristol Myers Squibb (NYSE: BMY) and a term loan facility with access to up to \$125 million from Hercules Capital, Inc. (NYSE: HTGC). If the term loan is fully drawn, proceeds from these two transactions together with existing cash are expected to fund Kura’s current operating plan into 2026.

“Bristol Myers Squibb has deep expertise and history in advancing transformational cancer treatments,” said Troy Wilson, Ph.D., J.D., President and Chief Executive Officer of Kura Oncology. “This equity investment strengthens the relationship between our organizations and enables Bristol Myers Squibb to provide valuable strategic input into our global development strategy. We are honored and excited to have their support and look forward to their input as we work to deliver innovative science with the potential to benefit patients.”

“In addition, we are grateful for the support of Hercules Capital, a company with a long history of investing in innovative biotechnology companies,” Dr. Wilson continued. “Together, these transactions augment our already strong balance sheet and give us significant financial strength and flexibility as we prepare to advance into the registration-enabling portion of KOMET-001 for ziftomenib, initiate multiple combination studies for ziftomenib in earlier lines of acute myeloid leukemia and continue to expand and invest in our farnesyl transferase inhibitor programs.”

Kura has agreed to sell 1,370,171 shares to Bristol Myers Squibb at a price of \$18.25 per share for gross proceeds of \$25 million. The shares of common stock were offered and sold to Bristol Myers Squibb in a registered direct offering. In connection with the equity investment, Bristol Myers Squibb will appoint a member to Kura’s Global Steering Committee. Kura will maintain full ownership and control of its programs and operations.

Under the terms of the loan agreement with Hercules Capital, \$10 million will be drawn immediately after closing and an additional \$15 million is immediately available to Kura at its sole discretion. Kura may draw an additional \$75 million in two separate tranches upon achievement of near-term clinical milestones. An additional \$25 million may be drawn in a fourth tranche, subject to the approval of Hercules Capital. The loan bears an initial interest rate of 8.65% and adjusts with future changes in the prime rate. Kura will pay interest only for the first 24 months, extendable to up to 48 months on achievement of certain milestones. The loan matures 60 months from closing in November 2027.

“Hercules is pleased to enter into a strategic relationship with Kura as it advances its promising clinical-stage programs,” said Lake McGuire, Managing Director at Hercules Capital. “This capital commitment from Hercules aims to help Kura deliver new treatment options to patients suffering from AML and other cancers and reflects our dedication to provide customized financing solutions to growth-stage life science companies.”

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

### **About Kura Oncology**

Kura Oncology is a clinical-stage biopharmaceutical company committed to realizing the promise of precision medicines for the treatment of cancer. The Company’s pipeline consists of small molecule drug candidates that target cancer signaling pathways. Ziftomenib (KO-539), a potent and selective menin inhibitor, is currently in a Phase 1b clinical trial (KOMET-001) for patients with relapsed/refractory acute myeloid leukemia, including patients with NPM1 mutations or KMT2A rearrangements. Tipifarnib, a potent, selective and orally bioavailable farnesyl transferase inhibitor (FTI), has received Breakthrough Therapy Designation for the treatment of patients with HRAS mutant HNSCC. Kura is conducting a Phase 1/2 trial (KURRENT-HN) of tipifarnib in combination with the PI3K $\alpha$  inhibitor alpelisib to address larger genetic subsets of HNSCC patients, including those whose tumors are dependent on HRAS and/or PI3K $\alpha$  pathways. The Company has also initiated a Phase 1 trial (KURRENT-LUNG) of tipifarnib in combination with osimertinib in treatment-naïve, locally advanced/metastatic, EGFR mutant non-small cell lung cancer. Kura intends to perform initial clinical evaluation with tipifarnib while in parallel advancing KO-2806, the Company’s next-generation FTI, through IND-enabling studies. For additional information, please visit Kura’s website at [www.kuraoncology.com](http://www.kuraoncology.com).

### **Forward-Looking Statements**

This news release contains certain forward-looking statements that involve risks and uncertainties that could cause actual results to be materially different from historical results or from any future results expressed or implied by such forward-looking statements. Such forward-looking statements include statements regarding, among other things, the efficacy, safety and therapeutic potential of ziftomenib or farnesyl transferase inhibitors, progress and expected timing of the ziftomenib or farnesyl transferase inhibitor programs and clinical trials, and the strength of Kura’s balance sheet and the adequacy of cash on hand. Factors that may cause actual results to differ materially include the risk that compounds that appeared promising in early research or clinical trials do not demonstrate safety and/or efficacy in later preclinical studies or clinical trials, the risk that Kura may not obtain approval to market its product candidates, uncertainties associated with performing clinical trials, regulatory filings, applications and other interactions with regulatory bodies, risks associated with reliance on third parties to successfully conduct clinical trials, the risks associated with reliance on outside financing to meet capital requirements, and other risks associated with the process of discovering, developing and commercializing drugs that are safe and effective for use as human therapeutics, and in the endeavor of building a business around such drugs. You are urged to consider statements that include the words “may,” “will,” “would,” “could,” “should,” “believes,” “estimates,” “projects,” “promise,” “potential,”

“expects,” “plans,” “anticipates,” “intends,” “continues,” “designed,” “goal,” or the negative of those words or other comparable words to be uncertain and forward-looking. For a further list and description of the risks and uncertainties the Company faces, please refer to the Company’s periodic and other filings with the Securities and Exchange Commission (SEC), including the Company’s Form 10-Q for the quarter ended September 30, 2022 filed with the SEC on November 3, 2022, which are available at [www.sec.gov](http://www.sec.gov). Such forward-looking statements are current only as of the date they are made, and Kura assumes no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

## **Contacts**

### Company:

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Senior Vice President, Investor Relations &  
Corporate Communications  
(858) 500-8803  
[pete@kuraoncology.com](mailto:pete@kuraoncology.com)

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