

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 ACT OF 1934

Date of Report (Date of earliest event reported): October 30, 2023

SIENTRA, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-36709

(Commission File Number)

20-5551000

(I.R.S. Employer
Identification No.)

3333 Michelson Drive, Suite 650
Irvine, California

(Address of Principal Executive Offices)

92612

(Zip Code)

805 562-3500

(Registrant's telephone number, including area code)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	SIEN	The Nasdaq Global Select Market

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement

On October 30, 2023 (the “Effective Date”), Sientra, Inc. a Delaware corporation (the “Company”) entered into a Temporary Waiver and Exchange Agreement (the “Temporary Waiver and Exchange Agreement”) under that certain Amended and Restated Facility Agreement, dated as of October 12, 2022 (as so amended and restated, and as the same may be further amended, modified, restated or otherwise supplemented from time to time from time to time, the “Facility Agreement”) by and among the Company as borrower, certain of the Company’s subsidiaries from time to time party thereto as guarantors and Deerfield Partners, L.P., as agent and lender (“Deerfield”). Pursuant to the Facility Agreement, the Company issued and sold to Deerfield on October 12, 2022 an Original Loan Convertible Note, with an outstanding aggregate principal amount of \$50 million (the “Note”). In addition, pursuant to the Facility Agreement, Deerfield holds a Disbursement Loan Convertible Note issued by the Company on October 12, 2022, with an aggregate principal amount of \$23 million.

The Temporary Waiver and Exchange Agreement, among other matters, provides:

- (i) for a temporary waiver of the event of default that has occurred and is continuing under Section 7.1(b) of the Facility Agreement as a result of the Company’s failure to satisfy the minimum revenue financial covenant for the fiscal quarter ending September 30, 2023 (the “Specified Event of Default”) set forth in Section 6.10 of the Facility Agreement until the earliest to occur of (A) the first date following the Effective Date on which an Event of Default (as defined in the Facility Agreement) has occurred, other than the Specified Event of Default, (B) the failure of the Company, or the failure of the Company’s subsidiaries party to the Facility Agreement, to comply with any term, condition or covenant set forth in the Temporary Waiver and Exchange Agreement and (C) January 15, 2024 (the “Waiver Period”);
- (ii) for the exchange by Deerfield of \$1.2 million of principal amount of the Note into a pre-funded warrant (a “Pre-Funded Warrant”) to purchase 886,635 shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), based upon 105.75% of the aggregate principal amount of the Note exchanged, plus the amount of accrued and unpaid interest thereon at an exchange rate equal to the Nasdaq official closing price of the Common Stock as of the Effective Date; and
- (iii) on or before January 15, 2024, Deerfield may (in its sole discretion) elect for the Company to convert up to an additional \$18.8 million in aggregate of the principal amount of the Note into one or more Pre-Funded Warrants to purchase additional shares of the Company’s Common Stock, based upon 105.75% of the aggregate principal amount of the Note to be converted, plus the amount of accrued and unpaid interest thereon at an conversion rate equal to the Nasdaq official closing price of the Common Stock as of the Effective Date.

The Pre-Funded Warrants have an exercise price of \$0.01 per share and are exercisable at any time after issuance until such Pre-Funded Warrants have been fully exercised in accordance with their terms. The Pre-Funded Warrants are subject to a limitation on the ability to exercise if the Deerfield’s beneficial ownership of Common Stock (together with its affiliates and certain attribution parties) would exceed 4.985% of the outstanding Common Stock.

In addition, during the Waiver Period, for purposes of determining whether or not certain actions are permitted to be taken by or on behalf of the Company or any other loan party upon the satisfaction of any term, condition or requirement in the Facility Agreement or any other Facility Document (as defined in the Facility Agreement) that a default or event of default shall not have occurred and be continuing, the Specified Event of Default shall be deemed to have occurred and be continuing in respect of any such term, condition or requirement, except as set forth in the Temporary Waiver and Exchange Agreement.

The foregoing description of the Temporary Waiver and Exchange Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Temporary Waiver and Exchange Agreement, a copy of which is filed as Exhibit 10.1 hereto and incorporated by reference herein.

Item 2.02 Results of Operations and Financial Condition.

To the extent applicable, the disclosures in Item 7.01 below are incorporated by reference.

The information under Item 2.02 of this Current Report on Form 8-K, including the press release furnished as Exhibit 99.1, is being furnished, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, and shall not be deemed to be incorporated by reference into any of the Company's filings, whether made before or after the date hereof, regardless of any general incorporation language in any such filing.

Item 3.02 Unregistered Sales of Equity Securities.

The information contained in Item 1.01, above, is hereby incorporated by reference. The issuance of the Pre-Funded Warrants was made in reliance upon an exemption from registration pursuant to Section 3(a)(9) of the Securities Act of 1933, as amended.

Item 7.01 Regulation FD Disclosure.

On October 30, 2023, the Company issued a press release announcing preliminary third quarter financial results and withdrawing fiscal 2023 guidance. In addition, the Company announced it is exploring strategic alternatives in partnership with its advisors and financial partners to improve its balance sheet and provide the strongest path forward for its continued success. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and incorporated by reference.

The information under Item 7.01 of this Current Report on Form 8-K, including the press release furnished as Exhibit 99.1, is being furnished, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, and shall not be deemed to be incorporated by reference into any of the Company's filings, whether made before or after the date hereof, regardless of any general incorporation language in any such filing.

Cautionary Statement Regarding Forward-Looking Statements

Forward-Looking Statements

This current report on Form 8-K contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, based on management's current assumptions and expectations of future events and trends, which affect or may affect the Company's business, strategy, operations or financial performance, and actual results may differ materially from those expressed or implied in such statements due to numerous risks and uncertainties. Forward-looking statements are made only as of the date of this Current Report on Form 8-K. The words "believe," "may," "might," "could," "will," "aim," "estimate," "continue," "anticipate," "intend," "expect," "plan," "position," or the negative of those terms, and similar expressions that convey uncertainty of future events or outcomes are intended to identify estimates, projections and other forward-looking statements. Forward-looking statements may include information concerning the Company's ability to comply with the terms of the Facility Agreement, including financial covenants, both during and after any waiver period, and/or obtain any additional waivers of any terms of the Company's Facility Agreement to the extent required, the Company's unaudited financial information for the third quarter ended September 30, 2023, the Company's possible or assumed future results of operations, including descriptions of the Company's revenues, operating expense, profitability, outlook and overall business strategy, the Company's ability and timing to successfully integrate the Viality™ with AuraClens™ fat transfer system and SimpliDerm® human Acellular Dermal Matrix into its existing operations, the reception of plastic surgeons to the Company's products, the Company's ability to expand into aesthetic applications outside of breast procedures, the Company's ability to add additional products and strategic partnerships, the Company's ability to capture additional market share and customer accounts in the plastic surgery market, and the Company's ability to obtain and execute on any strategic alternatives. Such statements are subject to risks and uncertainties, including the audit of the Company's financial statements which audit is not yet complete and the numbers presented here could differ from the final audited financial statements presented by the Company, the Company's ability to recapture delayed procedures resulting from the COVID-19 pandemic and other macroeconomic pressures, the positive reaction from plastic surgeons and their patients to the Company's products, the ability to meet consumer demand including any potential supply issues resulting from the COVID-19 pandemic or the war in Ukraine, the growth of the plastic surgery market and breast procedures, and the ability of the Company to execute on its commercial, operational, marketing, research and development and regulatory plans, and the Company's ability to obtain and execute on any strategic alternatives. Additional factors that could cause actual results to differ materially from those contemplated in this Current Report on Form 8-K can be found in the Risk Factors section of Sientra's public filings with the Securities and Exchange Commission. All statements other than statements of historical fact are forward-looking statements. The words "believe," "may," "might," "could," "will," "aim," "estimate," "continue," "anticipate," "intend," "expect," "plan," "position," or the negative of those terms, and similar expressions that convey uncertainty of future events or outcomes are intended to identify estimates, projections and other forward-looking statements. You are cautioned not to place undue reliance on these forward-looking statements, and such estimates, projections and other forward-looking statements speak only as of the date they were made, and, except to the extent required by law, the Company undertakes no obligation to update or review any estimate, projection or forward-looking statement. Actual results may differ from those set forth in this Current Report on Form 8-K due to the risks and uncertainties inherent in the Company's business.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
4.1	Form of Pre-Funded Warrant
10.1	Temporary Waiver and Exchange Agreement, dated as of October 30, 2023, among Sientra, Inc., the other loan parties party thereto and Deerfield Partners, L.P.
99.1	Press Release, dated October 30, 2023
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.

SIENTRA, INC.

Date: October 31, 2023

By: /s/ Ronald Menezes

Ronald Menezes

President and Chief Executive Officer

**PRE-FUNDED WARRANT
TO PURCHASE
SHARES OF COMMON STOCK
OF
SIENTRA, INC.**

Original Issue Date: []

No. []

FOR VALUE RECEIVED, the undersigned, Sientra, Inc., a Delaware corporation (together with its successors and assigns, the “Company”), hereby certifies that Deerfield Partners, L.P. or any transferee, assignee or other subsequent holder hereof (the “Holder”) is entitled to subscribe for and purchase, at the Exercise Price per share, the Warrant Share Number of duly authorized, validly issued, fully paid and non-assessable shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”). This Warrant is issued pursuant to that certain [Amended and Restated Convertible Note, originally issued on March 11, 2020, and amended and restated on October 12, 2022 (the “Note”), as modified by that certain]¹ Temporary Waiver and Exchange Agreement, dated as of October 30, 2023, between the Company, the other Loan Parties and Deerfield Partners, L.P., in its capacity as Agent for itself as a lender and as lender (as may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Exchange Agreement”). The Common Shares (as defined below) issuable hereunder (the “Warrant Shares”) are entitled to the benefits of the Registration Rights Agreement (as defined below). Capitalized terms used in this Warrant and not otherwise defined herein shall have the respective meanings specified in Section 8 hereof or, if not specified in Section 8 hereof, the respective meanings ascribed thereto in the Exchange Agreement or the Facility Agreement, as applicable.

1. Term. The right to subscribe for and purchase Warrant Shares represented hereby commences on the Original Issue Date and shall expire at such time as this Warrant shall have been exercised in full (such period being the “Term”).

2. Method of Exercise; Payment; Issuance of New Warrant; Transfer and Exchange.

(a) ***Exercise of Warrant.*** The purchase rights represented by this Warrant may be exercised in whole or in part at any time and from time to time during the Term by delivering to the Company (by electronic mail or otherwise in accordance with Section 11) written notice of such exercise in the form attached hereto as Exhibit A (each, an “Exercise Form”) and the applicable Exercise Price, which may be satisfied by a Cash Exercise or a Cashless Exercise (as each is defined below), for each Warrant Share as to which this Warrant is being exercised. The “Exercise Date” in respect of each exercise of this Warrant shall be defined as the date that the Exercise Form in respect of such exercise is delivered to the Company in accordance with the terms hereof. In the event that this Warrant has not been exercised in full as of the last Business Day during the Term, the Holder shall be deemed to have exercised the purchase rights represented by this Warrant in full as a Cashless Exercise as of 4:59 p.m. (New York City time) on such last Business Day (and such last Business Day shall be deemed the Exercise Date for purposes of such exercise).

¹ **NTD:** Bracketed language will be included in Additional Warrants, but not the Exchange Warrant.

(b) **Cash Exercise.** The Holder may pay the Exercise Price in respect of any Warrant Share(s) in cash (a “Cash Exercise”). In the case of a Cash Exercise, within two (2) Trading Days (or, if less, the number of Trading Days comprising the Standard Settlement Period on the Exercise Date) following the Exercise Date as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Exercise Form by wire transfer or cashier’s check drawn on a United States bank.

(c) **Net Issue Exercise.** In lieu of paying the Exercise Price in respect of any Warrant Share(s) in cash, the Holder, at its option, may exercise this Warrant (in whole or in part) on a cashless basis by making appropriate notation on the applicable Exercise Form, in which event the Company shall issue to the Holder a number of Warrant Shares computed using the following formula (a “Cashless Exercise”):

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

Where: X = the number of the Warrant Shares to be issued to the Holder.
Y = the number of Warrant Shares with respect to which the Warrant is exercised.
A = the fair market value of one share of Common Stock on the Exercise Date.
B = the Exercise Price (as adjusted to the date of such calculation).

For purposes of this Section 2(c), the “fair market value” of one share of Common Stock on the date of determination shall mean:

(i) if the Market Price can be calculated in accordance with the definitions of “Market Price” and “Volume Weighted Average Price,” the Market Price per share of Common Stock as of the Exercise Date; and

(ii) if the Common Stock cannot be calculated in accordance with the definitions of “Market Price” and “Volume Weighted Average Price,” the fair market value of a share of Common Stock shall be such fair market value as determined in good faith by the Company in reliance on an opinion of a nationally recognized independent investment banking firm retained by the Company for this purpose; provided that the Holder shall have a right to receive from the Company the calculations performed to arrive at such fair market value and a copy of the opinion of such investment banking firm and any report prepared by such investment banking firm and delivered to the Company in connection therewith.

The date of determination for purposes of this Section 2(c), shall be the date the Exercise Form is delivered by the Holder to the Company.

(d) **Issuance of Warrant Shares and New Warrant.** In the event of any exercise of the purchase rights represented by this Warrant in accordance with the terms hereof, the Warrant Shares issuable upon such exercise shall be delivered by the Company, (i) in the case of an exercise at a time when any of the Unrestricted Conditions is met as of the Exercise Date in respect of such Warrant Shares, by causing the Company’s designated transfer agent (“Transfer Agent”) to electronically transmit the Warrant Shares issuable upon such exercise to the Holder by crediting the account of the Holder’s prime broker with The Depository Trust Company (“DTC”), through its Deposit/Withdrawal at Custodian (“DWAC”) system, as specified in the relevant Exercise Form, no later than the later of (x) two (2) Trading Days (or, if less, the number of Trading Days comprising the Standard Settlement Period) after the relevant Exercise Date and, (y) in the case of a Cash Exercise, one (1) Trading Day after the date the applicable aggregate Exercise Price is received by the Company, or (ii) in the case of an exercise at a time when the Warrant Shares issuable upon such exercise are required to bear a restrictive legend pursuant to Section 2(f)(ii) because none of the Unrestricted Conditions is met in respect thereof, issue and dispatch by overnight courier to the address as specified in the Exercise Form, a certificate, registered in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise, within five (5) Trading Days after the relevant Exercise Date. Upon the exercise of this Warrant or any part hereof, the Company shall, at its own cost and expense, take all necessary action, including obtaining and delivering an opinion of counsel, if applicable, as shall be necessary to enable the Transfer Agent to transmit to the Holder in accordance with this Section 2(d) the number of Warrant Shares issuable upon such exercise. The Company warrants that no instructions other than these instructions have been or will be given to the Transfer Agent in respect of the Warrant Shares and that the Warrant Shares will not contain any legend or be subject to any stop transfer or similar instruction if any of the Unrestricted Conditions is met in respect thereof. Upon the delivery of an Exercise Form in accordance with Section 2(a), the Holder shall be deemed for all purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s or its designee’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. The Holder shall not be required to physically surrender this Warrant to the Company. Execution and delivery of an Exercise Form with respect to a partial exercise shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the remaining number of Warrant Shares. ***The Holder and any assignee of the Holder, by acceptance of this Warrant, acknowledges and agrees that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the Warrant Share Number (and, therefore, the number of Warrant Shares available for purchase hereunder) at any given time may be less than the amount stated herein.***

(e) *Transferability of Warrant.* Subject to Section 2(f)(iii), this Warrant and all rights hereunder are transferable, in whole or in part, by the Holder without charge to the Holder, upon surrender of this Warrant to the Company at its then principal executive offices with a properly completed and duly executed Assignment Form in the form attached hereto as Exhibit B. Within three (3) Trading Days of such surrender and delivery (the “Transfer Delivery Period”), the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant, if any, not so assigned and this Warrant shall promptly thereafter be cancelled. Notwithstanding anything herein to the contrary, this Warrant, if properly assigned in accordance herewith, may be exercised by a new Holder for the purchase of Warrant Shares immediately upon such assignment without having a new Warrant issued. The Holder shall pay any Transfer Taxes (as such term is defined in Section 5(b) below) imposed in connection with such transfer or assignment (if any).

(f) Restrictive Legend.

(i) The Holder understands that until such time as the Warrant Shares have been registered under the Securities Act or otherwise may be sold pursuant to Rule 144 or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Warrant Shares may bear a restrictive legend in substantially the following form (and a stop-transfer order consistent therewith may be placed against transfer of the certificates for such securities) (the “Securities Law Legend”):

“THE OFFER AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER SECTION 4(a)(7) OF THE SECURITIES ACT OR APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED “4(a)(1) AND A HALF SALE.” NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(ii) This Warrant and Warrant Shares (and any certificates or electronic book entries evidencing the Warrant Shares) shall not contain or be subject to (and Holder shall be entitled to removal of) any legend (or stop transfer or similar instruction) restricting the transfer thereof (including the Securities Law Legend): (A) while a registration statement (including a Registration Statement, as defined in the Registration Rights Agreement) covering the sale or resale of such securities is effective under the Securities Act, or (B) if the Holder provides customary certifications to the effect that it has sold, or is selling substantially contemporaneously with the delivery of such certifications, such securities pursuant to such a registration statement or Rule 144 under the Securities Act, or (C) if such securities are eligible for sale under Rule 144(b)(1) under the Securities Act as set forth in customary, non-affiliate certifications provided by the Holder, or (D) if at any time on or after the date hereof that the Holder certifies that it is not a Rule 144 Affiliate and that the Holder's holding period for purposes of Rule 144 (including, for the avoidance of doubt, subsection (d)(3)(ii) thereof) of at least six (6) months, or (E) if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) as determined in good faith by counsel to the Company or as set forth in a legal opinion delivered by Katten Muchin Rosenman LLP or other nationally recognized counsel to the Holder (collectively, the "Unrestricted Conditions"). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent, promptly after the Original Issue Date, or at such other time as any of the Unrestricted Conditions has been satisfied, if required by the Transfer Agent to effect the issuance of this Warrant or the Warrant Shares, as applicable, without a restrictive legend or removal of the legend hereunder. If any of the Unrestricted Conditions is met at the time of issuance of the Warrant Shares then such Warrant Shares shall be issued free of all legends and stop-transfer instructions. The Company agrees that following the Original Issue Date or at such other time as any of the Unrestricted Conditions is met or such legend is otherwise no longer required under this Section 2(f), it will, no later than the earlier of (x) two (2) Trading Days and (y) the number of Trading Days comprising the Standard Settlement Period following the delivery by the Holder to the Company or the Transfer Agent of the Warrant Shares issued with a restrictive legend, deliver or cause to be delivered to the Holder or its designee the Warrant Shares free from all restrictive and other legends (or similar notations) by crediting the account of the Holder's prime broker with DTC, through its DWAC system. The Company acknowledges and agrees that, if the Holder delivers a certification that it is not an "affiliate" of the Company (as such term is used under Rule 144 under the Securities Act) and has not been an Affiliate for a period of three months, then from and after the delivery thereof, the Holder shall be deemed to have certified that it is not an "affiliate" of the Company (as such term is used under Rule 144 under the Securities Act) upon each delivery of an Exercise Form, unless the Holder otherwise advises the Company in writing. For purposes of Rule 144 under the Securities Act and subsection (d)(3)(ii) thereof, it is intended, understood and acknowledged that (X) this Warrant shall be deemed to have been acquired, and the holding period thereof shall be deemed to have commenced, on March 11, 2020 (i.e., the date of issuance of the Note in respect of which this Warrant was issued), and (Y) the Warrant Shares issuable upon any exercise of this Warrant pursuant to a Cashless Exercise shall be deemed to have been acquired, and the holding period thereof shall be deemed to have commenced, on such date. The Holder, by acceptance hereof, acknowledges and agrees that the removal of any restrictive legends from any securities as set forth in this Section 2(f)(ii) is predicated upon the Company's reliance that the Holder will sell such securities pursuant to either the registration requirements of the Securities Act or an exemption therefrom, and that if such securities are sold pursuant to a registration statement, they will be sold while such registration statement is effective and available for resales of such securities, in compliance with the plan of distribution set forth therein.

(iii) The Holder covenants that it will not sell or otherwise transfer any Warrants or Warrant Shares except pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from the registration and prospectus-delivery requirements of the Securities Act.

(g) **No Fractional Shares or Scrip.** No fractional shares or scrip representing fractional Warrant Shares shall be issued upon the exercise of this Warrant. If pursuant to an exercise of this Warrant the Holder would be entitled to a fractional Common Share, then either (i) the number of Common Shares issuable upon such exercise shall be rounded up to the next higher whole number of Common Shares or (ii) the Company will pay, in lieu of delivering such fractional share, a cash amount equal to the product of the related fraction and the Volume Weighted Average Price per share of Common Stock on the trading day immediately before the related Exercise Date.

(h) **Replacement of Warrant.** On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and substance to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new Warrant of like tenor and amount.

(i) **No Rights of Stockholders.** Except as otherwise provided herein, including in Section 4(b), the Holder shall not be entitled to vote or be otherwise deemed the holder of Common Shares or any other securities of the Company that may at any time be issuable on the exercise hereof for any purpose under this Agreement, nor shall anything contained herein be construed to confer upon the Holder, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action (whether upon any recapitalization, issuance of stock, reclassification of stock, change of par value, or change of stock to no par value, consolidation, merger, conveyance, or otherwise) or to receive notice of meetings.

(j) ***Holder's Exercise Limitations.*** Notwithstanding anything to the contrary contained herein, the Company shall not effect any exercise of this Warrant (or issue any Warrant Shares thereupon), and the Holder shall not have the right to exercise any portion of this Warrant or acquire Warrant Shares pursuant to Section 2(c) or otherwise, to the extent that after giving effect to such exercise as contemplated by the applicable Exercise Form, the number of Common Shares then beneficially owned by the Holder and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein), would exceed 4.985% of the total number of Common Shares issued (excluding treasury shares) (the "Beneficial Ownership Limitation"); provided, however, that the Beneficial Ownership Limitation shall only apply to the extent that the Common Stock is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act. For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the SEC, and the percentage beneficially owned by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. For purposes hereof, the Holder may rely on the number of outstanding Common Shares as set forth in the Company's most recent annual report filed with the SEC, or any report filed by the Company with the SEC subsequent thereto, in each case, unless the Company has confirmed to the Holder the number of Common Shares outstanding as provided in the next sentence (in which case the Holder may rely upon such confirmation); provided, that the number of outstanding shares of Common Stock for such purposes shall be determined after giving effect to the exercise or conversion of securities of the Company, including this Warrant, any other warrants and any convertible notes, by the Holder and its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. Upon the written request of the Holder, the Company shall, within two (2) Trading Days, confirm in writing to the Holder the number of Common Shares then outstanding. Each delivery of an Exercise Form by the Holder will constitute a representation by the Holder that it has evaluated the limitation set forth in this paragraph and determined that the issuance of the full number of Common Shares requested in such Exercise Form is permitted under this paragraph.

(k) **Cash Damages for Failure to Timely Issue Warrant Shares.** If by the first (1st) Trading Day following the expiration of the Delivery Period, the Company shall fail to issue and deliver a certificate to the Holder for, or, if as required by Section 2(d) hereof the Transfer Agent shall fail to credit the Holder's or its designee's balance account with DTC with, the applicable number of Warrant Shares (in each case, free of any restrictive legend, provided that any Unrestricted Condition is satisfied), then, in addition to all other available remedies that the Holder may pursue hereunder and under the Exchange Agreement or otherwise at law or in equity, the Company shall pay additional damages to the Holder, in cash, for each thirty (30) day period after the Delivery Period such exercise is not timely effected in an amount equal to (prorated for any partial period) one and one-half percent (1.5%) of the product of (I) the number of Warrant Shares not issued and delivered to the Holder (in each case, free of any restrictive legend, provided, that any Unrestricted Condition is satisfied) or its designee prior to the expiration of the Delivery Period and to which the Holder is entitled and (II) the Volume Weighted Average Price of a share of Common Stock on the last day of the Delivery Period. Alternatively, in lieu of foregoing damages but in addition to any other rights or remedies available to the Holder under this Warrant or the Exchange Agreement or otherwise at law or in equity, at the written election of the Holder made in the Holder's sole discretion, if, on or after the last day of the Delivery Period in respect of such Exercise, the Holder or its brokerage firm purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares that the Holder was entitled to receive upon such exercise (such purchased shares, "Buy-In Shares"), the Company shall (1) be obligated to promptly pay to the Holder (in addition to all other available remedies that the Holder may otherwise have), 105% of the amount by which (A) the Holder's total purchase price (including brokerage commissions, if any) for such Buy-In Shares exceeds (B) the net proceeds received by the Holder from the sale of a number of shares equal to up to the number of Warrant Shares such Holder was entitled to receive but had not received on or before the last day of such Delivery Period Date, and (2) at the option of the Holder, either reinstate the portion of this Warrant and equivalent number of Warrant Shares for which such exercise was not honored (and refund the Exercise Price therefor, to the extent paid by Holder), or deliver to the Holder the number of Common Shares that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. If the Company fails to pay the additional damages set forth in this Section 2(k) within five (5) Trading Days of the date incurred, then the Holder shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of such cash damages, the number of Common Shares equal to the quotient of (X) the aggregate amount of the damages payments described herein divided by (Y) the Exercise Price applicable to the exercise of the Warrant to which the additional damages relate. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver the Common Shares upon exercise of this Warrant as required pursuant to the terms hereof.

(l) **Void Exercise Form.** If for any reason the Holder has not received all of the Warrant Shares (free of any restrictive legend, provided that any Unrestricted Condition is satisfied) prior to the fifteenth (15th) Business Day after the expiration of the Delivery Period with respect to an exercise of this Warrant in accordance with Section 2(d), then the Holder, upon written notice to the Company by facsimile or electronic mail (a "Void Exercise Notice"), may void its Exercise Form with respect to, and retain or have returned, as the case may be, any portion of this Warrant with respect to which Warrant Shares have not been delivered pursuant to the Holder's Exercise Form; provided, that the voiding of the Holder's Exercise Form shall not affect the Company's obligations to make any payments that have accrued prior to the date of such Void Conversion Notice pursuant to Section 2(k).

3. Certain Representations and Agreements. The Company represents, covenants and agrees:

(a) This Warrant is, and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, duly authorized and validly issued.

(b) All Warrant Shares issuable upon the exercise of, or otherwise pursuant to, this Warrant pursuant to the terms hereof shall be, upon issuance, and the Company shall take all such actions as may be necessary or appropriate in order that such Warrant Shares are, validly issued, fully paid and non-assessable, issued without violation of any preemptive or similar rights of any stockholder of the Company, and free from all taxes, liens and charges. As of the Original Issue Date, the Company has reserved from its authorized and unissued Common Shares, exclusively for issuance upon exercise of this Warrant, and from and after the Original Issue Date the Company shall at all times reserve and keep available out of its authorized but unissued Common Shares solely for the purpose of effecting exercises of this Warrant, such number of Common Shares as shall from time to time be sufficient to effect the exercise of this Warrant in full for cash (without giving effect to the Beneficial Ownership Limitation); and if at any time the number of authorized but unissued Common Shares shall not be sufficient to effect the exercise of this Warrant in full, the Company will use reasonable best efforts to take such corporate action as may be necessary to increase its authorized but unissued Common Shares to such number of shares as shall be sufficient for such purpose, including, without limitation, calling a special meeting of stockholders and/or any other relevant corporate body to amend the Company's charter increasing the authorized share capital of the sufficiently high to meet the Company's obligations under this Section 3(b).

(c) The Company shall take all such actions as may be necessary to ensure that all Warrant Shares are issued without violation of any applicable law or governmental regulation or any requirements of any securities exchange upon which shares of the Company's capital stock may be listed at the time of such exercise.

(d) The Company will procure, subject to issuance or notice of issuance, the listing of any Warrant Shares issuable upon exercise of this Warrant on the principal stock exchange on which the Common Stock is then listed or traded.

4. Adjustments and Other Rights. The Exercise Price and Warrant Share Number shall be subject to adjustment from time to time as follows; provided, that no single event shall cause an adjustment or distribution under more than one subsection of this Section 4 so as to result in duplication.

(a) ***Stock Splits, Subdivisions, Reclassifications or Combinations***. If the Company shall at any time or from time to time (i) pay or make a dividend or make a distribution on its Common Stock in Common Shares, (ii) split, subdivide or reclassify the outstanding Common Shares into a greater number of shares or (iii) combine or reclassify the outstanding Common Shares into a smaller number of shares, the Warrant Share Number at the time of the record date for such dividend or distribution or the effective date of such split, subdivision, combination or reclassification shall be proportionately adjusted so that the Holder immediately after such record date or effective date, as the case may be, shall be entitled to purchase the number of Common Shares which such Holder would have owned or been entitled to receive in respect of the Common Shares subject to this Warrant after such date had such Holder held a number of Common Shares equal to the Warrant Share Number immediately prior to such record date or effective date, as the case may be. In the event of such adjustment, the Exercise Price in effect at the time of the record date for such dividend or distribution or the effective date of such split, subdivision, combination or reclassification shall be immediately adjusted to the number obtained by dividing (x) the product of (1) the Warrant Share Number before the adjustment determined pursuant to the immediately preceding sentence and (2) the Exercise Price in effect immediately prior to the record or effective date, as the case may be, for the dividend, distribution, split, subdivision, combination or reclassification giving rise to such adjustment by (y) the new Warrant Share Number determined pursuant to the immediately preceding sentence.

(b) ***Distributions***. Notwithstanding anything to the contrary contained herein (including, for the avoidance of doubt, Section 2(i)), the Holder, as the holder of this Warrant, shall be entitled to receive, and shall be paid by the Company, any dividend paid or distribution of any kind made to the holders of Common Stock, other than a dividend or distribution resulting in an adjustment pursuant to Section 4(a), to the same extent as if the Holder had exercised this Warrant in full in a Cash Exercise (without regard to the Beneficial Ownership Limitation or any other limitations on exercise herein or elsewhere and without regard to whether or not a sufficient number of shares are authorized, reserved and available to effect any such exercise and issuance) and had held such Warrant Shares on the record date for such dividend or distribution (or, if there is no record date therefor, on the date of such dividend or distribution). Payments or distributions under this Section 4(b) shall be made concurrently with the dividend or distribution to holders of the Common Stock. For the avoidance of doubt, if at any time the Company grants, issues or sells any options, convertible securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of its capital stock (the "Purchase Rights"), and such grant, issuance or sale does not result in a dividend or distribution resulting in an adjustment pursuant to Section 4(a), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights that the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon exercise in full of this Warrant (without regard to the Beneficial Ownership Limitation or any other limitations on exercise herein or elsewhere and without regard to whether or not a sufficient number of shares are authorized, reserved and available to effect any such exercise and issuance) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(c) **Organic Change.**

(i) If, at any time while this Warrant is outstanding an Organic Change is consummated or otherwise occurs, then, upon exercise of this Warrant, the Holder shall be entitled to receive in lieu of (or in addition to, as the case may be) the Warrant Shares, the kind and amount of securities, cash or other property of the Company or the Successor Entity, as the case may be, resulting from such Organic Change, which a Holder of the Warrant Share Number (at the time of such Organic Change and, for the avoidance of doubt, without regard to the Beneficial Ownership Limitation or any other restriction or limitation on exercise) of Warrant Shares would have been entitled to receive upon consummation of such Organic Change if such Warrant Shares had been outstanding immediately prior to such Organic Change; and in any such case, if applicable, the provisions set forth herein with respect to the rights and interests thereafter of the Holder shall be appropriately adjusted (pursuant to a written agreement in form and substance reasonably satisfactory to Required Holders) so as to be applicable, as nearly as may reasonably be, to the Holder's right to exercise this Warrant in exchange for any shares of stock or other securities or property pursuant to this paragraph. If holders of Common Shares are given any choice as to the kind and/or amount of stock and/or other securities or property (including cash) to be received in an Organic Change, then the Holder shall be given the same choice as to the consideration it receives upon any exercise of this Warrant following such Organic Change.

(ii) The Company shall cause any acquiring, surviving or successor entity in an Organic Change in which the Company does not survive as the parent entity (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the Registration Rights Agreement in accordance with the provisions hereof and thereof pursuant to written agreements in form and substance approved by the Required Holders (which approval shall not be unreasonably withheld, conditioned or delayed), including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant. Upon the occurrence of any such Organic Change in which there is a Successor Entity, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Organic Change, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the Registration Rights Agreement with the same effect as if such Successor Entity had been named as the Company herein and therein.

(d) **Other Events.** If any event of the type contemplated by the provisions of Section 4(a), 4(b), or 4(c) or any other provision hereof that provides for an adjustment of Exercise Price, the Warrant Share Number, or the number and class of shares of capital stock issuable upon exercise of this Warrant, but not expressly provided for by any such provision occurs, then the Company shall make an appropriate adjustment in the Exercise Price, the Warrant Share Number and/or number and class of shares of capital stock issuable upon exercise of this Warrant so as to protect the rights of the Holder in a manner consistent with such provisions; provided, that no such adjustment shall increase the Exercise Price or decrease the Warrant Share Number except as otherwise determined pursuant to the express provisions of Section 4(a).

(e) **Calculations.** All calculations under this Section 4 shall be made to the nearest one-hundredth (1/100th) of a cent or to the nearest one-tenth (1/10th) of a share, as the case may be.

(f) **Notice of Adjustments.** Whenever the Exercise Price or the Warrant Share Number shall be adjusted as provided in this Section 4, the Company shall as promptly as practicable prepare and make available to the Holder a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price and Warrant Share Number that shall be in effect after such adjustment.

(g) **Adjustment Rules.** Any adjustments pursuant to this Section 4 shall be made successively whenever an event referred to herein shall occur. If an adjustment in Exercise Price made hereunder would reduce the Exercise Price to an amount below par value of the Common Stock, then such adjustment in Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Stock.

(h) **Proceedings Prior to any Action Requiring Adjustment.** As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 4, the Company shall take such actions as are necessary, which may include obtaining regulatory, stock exchange or stockholder approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable Common Shares (and any other securities, if applicable) that the Holder is entitled to receive upon exercise of this Warrant pursuant to this Section 4.

5. Taxes; HSR.

(a) **Taxes.** The Company shall be responsible for paying all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from the issuance of this Warrant and any payment or issuance made under, from the execution, delivery, performance, enforcement or otherwise with respect to, this Warrant, including upon the issuance of Warrant Shares or other securities issued upon the exercise hereof.

(b) **HSR Submissions.** If the Holder determines in good faith that the exercise of this Warrant is subject to notification under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, and the related rules and regulations promulgated thereunder (collectively, the “HSR Act”), each of the Company and the Holder agrees to (i) cooperate with the other party in the other party’s preparing and making such submission and any responses to inquiries of the Federal Trade Commission (“FTC”) and/or Department of Justice (“DOJ”); and (ii) prepare and make any submission required to be filed by the Company or the Holder, as applicable, under the HSR Act and respond to inquiries of the FTC and DOJ in connection therewith. The Company shall pay, or reimburse the Holder for, the costs of any required filing fees for any submissions under the HSR Act. Where the Holder notifies the Company that, pursuant to this section, the Holder has determined that an HSR filing is required, the Company shall not issue Warrant Shares until the expiration or early termination of the applicable waiting period under the HSR Act.

6. Dispute Resolution. In the case of a dispute between the Company and the Holder as to the determination of the Exercise Price, Market Price or Volume Weighted Average Price, the Company shall issue, or instruct the Transfer Agent to issue, as applicable, to the Holder the number of Warrant Shares that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within two (2) Business Days of receipt or deemed receipt of the Holder's Exercise Form or other date of determination. If the Holder and the Company are unable to agree upon the determination of the Exercise Price, Market Price or Volume Weighted Average Price within one (1) Business Day of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Company shall promptly (and in any event within two (2) Business Days) submit via email (A) the disputed determination of the Exercise Price, Market Price or Volume Weighted Average Price, as applicable, to an independent, reputable investment banking firm selected by the Company and subject to the approval of the Required Holders (such consent not to be unreasonably withheld, conditioned or delayed), or (B) in the case of a dispute as to the arithmetic calculation of the Exercise Price or the arithmetic calculation of the Volume Weighted Average Price, to an independent registered public accounting firm selected by the Company and, if not the Company's auditors, subject to the approval of the Required Holders, as the case may be. The Company shall direct the investment bank or the accounting firm, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than two (2) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accounting firm's determination or calculation, as the case may be, shall be binding upon all parties absent manifest error. Neither the Holder nor the Company shall have the right to dispute any determination pursuant to the provisions of this Section 6 unless such party notifies the other party of such dispute in writing no later than two (2) Business Days after the other party notifies the Holder or the Company, as applicable, in writing of such determination.

7. Frustration of Purpose. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any Common Shares receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall not issue any preferred stock (or other capital stock) that contains, or provides any holder thereof with, any redemption rights or obligations (or similar features) or any liquidation preference (other than on an as-converted to Common Stock basis or a de minimis preference necessary to comply with the Delaware General Corporation Law), is convertible into Common Stock at a rate that "floats" or varies based upon the trading price of the Common Stock or otherwise contains rights or other terms in priority to the rights and terms of the Common Stock, and (iii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Common Shares upon the exercise of this Warrant. Nothing in this Section 7 shall be deemed to limit or otherwise affect the Company's ability to issue or sell Common Stock.

8. Definitions. For the purposes of this Warrant, the following terms have the following meanings:

“Action” means any legal, regulatory or administrative proceeding, suit, investigation, arbitration or action.

“Rule 144 Affiliate” means, with respect to any person as of the applicable time of determination, that such person is not as of such time, and has not been at any time during the preceding three months, a “person” that is an “affiliate” of the Company within the meaning of Rule 144.

“Beneficial Ownership Limitation” has the meaning specified in Section 2(j) hereof.

“Business Day” means any day, except a Saturday, Sunday or legal holiday, on which banking institutions in the city of New York, New York are authorized or obligated by law or executive order to close; provided, however, for clarification, bank institutions shall not be deemed to be authorized or obligated by law or executive order to remain closed due to “stay at home,” “shelter-in-place,” “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in the City of New York generally are open for use by customers on such day.

“Cash Exercise” has the meaning specified in Section 2(b) hereof.

“Cashless Exercise” has the meaning specified in Section 2(c) hereof.

“Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of the Company, as from time to time amended, modified, supplemented or restated in accordance with its terms and pursuant to applicable law.

“Closing Price” means, for any security as of any Trading Day, the closing (last sale) price per share for such security on its Principal Market on such Trading Day (at the end of regular trading hours on such Principal Market), as reported by Bloomberg, or if no closing price per share is reported for such security by Bloomberg, the average of the last bid and last ask price (or if more than one in either case, the average of the average last bid and average last ask prices) per share for such security on such Trading Day as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If such security is not listed for trading on a U.S. national or regional securities exchange on the relevant Trading Day, then the Closing Price for such security will be the average of the mid-point of the last bid and last ask prices per share for such security in the over-the-counter market on the relevant Trading Day as reported by OTC Markets Group or similar organization. If the Closing Price cannot be calculated for a security on such date on any of the foregoing bases, the Closing Price of such security on such date shall be the fair market value per share of such security as determined in good faith by the Company in reliance on an opinion of a nationally recognized independent investment banking firm retained by the Company (at its sole cost and expense) for this purpose; provided, that (i) the Holder shall have a right to receive from the Company the calculations performed to arrive at such fair market value and a copy of each valuation used in connection therewith, and (ii) to the extent the most recent such valuation is made as of a date that precedes the date for which the Closing Price is being determined, the Closing Price shall be adjusted to reflect subsequent events that occur after the date of such valuation.

“Common Shares” means shares of Common Stock.

“Common Stock” has the meaning specified in the preamble hereof.

“Company” has the meaning specified in the preamble hereof.

“Delivery Period” means, in respect of each exercise of the Holder’s purchase right hereunder, the period commencing on the delivery of an Exercise Form in respect of such exercise and ending on the deadline for delivery of the applicable Warrant Shares as set forth in Section 2(e).

“DTC” has the meaning specified in Section 2(d) hereof.

“DWAC” has the meaning specified in Section 2(d) hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exercise Date” has the meaning specified in Section 2(a) hereof.

“Exercise Form” has the meaning specified in Section 2(a) hereof.

“Exercise Price” means \$0.01, subject to adjustment as set forth herein.

“Holder” means the Person or Persons who shall from time to time own this Warrant.

“Market Price” means, with respect to a share of Common Stock or any other security, on any given day, the arithmetic average of the Volume Weighted Average Price (as defined below) of the Company’s Common Stock or such security on each of the five (5) consecutive Trading Days ending immediately prior to the Exercise Date or other date of determination (or, for the avoidance of doubt, for purposes of the determination of the Market Price in the case of an exercise of this Warrant, or any other event, occurring on a Trading Date after the end of regular trading hours on the applicable exchange or trading market, ending on such Exercise Date or other date of determination). In the event that a Stock Event is consummated during any period for which the arithmetic average of the Volume Weighted Average Prices is to be determined, the Volume Weighted Average Price for all Trading Days during such period prior to the effectiveness of the Stock Event shall be appropriately adjusted to reflect such Stock Event.

“Organic Change” means any merger, consolidation, business combination, recapitalization, reorganization, reclassification, spin-off or other transaction other than a transaction subject to Section 4(a), in each case, that is effected in such a way that the outstanding Common Shares are converted into, are exchanged for or become the right to receive (either directly or upon subsequent liquidation) cash, securities or other property.

“Original Issue Date” means the date this Warrant is originally issued pursuant to the Exchange Agreement.

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

“Principal Market” means the principal securities exchange or trading market for such security.

“Registration Rights Agreement” means that certain Amended and Restated Registration Rights Agreement, dated as of October 12, 2022, among the Company, Deerfield Partners, L.P., and any other Investors (as defined therein) from time to time signatory thereto, as may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Required Holders” means, as of any date of determination, the holders of a majority-in-interest of the Warrants as of such date.

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

“Securities Act” means the Securities Act of 1933, as amended.

“Standard Settlement Period” means the standard settlement period for equity trades effected by U.S. broker-dealers, expressed in a number of Trading Days, as in effect on the applicable date.

“Stock Event” means any stock split or other subdivision of outstanding Common Stock, combination of outstanding Common Stock (including by reverse stock split), reclassification, payment of a stock dividend in Common Shares, recapitalization, or other similar transaction of such character that Common Shares shall be changed into or become exchangeable for a larger or smaller number of Common Shares.

“Term” has the meaning specified in Section 1 hereof.

“Trading Day” means any day on which the Common Shares are traded for any period on the Nasdaq Global Select Market, or if the Common Shares are no longer listed on the Nasdaq Global Select Market on the other United States securities exchange or market on which the Common Shares are then being principally traded. If the Common Shares are not so listed or traded, then “Trading Day” means a Business Day.

“Transfer Delivery Failure” means the Company has failed to deliver a Warrant within any applicable Transfer Delivery Period.

“Unrestricted Conditions” has the meaning specified in Section 2(f)(ii) hereof.

“Volume Weighted Average Price” means, with respect to a share of Common Stock or any other security as of any date, the volume weighted average sale price on the principal United States exchange or market on which the Common Stock or such security is then being traded as reported by, or based upon data reported by, Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by the Required Holders and the Company (“Bloomberg”), or, if no volume weighted average sale price is reported for such security, then the last closing trade price of such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security on the OTC Bulletin Board, the OTCQX Market, the OTCQB Market or Pink Open Market of OTC Markets Group (or, in each case, any successor to such market).

“Warrant” means this Warrant and any other warrants of like tenor issued in substitution or exchange for any thereof pursuant to the provisions of Section 2(d) hereof.

“Warrant Share Number” means [], subject to adjustment as set forth herein, including reduction for each Common Share as to which this Warrant has been exercised (whether pursuant to a Cash Exercise or a Cashless Exercise) hereunder (subject to the Company’s compliance with its obligations with respect to each such exercise under Section 2 hereof).

“Warrant Shares” has the meaning set forth in the preamble.

“Warrants” means, collectively, this Warrant and each other warrant issued in exchange, transfer or replacement hereof or thereof, as any of the foregoing may be amended, restated, supplemented or otherwise modified from time.

9. Amendment and Waiver. Any term, covenant, agreement or condition in this Warrant may be amended, or compliance therewith may be waived (either generally or in a particular instance and either retroactively or prospectively), by a written instrument or written instruments executed by the Company and the Required Holders, and all amendments and waivers so approved shall be binding upon holders of all warrants issued pursuant to the Credit Agreement.

10. Governing Law; Jurisdiction; Specific Performance; WAIVER OF JURY TRIAL. This Warrant and all matters concerning the construction, validity, enforcement and interpretation hereof or otherwise relating hereto shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York. All Actions arising out of or relating to this Warrant shall be heard and determined in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York, and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 10 shall not constitute general consents to service of process in the State of New York and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Warrant shall be effective if notice is given by overnight courier at the address set forth in Section 11 of this Warrant. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment. The parties hereto agree that irreparable damage for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Warrant in accordance with its specified terms or otherwise breach such provisions. Accordingly, the parties acknowledge and agree that the parties shall be entitled to seek an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Warrant and to enforce specifically the terms and provisions hereof in the courts without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Warrant or the Exchange Agreement, and this right of specific enforcement is an integral part of the terms of this Warrant. The parties agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties acknowledge and agree that any party shall not be required to provide any bond or other security in connection with its pursuit of an injunction or injunctions to prevent breaches of this Warrant and to enforce specifically the terms and provisions hereof. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, the Exchange Agreement at law or in equity (including a decree of specific performance and/or other injunctive relief). **THE PARTIES HERETO, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS WARRANT.**

11. Notices. All notices, requests, claims, demands and other communications under this Warrant shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by email, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at the following respective addresses (or at such other address for a party hereto as shall be specified in a notice given in accordance with this Section 11):

(a) If to the Holder:

c/o Deerfield Management Company, L.P.
345 Park Avenue South, 12th Floor
New York, NY 10010
Attn: Legal Department
E-mail: legalnotice@deerfield.com

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

Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661
Attn: Mark D. Wood and Jonathan D. Weiner
Email: mark.wood@katten.com, jonathan.weiner@katten.com

or at such other address or contact information delivered by the Holder to the Company in writing.

(b) If to the Company:

Sientra, Inc.
3333 Michelson Drive, Suite 650
Irvine, CA 92612
Email: oliver.bennett@sientra.com
Attn: Oliver Bennett, Esq.

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

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Email: ngreenblatt@kirkland.com and jennifer.lee@kirkland.com
Attn: Nicole Greenblatt and Jennifer Lee

In connection with any exercise or assignment of this Warrant, no ink-original Exercise Form or Assignment Form, as applicable, shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Exercise Form or Assignment Form be required.

12. Successors and Assigns. This Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the Company and the Holder and their respective successors and permitted assigns (subject to Section 2(e) with respect to the Holder); provided that the Company shall not assign its obligations under this Warrant.

13. Modification and Severability. The provisions of this Warrant will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of any other provision hereof. To the fullest extent permitted by law, if any provision of this Warrant, or the application thereof to any Person or circumstance, is invalid or unenforceable, (a) a suitable and equitable provision will be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Warrant and the application of such provision to other Persons, entities or circumstances will not be affected by such invalidity or unenforceability.

14. Material Nonpublic Information. Upon receipt or delivery by the Company of any notice pursuant to this Warrant, including, as applicable, any Default Notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material nonpublic information relating to the Company or its subsidiaries, if requested by Holder, the Company shall within two (2) Trading Days after any such receipt or delivery, publicly disclose such material nonpublic information in a report on Form 8-K or otherwise in a filing with the SEC. Without derogating from the immediately previous sentence, in the event that the Company believes that any notice delivered to the Holder contains material nonpublic information relating to the Company, the Company shall so indicate to the Holder prior to the delivery of such notice, and such indication shall provide the Holder the means to refuse to receive such notice; and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material nonpublic information relating to the Company. The provisions of this Section 14 are in addition to, and shall in no way limit, the provisions of Section 5.18 of the Facility Agreement.

15. Interpretation.

(a) When a reference is made in this Warrant to a Section, such reference shall be to a Section of this Warrant unless otherwise indicated. The headings contained in this Warrant are for reference purposes only and shall not affect in any way the meaning or interpretation of this Warrant. Whenever the words “include,” “includes” or “including” are used in this Warrant, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Warrant shall refer to this Warrant as a whole and not to any particular provision of this Warrant unless the context requires otherwise. The words “date hereof” when used in this Warrant shall refer to the date of this Warrant. The terms “or,” “any” and “either” are not exclusive. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” All terms defined in this Warrant shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Warrant are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Unless otherwise specifically indicated, all references to “dollars” or “\$” shall refer to, and all payments hereunder shall be made in, the lawful money of the United States. References to a Person are also to its successors and permitted assigns. When calculating the period of time between which, within which or following which any act is to be done or step taken pursuant to this Warrant, the date that is the reference date in calculating such period shall be excluded (and, unless otherwise required by law, if the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day).

[Signature pages follow]

IN WITNESS WHEREOF, the Company has duly executed this Warrant.

Dated: []

SIENTRA, INC.

By: _____
Name:
Title:

[Signature Page to Pre-funded Warrant]

FORM OF EXERCISE NOTICE
(To be executed by the registered holder hereof)

Reference is made to the Warrant to Purchase Common Shares of Sientra, Inc. No. W-[] (the "Warrant").

The undersigned hereby irrevocably exercises the Warrant with respect to shares of common stock, par value \$0.01 per share (the "Common Stock"), of Sientra, Inc., a Delaware corporation (the "Company").

Check the applicable box:

- ☐ The undersigned is exercising the Warrant with respect to [] shares of Common Stock pursuant to a Cashless Exercise, and makes payment of the Exercise Price with respect to such shares in full, all in accordance with the conditions and provisions of the Warrant applicable to such Cashless Exercise.
- ☐ The undersigned is exercising the Warrant with respect to [] shares of Common Stock pursuant to a Cash Exercise. [IF APPLICABLE: The undersigned hereby encloses, or has delivered by wire transfer to an account designated by the Company, \$____ as payment of the Exercise Price.]
1. The undersigned requests that [any stock certificates for such shares be issued free of any restrictive legend, if appropriate,]/[the shares be credited to the Holder's account with its prime broker by DWAC to the account specified below] [and, if requested by the undersigned, a warrant representing any unexercised portion hereof be issued, pursuant to the Warrant in the name of the undersigned and delivered to the undersigned at the address set forth below.]
2. Capitalized terms used but not otherwise defined in this Exercise Form shall have the meaning ascribed thereto in the Warrant.

Dated: _____

Please issue shares of Common Stock in the following name and to the following address:

Issue to (print name):

Email Address:

DTC Details (if applicable):

Address for Stock Certificates (if applicable):

ASSIGNMENT FORM

(To be executed by the registered holder hereof)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within Warrant and all rights evidenced thereby and does irrevocably constitute and appoint _____, attorney, to transfer the said Warrant on the books of the within named corporation.

Dated: _____ Signature _____
Address _____

PARTIAL ASSIGNMENT

(To be executed by the registered holder hereof)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the right to purchase _____ Common Shares issuable upon exercise of the attached Warrant, and does irrevocably constitute and appoint _____, attorney, to transfer that part of the said Warrant on the books of the within named corporation.

Dated: _____ Signature _____
Address _____

TEMPORARY WAIVER AND EXCHANGE AGREEMENT

This **TEMPORARY WAIVER AND EXCHANGE AGREEMENT** (including the schedules, annexes and exhibits hereto, this “**Agreement**”), dated as of October 30, 2023 (the “**Effective Date**”), is by and among Sientra, Inc., a Delaware corporation (the “**Borrower**” or the “**Company**” as applicable), the other Loan Parties (as defined in the Facility Agreement (as defined below)) signatory hereto, and Deerfield Partners, L.P., in its capacity as Agent for the Lenders (in such capacity, the “**Agent**”) and as a lender (the “**Lender**”). Capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings given to them in the Facility Agreement.

RECITALS:

A. The Borrower, the other Loan Parties signatory hereto and the Lender are parties to that certain Amended and Restated Facility Agreement, dated as of October 12, 2022 (as so amended and restated, and as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Facility Agreement**”).

B. The Lender holds an Original Loan Convertible Note issued by the Borrower to the Lender on October 12, 2022 in the initial principal amount of \$50,000,000 (including any Original Loan Convertible Note issued in exchange, transfer or replacement thereof, and as the same has been or may hereafter be amended, modified, restated or otherwise supplemented from time to time, the “**Note**”). As of the date hereof, the outstanding Principal (as used herein, as defined in the Note) of the Note is \$50,000,000. In addition, the Lender holds a Disbursement Loan Convertible Note issued by the Borrower to the Lender on October 12, 2022 in the initial principal amount of \$23,000,000. As of the date hereof, the outstanding principal amount of such Disbursement Loan Convertible Note is \$23,000,000.

C. Certain Defaults and Events of Default have (or, in the case of clause (ii) of this paragraph, may have) occurred and are continuing (i) under Section 7.1(b) of the Facility Agreement as a result of the Borrower’s failure to satisfy the minimum revenue financial covenant set forth in Section 6.10 of the Facility Agreement for the fiscal quarter ending September 30, 2023, resulting in an Event of Default under Section 7.1(b) of the Facility Agreement (the “**Specified Event of Default**”) and (ii) under Section 7.1(c) of the Facility Agreement (or otherwise) as a result of any representation or warranty made or deemed made prior to the Effective Date by any Loan Party in the Facility Agreement, any other Facility Document or any document required to be delivered in connection with any Facility Document, being incorrect, false or misleading in any material respect (except to the extent that such representation or warranty is qualified by reference to materiality or Material Adverse Effect, to which extent it shall have been incorrect, false or misleading in any respect) as of the date it was made or deemed made solely due to the existence of (x) the Specified Event of Default (prior to the Effective Date) or (y) any action taken that was prohibited at the time taken solely due to the existence of the Specified Event of Default (together with the Specified Event of Default, the “**Existing Events of Default**”). For the avoidance of doubt, no Event of Default resulting from any action taken (or omitted to be taken) on or after the Effective Date shall constitute an Existing Event of Default.

D. The Borrower has requested that the Lender, being the sole “Lender” within the meaning of the Facility Agreement and constituting the Required Lenders, temporarily waive the Existing Events of Default and, upon the terms and subject to the conditions and limitations set forth in this Agreement (including the satisfaction of the conditions set forth in Section 6.01 of this Agreement), and in reliance on the agreements and covenants set forth herein, the Lender is willing to temporarily waive the Existing Events of Default for the period of time determined in accordance with this Agreement.

E. The Borrower and the Lender have also agreed (i) to exchange, in accordance with Section 3(a)(9) of the Securities Act of 1933, as amended (the “**Securities Act**”), and otherwise upon the terms and subject to the conditions set forth herein, \$1,220,000 of Principal (the “**Exchanged Principal Amount**”), together with accrued and unpaid interest thereon and an amount (the “**Premium Amount**”) equal to five hundred and seventy-five basis points (5.75%) of the Exchanged Principal Amount (which is less than the Make Whole Amount that would be payable in respect of a prepayment or redemption of the Exchanged Principal Amount), for a pre-funded warrant to purchase 886,635 shares of Common Stock in substantially the form attached hereto as Exhibit A (a “**Pre-Funded Warrant**”); and (ii) to provide for the subsequent conversion, at the election of the Holder (as defined in the Note), of up to \$18,800,000 of Principal (or any portion thereof), into Pre-Funded Warrants at any time and from time to time prior to January 15, 2024. For the avoidance of doubt, neither the Disbursement Loan Convertible Note nor any Obligations thereunder are being exchanged or modified in connection with the transactions contemplated by this Agreement.

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

ARTICLE I.

EXCHANGE; CERTAIN CONVERSIONS

Section 1.01. Exchange. Subject to the terms and conditions hereof, effective as of the Effective Time (as defined below), the Lender and the Borrower hereby agree to exchange the Exchanged Principal Amount of the Note, together with accrued and unpaid interest thereon and the Premium Amount, for the issuance and delivery by the Borrower to the Lender of a Pre-Funded Warrant to purchase 886,635 shares of Common Stock (the “**Exchange Warrant**”). The exchange contemplated by this Section 1.01 is referred to herein as the “**Exchange**.”

Section 1.02. Exchange Settlement.

(a) Subject to the satisfaction (or waiver) of all of the conditions to the Exchange set forth in Section 6.01, the Exchange shall be consummated and become effective upon the execution and delivery of this Agreement (the time of such effectiveness, the “**Effective Time**”).

(b) Upon the Effective Time, the Lender shall be deemed for all purposes to have become the legal, beneficial and record holder of the Exchange Warrant and, upon the issuance to the Lender of the Exchange Warrant, the Principal under the Note shall be deemed to have been reduced by the Exchanged Principal Amount.

(c) If requested by the Lender, promptly following such request, the Borrower shall deliver to the Lender in replacement of the Note an Original Loan Convertible Note in a principal amount that gives effect to the Exchange. As promptly as reasonably practicable thereafter, the Lender shall deliver the Note for cancellation. For the avoidance of doubt, the Exchange shall not be conditioned upon, or be subject to, the delivery of any such Original Loan Convertible Note by the Borrower or delivery of the existing Note by the Lender.

Section 1.03. Conversion Terms.

(a) Notwithstanding anything to the contrary contained in the Note, upon each conversion of the Note, or any portion thereof, pursuant to a Conversion Notice (as defined in the Note) delivered by any holder of the Note (a “**Holder**”) during the Modified Conversion Period (as defined below):

(i) the “Conversion Amount” (within the meaning of the Note) shall be 105.75% of the Principal to be converted, plus the amount of accrued and unpaid interest on such Principal (the “**Converted Interest Amount**”), and the “Conversion Price” (within the meaning of the Note) shall be \$1.46 per share of Common Stock, subject to adjustment as provided herein and subject to appropriate adjustment to reflect any subdivision of outstanding Common Stock (by any stock split, share or stock dividend, recapitalization or otherwise) or combination of outstanding Common Stock (by consolidation, combination, reverse stock split or otherwise), repayment or reduction of capital or other event giving rise to an adjustment of the nominal amount of such Common Stock hereafter; and

(ii) in lieu of delivering Conversion Shares and paying the Converted Interest Amount in cash, the Borrower shall, promptly and in any event within one (1) Trading Day following delivery of such Conversion Notice, execute and deliver to such Holder a Pre-Funded Warrant exercisable for the number of Conversion Shares otherwise issuable upon such conversion (after giving effect to the provisions of Section 1.03(a), and disregarding for such purpose the Beneficial Ownership Cap (as defined in the Note)) (each such Pre-Funded Warrant, an “**Additional Warrant**”).

(b) In connection with any Conversion Notice delivered during the Modified Conversion Period, each Additional Warrant shall be deemed to have been issued, and the Person entitled to receive such Additional Warrant shall be treated for all purposes as the legal and record holder of such Additional Warrant upon delivery of the Conversion Notice via facsimile, electronic mail or otherwise in accordance with the terms of the Note. Without limiting the foregoing, (i) the Person entitled to receive each Additional Warrant shall have the right to exercise such Additional Warrant, and to deliver an Exercise Form in substantially the form attached to the form of Pre-Funded Warrant, immediately following its delivery of such Conversion Notice (and in the case of contemporaneous delivery of a Conversion Notice and Exercise Form, the Exercise Form shall be deemed to have been delivered immediately following delivery of the Conversion Notice), and (ii) an Exercise Form delivered in respect of an Additional Warrant shall be effective and, in accordance with the terms of the Pre-Funded Warrant, upon the delivery of an Exercise Form, the Holder shall be deemed for all purposes to have become the holder of record of the Warrant Shares (as defined in the Pre-Funded Warrant) with respect to which such Additional Warrant is being exercised, in each case, regardless of whether or when such Additional Warrant is executed or delivered (or required to be executed or delivered) to such Holder.

(c) For purposes hereof, the term “**Modified Conversion Period**” means the period commencing on the Effective Date and ending upon the earlier to occur of (i) 11:59 p.m. (New York time) on January 15, 2024 and (ii) such time as the aggregate principal amount of the Note converted in accordance with this Section 1.03 equals \$18,800,000.

(d) For the avoidance of doubt, nothing contained herein shall be deemed to affect any other rights of a Holder under the Note, including, but not limited to, the right to receive Additional Conversion Shares (as defined in the Note) upon a conversion of the Note in connection with a Major Transaction (as used herein, as defined in the Note) and any other rights of a Holder in respect of a Major Transaction.

Section 1.04. Intended Tax Treatment. The parties hereto agree that for federal (and applicable state and local) income tax purposes, it is intended that (a) the Exchange and the modifications to the Note pursuant to Section 1.03, respectively, be treated as made pursuant to a recapitalization within the meaning of section 368(a)(1)(E) of the Code (and any similar provision of state or local law), and (b) each Pre-Funded Warrant be treated as exercised upon issuance (the foregoing, the “**Intended Tax Treatment**”). The parties hereto agree to (and agree to cause their Affiliates to) file their income tax returns consistent with the Intended Tax Treatment (including by adopting a plan of reorganization and making filings under Treasury Regulations section 1.368-3 that are required to support such treatment, as applicable), except as otherwise required by applicable law.

ARTICLE II.

TEMPORARY WAIVER

Section 2.01. Temporary Waiver.

(a) Subject to the satisfaction (or waiver in writing by the Agent) of, and effective upon the conditions set forth in, Section 6.01 (the date upon which such conditions are satisfied (or waived in writing by the Agent), the “**Waiver Effective Date**”), the Lender (in its capacities as Agent and the sole lender under the Facility Agreement) hereby temporarily waives the Existing Events of Default solely during the Waiver Period. The “**Waiver Period**” means the period beginning on the Waiver Effective Date and ending on the earlier to occur of (i) January 15, 2024, (ii) any date prior to January 15, 2024 on which any Event of Default (other than the Existing Events of Default) occurs and (iii) the failure of any Loan Party to comply with any term, condition or covenant set forth in this Agreement (such earlier date, the “**Waiver Termination Date**”). The waiver contained in this Section 2.01(a) is a limited and temporary waiver and (i) shall only be relied upon and used for the specific purpose set forth herein, (ii) shall not constitute nor be deemed to constitute a waiver, or alter or impair the obligations or any of the rights or remedies of the Lender (in its capacities as Agent and lender and in any other capacity) under the Facility Documents at law or in equity, except as otherwise expressly set forth herein, of (A) any Default or Event of Default (other than the Existing Events of Default during the Waiver Period) or (B) any term or condition of the Facility Agreement and the other Facility Documents, (iii) shall not constitute nor be deemed to constitute a consent by the Lender to anything other than the specific purpose set forth herein and (iv) shall not constitute a custom or course of dealing among the parties hereto. Without limiting the foregoing, the parties hereto acknowledge and agree that immediately following the Waiver Termination Date, none of the Existing Events of Default shall be subject to the waiver contained herein and the Lender (in its capacities as Agent and a lender) shall be entitled to exercise all of its rights and remedies with respect thereto in accordance with the Facility Documents.

(b) Notwithstanding the temporary limited waiver set forth in Section 2.01(a) above or anything to the contrary contained herein, in the Facility Agreement or in the other Facility Documents, each of the Borrower and each other Loan Party hereby acknowledges and agrees that, for purposes of determining whether or not certain actions are permitted to be taken by or on behalf of the Borrower or any other Loan Party upon the satisfaction of any term, condition or requirement in the Facility Agreement or any other Facility Document that a Default or Event of Default shall not have occurred and be continuing, the Existing Events of Default shall be deemed to have occurred and be continuing in respect of any such term, condition or requirement, and the Borrower and the other Loan Parties shall not be permitted to take, or cause to be taken, any such action, other than with respect to actions taken under Section 6.5 of the Facility Agreement for which the Existing Events of Default shall not be taken into consideration in determining if such action is permitted thereunder. Accordingly, any actions taken, or caused to be taken by the Borrower or any other Loan Party in violation of this Section 2.01(b) shall automatically constitute additional Events of Default under the Facility Agreement.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Lender. The Lender, represents and warrants to the Borrower as of the date of this Agreement and as of the Effective Date as follows:

(a) Organization and Good Standing. The Lender is a limited partnership duly organized, 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.

(b) Authority. The Lender has the requisite limited partnership power and authority to enter into and to consummate the transactions contemplated by this Agreement and each Transaction Document (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery by the Lender of this Agreement and each Transaction Document to which it is a party and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Lender and no further action is required in connection herewith or therewith.

(c) Valid and Binding Agreement. This Agreement has been duly executed and delivered by the Lender and constitutes, and upon the execution and delivery by the Lender thereof, each other Transaction Document to which it is a party will have been duly executed and delivered by the Lender and will constitute, the valid and binding obligations of the Lender, enforceable against the Lender in accordance with their terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(d) Non-Contravention. The execution and delivery by the Lender of this Agreement and each Transaction Document to which the Lender is or will be a party and the performance by the Lender of its obligations hereunder and thereunder, do not and will not (i) violate any provision of the Lender's Organizational Documents, or (ii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Lender is subject, or by which the Note is bound or affected except, in each instance of clauses (i) and (ii) hereof, where such violation or conflict would not reasonably be expected, individually or in the aggregate, to result in a material adverse effect on the ability of the Lender to timely perform its obligations under this Agreement or any other Transaction Document to which the Lender is a party.

(e) Exemption. As of the Effective Time, the Lender shall have held the Note of record and beneficially for a period of at least one (1) year for purposes of Rule 144 under the Securities Act and is not, and during the three-month period prior to the date hereof has not been, an "affiliate" (as such term is used in Rule 144 under the Securities Act) of the Borrower. The Lender understands that the Exchange Warrant, the shares of Common Stock issuable upon exercise of the Exchange Warrant (the "**Initial Exercise Shares**"), any Additional Warrants and any shares of Common Stock issuable upon exercise of any Additional Warrants (the "**Additional Exercise Shares**") and, together with the Initial Exercise Shares, the Exchange Warrant and each Additional Warrant issued hereunder, the "**Securities**") are being offered, sold, issued and delivered to it in reliance upon specific exemptions from registration or qualification under federal and applicable state securities laws.

(f) Ownership of the Exchanged Notes. The Lender is the record and beneficial owner of, and has good and valid title to, the Note, free and clear of all Liens, and has full power to dispose thereof and to exercise all rights thereunder (other than as restricted by this Agreement or the Facility Agreement and other than pledges or security interests that the Lender may have created in favor of a prime broker under and in accordance with its prime brokerage account with such broker), without the consent or approval of, or any other action on the part of, any other Person. Other than the transactions contemplated by this Agreement, there is no outstanding contract, vote, plan, pending proposal or other right of any Person to acquire the Note or any portion thereof. The Lender has not, in whole or in part, (i) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of the Note or its rights in the Note, or (ii) except as would not materially and adversely affect the ability of the Lender to consummate the transactions contemplated hereby, given any person or entity any transfer order, power of attorney or other authority of any nature whatsoever with respect to the Note.

(g) Accredited Investor. The Lender is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act. The Lender understands the economic risk of its investment in the Securities, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Securities.

(h) Information. The Lender acknowledges and agrees that (i) the Lender has had the opportunity to review the Borrower's SEC Reports (as defined below) and this Agreement (including the exhibits hereto), (ii) the Lender has had an opportunity to submit questions to the Borrower concerning the Borrower, its business, operations, financial performance, financial condition and prospects, and the terms and conditions of the Exchange and has all information that it considers necessary in making an informed investment decision, (iii) the Lender has had the opportunity to consult with its accounting, tax, financial and legal advisors to be able to evaluate the risks involved in the Exchange and to make an informed investment decision with respect to the Exchange. Notwithstanding anything to the contrary contained herein, neither any such review nor any due diligence investigation conducted by the Lender or its advisors, if any, or its representatives shall modify, amend or otherwise affect the Lender's right to rely on the representations, warranties, covenants and agreements of the Borrower contained in, or otherwise affect the rights and remedies available to the Lender under, this Agreement and the other Transaction Documents.

Section 3.02. Representations and Warranties of the Borrower and the other Loan Parties. The Borrower and each other Loan Party, jointly and severally, hereby represent and warrant to the Lender as of the date of this Agreement and as of the Effective Time as follows:

(a) Organization and Good Standing. Each Loan Party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, as applicable and (ii) has all powers to (A) own its assets and has powers and all Permits necessary in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect.

(b) Authority. Each Loan Party has all powers to enter into, execute, deliver and perform its obligations under, this Agreement, the Exchange Warrant, any Additional Warrant(s), the Facility Agreement, each other Facility Document and each other document or instrument delivered by it in connection with any of the foregoing, whether or not specifically mentioned herein or therein, in each case, as amended from time to time in accordance with the terms hereof and thereof (collectively, the "**Transaction Documents**" and each a "**Transaction Document**") and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery by the Borrower and each other Loan Party signatory thereto of this Agreement, the Exchange Warrant, any Additional Warrants and the other Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Borrower and such Loan Party, and no further action of the Borrower or such Loan Party, its board of directors, managers, members or stockholders, as applicable, is required in connection herewith or therewith.

(c) Consents. Neither the Borrower nor any other Loan Party is required to obtain any consent from, authorization or order of, or make any filing or registration with any governmental authority or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Agreement, the Exchange Warrant, any Additional Warrants, the Facility Agreement and other Transaction Documents (in each case, to the extent such Loan Party is a signatory thereto), in accordance with the terms hereof or thereof, other than filing the Announcing 8-K Filing (as defined below). None of the Securities will be issued in violation of, any preemptive or similar rights of any Person, or otherwise subject to any preemptive or similar rights of any Person that have not been validly waived, nor will the issuance of any of the Securities trigger any “anti-dilution” or similar adjustment. No vote or approval of the Company’s stockholders is required in connection with this Agreement, the other Transaction Documents or the Exchange, including, for the avoidance of doubt, the issuance of the Securities, under the Organizational Documents of the Borrower, the Delaware General Corporation Law, as amended, the rules and regulations of The Nasdaq Stock Market LLC or otherwise.

(d) Binding Effect. This Agreement has been duly executed and delivered by the Borrower and the other Loan Parties, and constitutes, and upon the execution and delivery each Loan Party signatory thereto of, the Exchange Warrant, any Additional Warrants, the Facility Agreement and each other Transaction Document being executed or amended in connection herewith or therewith will constitute, a valid and binding agreement or instrument of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors’ rights generally and by general equitable principles.

(e) Non-Contravention. The execution, delivery and performance by each Loan Party of this Agreement, the Exchange Warrant, any Additional Warrants, the Facility Agreement and each other Transaction Document to which it is party, do not and will not (with or without notice, the passage of time or both) (i) violate, conflict with or cause a breach or a default under (A) any Law applicable to any Loan Party, (B) any of the Organizational Documents of any Loan Party, or (C) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults which, with respect to this clause (C), would not reasonably be expected to have a Material Adverse Effect or (ii) result in the creation or imposition of any Lien on any part of the properties or assets of the Borrower or any other Loan Party.

(f) Issuance of Exercise Shares. The Initial Exercise Shares issuable upon exercise of the Exchange Warrant, and the Additional Exercise Shares issuable upon exercise of any Additional Warrants, are duly authorized, and when issued in accordance with the Exchange Warrant or Additional Warrants, as applicable, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Borrower, and will not be issued in violation of, or subject to, any preemptive or similar rights of any person. The Borrower has reserved from its duly authorized capital stock a sufficient number of shares of Common Stock for issuance hereafter upon exercise of the Exchange Warrant and any Additional Warrants (plus any additional shares of Common Stock that may be issuable as a result of the anti-dilution provisions of the Exchange Warrant or any Additional Warrants), in each case, free and clear of preemptive or similar rights. As of the date hereof, the authorized shares of capital stock of the Borrower consists of 200,000,000 shares of Common Stock, of which 11,264,850 shares are issued and outstanding as of August 8, 2023, and 10,000,000 shares of preferred stock, none of which are issued and outstanding.

(g) Brokers. No broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by this agreement or any other Transaction Document, and no Loan Party has or will have any obligation to any Person in respect of any finder’s or brokerage fees, commissions or other expenses in connection herewith.

(h) **SEC Reports.** The Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it 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**”). None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact (and the Registration Statement, when filed, did not and will not contain any untrue statement of a material fact and did not and will not omit 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 consolidated financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the United States Securities and Exchange Commission (the “**Commission**” or “**SEC**” as applicable) with respect thereto as in effect at the time of filing and fairly present in all material respects the financial position of the Company and its Subsidiaries 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, year-end audit adjustments, and such consolidated financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“**GAAP**”) (except as may be disclosed therein or in the notes thereto, and except that the unaudited financial statements may not contain all footnotes required by GAAP).

(i) **Exemption from Registration; Nasdaq.** No registration under the Securities Act or any state securities laws is or will be required for the offer and issuance of the Exchange Warrant by the Borrower to the Lender as contemplated hereby or for the offer and issuance of the Initial Exercise Shares or any Additional Exercise Shares by the Borrower to the Lender as contemplated hereby and by the Exchange Warrant and the Additional Warrants. The transactions contemplated hereby or entered into in connection herewith, including the issuance of the Exchange Warrant and any Additional Warrants hereunder and the issuance and sale of the Initial Exercise Shares and Additional Exercise Shares pursuant to the terms of the Exchange Warrant and any Additional Warrants do not and will not contravene, or require stockholder approval under the rules of The Nasdaq Stock Market, any securities exchange or otherwise. The Company acknowledges and agrees that, for purposes of Rule 144 under the Securities Act, the Lender’s holding period for the Exchange Warrant and any Additional Warrants shall be deemed to have commenced on the date the Lender acquired the Note. Assuming the Lender is not as of the date of issuance, and for a period of three (3) months prior to the date of issuance has not been, an “affiliate” (as such term is used in Rule 144 under the Securities Act) of the Borrower (which the Borrower shall assume (and the Lender shall be deemed to represent) unless the Lender has otherwise advised the Borrower in writing) and in reliance on the Lender’s representations contained in Section 3.01(e) hereof, the Exchange Warrant, any Additional Warrant and, in the case of a cashless exercise of the Exchange Warrant or any Additional Warrant, the Initial Exercise Shares and the Additional Exercise Shares, will be freely tradeable by the Lender without restriction or limitation (including volume limitation), pursuant to Rule 144 under the Securities Act, and will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof. The Borrower is not, and never has been, a “shell company” (as defined in Rule 12b-2 under the Exchange Act) and is not an issuer of a type identified in, or subject to, Rule 144(i)(1) under the Securities Act. The Borrower has submitted to The Nasdaq Stock Market LLC a Listing of Additional Shares Notification Form with respect to the Initial Exercise Shares and the Additional Exercise Shares and The Nasdaq Stock Market LLC has not objected to the issuance of the Initial Exercise Shares and the Additional Exercise Shares.

(j) No Integrated Offering. Neither the Borrower, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made, or will make, any offers or sales of any security or solicited, or will solicit, any offers to buy any security, under circumstances that would cause the offering and issuance of the Securities to be integrated with prior or contemporaneous offerings by the Borrower (i) for purposes of the Securities Act and which would require the registration of any such Securities under the Securities Act or (ii) for purposes of any applicable stockholder approval provisions of The Nasdaq Stock Market that would require stockholder approval for the issuance of the Exchange Warrant, any Additional Warrant, any Initial Exercise Shares or any Additional Exercise Shares.

(k) No Bad Actor Disqualification. None of the Loan Parties, any of its predecessors, any director, executive officer, other officer of any Loan Party participating in the offering of the Securities, any beneficial owner (as that term is defined in Rule 13d-3 under the Exchange Act) of 20% or more of any Loan Party's outstanding voting equity securities, calculated on the basis of voting power, any "promoter" (as that term is defined in Rule 405 under the Securities Act) connected with any Loan Party at the time this representation is made, any placement agent or dealer participating in the offering of the Securities and any of such agents' or dealer's directors, executive officers, other officers participating in the offering of the Securities (each, a "**Covered Person**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "**Disqualification Event**"). The Borrower has exercised reasonable care to determine (i) the identity of each person that is a Covered Person and (ii) whether any Covered Person is subject to a Disqualification Event. Each Loan Party has complied in all material respects, to the extent applicable, with its disclosure obligations under Rule 506(e).

(l) No Unlawful Payments. Neither the Borrower nor any other Loan Party, nor to the knowledge of the Borrower, any of its and their directors or officers or any employee, agent, affiliate, representative of or other person associated with or acting on behalf of the Borrower or any other Loan Party, has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (c) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or (d) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment.

(m) Application of Takeover Protections. The Borrower and its board of directors have taken all necessary action, if any, in order to render inapplicable the Borrower's issuance of the Securities, and the Lender's ownership of the Securities from the provisions of any control share acquisition, interested stockholder, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the organizational documents of the Borrower or the laws of the state of its incorporation which is applicable to the Lender as a result of the transactions contemplated by this Agreement, including the Borrower's issuance of the Securities.

(n) Financial Information. All information delivered to Agent and pertaining to the financial condition of any Loan Party fairly presents in all material respects the financial position of such Loan Party as of such respective date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since September 30, 2023, there has been no material adverse change in the business, operations, properties or condition (financial or otherwise) of any Loan Party.

(o) Litigation. Except as has been disclosed to Agent in writing prior to the date hereof, to the best of Borrower's knowledge, there is no Litigation pending against, or to such Loan Party's knowledge, threatened in writing against or affecting, any Loan Party or, to the best of such Loan Party's knowledge, any party to any Facility Document other than a Loan Party involving more than, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000). There is no Litigation pending in which an adverse decision would reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Facility Documents.

(p) Regulated Entities. No Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

(q) Listing; Registration. The Common Stock is listed on the Principal Market. During the last twelve months, trading in the Common Stock has not been suspended by the SEC or the Principal Market. As of the date of this Agreement, other than as disclosed in the SEC Documents, neither the Borrower nor any of its Subsidiaries has received any communication, written or oral, from the SEC or the Principal Market regarding the suspension or termination of trading of the Common Stock on the Principal Market. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and neither the Borrower nor any of its Subsidiaries has taken, or presently intend to take, any action designed to terminate, or that is likely to have the effect of terminating, the registration of the Common Stock under the Exchange Act; nor has the Borrower or any of its Subsidiaries received any notification that the SEC is contemplating terminating such registration. The Common Stock is eligible for clearing through DTC, through its Deposit/Withdrawal At Custodian (DWAC) system, and the Borrower is eligible for and participating in the Direct Registration System (DRS) of DTC with respect to the Common Stock. The transfer agent for the Common Stock is a participant in, and the Common Stock is eligible for transfer pursuant to, DTC's Fast Automated Securities Transfer Program. The Common Stock is not, and has not at any time been, subject to any DTC "chill," "freeze" or similar restriction with respect to any DTC services, including the clearing of transactions in shares of Common Stock through DTC.

(r) No Default. Except for (x) the Existing Events of Default and (y) any alleged Event of Default resulting from, or related to, the Borrower's failure to timely file its Annual Report on Form 10-K for the fiscal year ended December 31, 2022, no Event of Default, or to such Loan Party's knowledge, Default, has occurred and is continuing. No Loan Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default would reasonably be expected to have a Material Adverse Effect.

(s) Full Disclosure. Except for the transactions contemplated by this Agreement or disclosed in the Announcing Form 8-K, no event, liability, development or circumstance has occurred or exists, or is contemplated to occur with respect to the Borrower or any of its Subsidiaries, or any of its or their business, properties, prospects, operations or financial condition, that, under applicable securities laws, is required to have been, or be, publicly disclosed by the Borrower (on SEC Form 8-K otherwise) prior to, on or within four (4) Business Days after the date this representation is made, and, in either case, that has not been publicly disclosed by the Borrower at least one (1) Business Day prior to the date this representation is made. None of the written information (financial or otherwise) furnished by or on behalf of any Loan Party to Agent or any Lender in connection with the consummation of the transactions contemplated by this Agreement or any other Facility Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made.

ARTICLE IV. **COVENANTS**

Section 4.01. Reservation of Shares. On and after the Effective Time, the Borrower shall at all times reserve and keep available, free of preemptive or similar rights, a sufficient number of shares of Common Stock for the purpose of enabling the Borrower to issue all of the Initial Exercise Shares and the Additional Exercise Shares (without regard to the Beneficial Ownership Limitation (as defined in the Pre-Funded Warrant) or any other restriction or limitation upon the exercise thereof and assuming the cash exercise thereof).

Section 4.02. Blue Sky Filings. The Borrower shall take such action as is necessary in order to obtain an exemption for, or to qualify the Securities for issuance and sale to the Lender under applicable securities or “Blue Sky” laws of the states of the United States, and shall provide evidence of such actions promptly upon request of the Lender.

Section 4.03. Disclosure; Confidentiality. The Borrower represents and warrants that, from and after the filing of the Announcing 8-K Filing (as defined below), it shall have publicly disclosed all MNPI (as defined below) provided or made available to the Lender (or the Lender’s agents or representatives) by the Borrower or any of its officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by this Agreement or otherwise on or prior to the date hereof. Notwithstanding anything contained in this Agreement to the contrary, and without implication that the contrary would otherwise be true, the Borrower expressly acknowledges and agrees that, from and after the filing of the Announcing 8-K Filing, neither the Lender nor any affiliate of the Lender shall have (unless expressly agreed to by the Lender after the date hereof in a written definitive and binding agreement executed by the Borrower and the Lender or customary oral (confirmed by e-mail) “wall cross” agreement), any duty of trust or confidence with respect to, or a duty not to trade in any securities while aware of, any MNPI or any other information regarding the Borrower or any other Loan Party. The Borrower understands and acknowledges that the Lender, its affiliates and Persons acting on their behalf will rely on the representations, warranties, covenants, provisions and agreements set forth in this Section 4.03 in effecting transactions in the Securities and other securities of the Borrower and of other Persons. For the avoidance of doubt, the Borrower’s obligations under this Section 4.03 shall not be deemed to limit or otherwise modify the Borrower’s obligations under Section 5.18 of the Facility Agreement.

Section 4.04. Taxes. The Borrower shall be responsible for paying all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment or issuance made under, from the execution, delivery, performance or enforcement of, or otherwise with respect to, this Agreement.

Section 4.05. Fees and Expenses. The Borrower shall promptly reimburse the Agent and each Lender for all of its reasonable and documented out-of-pocket, costs, fees and expenses, including legal fees and expenses, incurred in connection with the negotiation and drafting of this Agreement and the other Transaction Documents and any other agreement entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby.

**ARTICLE V.
RESERVED**

**ARTICLE VI.
CONDITIONS PRECEDENT.**

Section 6.01. Conditions to The Lender's Obligation. The obligation of the Lender to consummate the Exchange and the effectiveness of the waivers granted pursuant to Article II are subject to satisfaction of the following conditions on or prior to the Effective Time, provided that the conditions set forth in this Section 6.01 are for the Lender's sole benefit and may be waived by the Lender at any time in its sole discretion by providing the Borrower with prior written notice thereof:

(a) The Borrower and each Loan Party shall have delivered to the Agent a fully executed copy of this Agreement.

(b) The Borrower shall have executed and delivered to the Agent the Exchange Warrant in accordance with Section 1.02;

(c) No stock split, stock dividend, stock combination, recapitalization or similar event, and no liquidation, dissolution or similar event, shall have been effected or authorized during the period commencing on (and including) the date of this Agreement and ending at (and including) the Effective Time;

(d) The Borrower shall have delivered to the Agent evidence of authority, officer's certificates and good standing certificates in the jurisdiction of organization of the Borrower, in form and substance reasonably satisfactory to the Lender;

(e) On or before 5:00 p.m., New York time, on the Effective Date, the Borrower shall file with the Commission a Current Report on Form 8-K, in substantially the form of the Current Report on Form 8-K last provided to the Lender and its counsel prior to the execution of this Agreement, which shall describe all the material terms of the transactions contemplated by this Agreement, the Exchange Warrant, and the other Transaction Documents entered into pursuant to, or in connection with, this Agreement, disclose the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, attach this Agreement (including the exhibits and schedules to this Agreement not otherwise filed) and the other Transaction Documents entered into pursuant to, or in connection with, this Agreement (in each case, without any redaction therefrom) and disclose any and all other presently material non-public information regarding the Borrower, the Loan Parties, their securities, any of their Affiliates or any other Person (collectively, “MNPI”) provided or made available to the Lender (or the Lender’s agents or representatives) on or prior to the date hereof (the “**Announcing 8-K Filing**”).

(f) After giving effect to the temporary waiver set forth in Section 2.01(a), the representations and warranties of the Borrower and each other Loan Party contained in Section 3.02 hereof shall be true and correct in all material respects on and as of the Effective Date as though made on and as of such date (it being understood and agreed that any representations and warranties which by their terms are expressly made as of an earlier date shall be required to be true and correct in all material respects as of such earlier date); and

(g) Borrower shall have reimbursed each of the Agent and each Lender for all of its reasonable and documented and invoiced out-of-pocket, costs, fees and expenses, including legal fees and expenses, incurred in connection with the negotiation and drafting of this Agreement and the other Transaction Documents and any other agreement entered into in connection herewith and the consummation of the transactions contemplated hereby and thereby

ARTICLE VII. MISCELLANEOUS

Section 7.01. Entire Agreement. This Agreement, together with the other Transaction Documents, contain the entire understanding of the Agent, the Lenders and the Borrower with respect to the matters covered hereby and supersede any and all other written and oral communications, negotiations, commitments and writings with respect thereto.

Section 7.02. Amendments and Waivers. No amendment, restatement, modification, supplement, change, termination or waiver of any provision of this Agreement, and no consent to any departure by the Borrower therefrom, shall in any event be effective without the written concurrence of the Borrower and the Lender.

Section 7.03. Successors and Assigns. This Agreement shall bind and inure to the respective successors and permitted assigns of the parties hereof. No party hereunder may assign its rights or obligations hereunder without the prior written consent of the other parties hereto, except that the Lender may assign or otherwise transfer its rights hereunder in respect of any Securities to any transferee or assignee of such Securities (in whole or in part); *provided* that the Lender agrees in writing with the transferee or assignee to assign such rights, and such assignee or transferee agrees in writing to accept such rights subject to, and to be bound by, the terms of this Agreement, and a copy of such agreement is furnished to the Borrower after such transfer or assignment.

Section 7.04. Notices. Any notice, request or other communication to be given or made under this Agreement shall be in writing and shall be given in accordance with Section 8.1 of the Facility Agreement, the provisions of which are incorporated by reference herein, with the same force and effect as if fully set forth herein, *mutatis mutandis*.

Section 7.05. Governing Law; Venue; Jurisdiction; Service of Process; WAIVER OF JURY TRIAL. The provisions of Section 8.3 of the Facility Agreement are incorporated by reference herein, with the same force and effect as if fully set forth herein, *mutatis mutandis*.

Section 7.06. Counterparts; Effectiveness. This Agreement may be executed in several counterparts, and by each party hereto on separate counterparts, each of which and any photocopies, facsimile copies and other electronic methods of transmission thereof shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 7.07. General Release.

(a) Effective as of the Effective Date, in consideration of, among other things, the Lender's and Agent's execution and delivery of this Agreement, the Borrower and each other Loan Party, on behalf of itself and its agents, representatives, officers, directors, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, the "**Releasors**"), hereby waives, releases and discharges, to the fullest extent permitted by law, each Releasee (as defined below) from any and all claims (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, liabilities, costs, expenses or claims whatsoever, that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity or upon contract or tort, or under any state or federal law or otherwise (collectively, the "**Claims**"), against the Agent or any Lender in their capacities as such and each of their respective affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys, advisors and other representatives of each of the foregoing (collectively, the "**Releasees**"), based in whole or in part on facts, whether or not now known, existing on or before the date of this Agreement, that relate to, arise out of or otherwise are in connection with any or all of the Transaction Documents or transactions contemplated thereby, in each case, to the extent that the applicable acts or omissions of the applicable Releasee(s) occurred on or prior to the date of this Agreement (collectively, the "**Released Matters**"); *provided* that this Section 7.07(a) shall not release any Releasee from (i) its duties, obligations and agreements specifically set forth in this Agreement and (ii) any Released Matters arising from the bad faith, gross negligence, willful misconduct or actual fraud of any Releasee.

(b) Each of the Releasors, hereby absolutely, unconditionally and irrevocably, covenants and agrees with, and in favor of, each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by the Borrower or the other Loan Parties pursuant to Section 7.07(a) hereof; *provided* that this Section 7.07(b) shall not restrict, inhibit or otherwise prevent any Releasor from seeking declaratory judgment (or other declaratory relief), asserting any defenses or counterclaims resulting from, or related to, claims brought against the such Releasor by any Releasee (including any claims brought by any Releasee with respect to any alleged Event of Default resulting from, or related to, the Borrower's failure to timely file its Annual Report on Form 10-K for the fiscal year ended December 31, 2022). If the Borrower, the Loan Parties or any of their respective successors, assigns or other legal representatives violates the foregoing covenant, the Borrower and the other Loan Parties, each for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Releasee as a result of such violation.

Section 7.08. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than the parties to this Agreement) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except that the Releasees shall be deemed to be express third party beneficiaries of Section 7.07.

Section 7.09. Remedies; Specific Performance. The rights and remedies provided in this Agreement shall be cumulative and in addition to all other remedies available under the Facility Agreement, the Note, the Exchange Warrant, any Additional Warrants, the other Transaction Documents and/or otherwise at law or in equity. No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy, and nothing herein shall limit the Agent's or the Lender's right to pursue actual damages for any failure by the Borrower to comply with the terms of this Agreement, the Facility Agreement, the Exchange Warrant, any Additional Warrants, the Note and the other Transaction Documents. The parties to this Agreement agree that irreparable damage would occur and that the parties to this Agreement would not have any adequate remedy at law in the event that any of the provisions of this Agreement, the Facility Agreement, the Exchange Warrant, any Additional Warrants, or any other Transaction Document were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties to this Agreement shall be entitled to an injunction or injunctions to prevent breaches of this Agreement, the Facility Agreement, the Exchange Warrant, any Additional Warrants, or any other Transaction Document and to enforce specifically the terms and provisions of this Agreement, the Facility Agreement, the Exchange Warrant, any Additional Warrants, and the other Transaction Documents, in each case, without the necessity of posting bond or other security or showing actual damages, and this being in addition to any other remedy to which such party is entitled at law or in equity.

Section 7.10. Effect of Headings. The division of this Agreement into Articles and Sections and the use of headings and captions is for convenience of reference only and shall not modify or affect the interpretation or construction of this Agreement or any of its provisions.

Section 7.11. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. The parties hereto shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

Section 7.12. Reservation of Rights. Neither the Agent nor the Lender has hereby waived any of the Agent's or Lender's rights or remedies arising from any breach or default or any right otherwise available under the Facility Agreement, any other Transaction Document or at law or in equity as to the Note. Each of the Agent and the Lender expressly reserves all such rights and remedies.

Section 7.13. Interpretation. The provisions of Section 1.2 of the Facility Agreement are incorporated by reference herein, with the same force and effect as if fully set forth herein, *mutatis mutandis*.

Section 7.14. Further Assurances. The parties hereby agree, from time to time, as and when reasonably requested by any other party hereto, to execute and deliver or cause to be executed and delivered, all such documents, instruments and agreements, including secretary's certificates, stock powers and irrevocable transfer agent instructions, and to take or cause to be taken such further or other action, as any party may reasonably deem necessary or desirable in order to carry out the intent and purposes of this Agreement, including the issuance and delivery of the Securities.

Section 7.15. Payment Set Aside. Notwithstanding anything to the contrary contained herein, if any payment or transfer (or any portion thereof) to the Agent or any Lender shall be subsequently invalidated, declared to be fraudulent or a fraudulent conveyance or preferential, avoided, rescinded, set aside or otherwise required to be return or repaid, whether in bankruptcy, reorganization, insolvency or similar proceedings involving the Borrower or otherwise, then the Obligations purportedly satisfied with such payment or transfer, to the extent that such payment is or must be invalidated, declared to be fraudulent or a fraudulent conveyance or preferential, avoided, rescinded, set aside or otherwise required to be return or repaid, shall immediately be reinstated, without need for any action by any Person, and shall be enforceable against the Borrower, any guarantor and their successors and permitted assigns as if such payment had never been made (in which case this Agreement shall in no way impair the claims of the Agent or the Lender with respect to such payment or transfer). The provisions of this Section 7.15 shall survive the satisfaction in full of the Obligations and the termination of the Facility Agreement.

Section 7.16. No Modification; Facility Agreement. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Facility Agreement, the Note or any of the other Facility Document. Except as expressly stated herein, the Agent and Lender reserve all rights, privileges and remedies under the Facility Documents. Except as amended or consented to hereby, the Facility Agreement and other Facility Documents remain unmodified and in full force and effect. The parties hereto acknowledge and agree that this Agreement and each other Transaction Document shall constitute a Facility Document, and that each Facility Document shall constitute a Transaction Document.

Section 7.17. Reaffirmation. Each of the Loan Parties as debtor, grantor, pledgor, guarantor, assignor, or in other any other similar capacity in which such Loan Party grants liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, hereby (a) ratifies and reaffirms as of the date hereof all of its payment and performance obligations, contingent or otherwise, under each of the Facility Documents to which it is a party (after giving effect hereto) and, (b) to the extent such Loan Party granted Liens on or security interests in any of its property pursuant to any such Facility Documents as security for or otherwise guaranteed the Liabilities of the Borrower under or with respect to the Facility Documents, ratifies and reaffirms as of the date hereof such guarantee and grant of security interests and Liens and confirms and agrees that such security interests and liens hereafter secure all of the Liabilities as amended hereby. Each of the Loan Parties hereby consents to this Agreement and each of the other Facility Documents remains in full force and effect and is hereby ratified and reaffirmed as of the date hereof. The execution of this Agreement shall not operate as a waiver of any right, power or remedy of the Agent or Lender, constitute a waiver of any provision of any of the Facility Documents or serve to effect a novation of the Liabilities.

Section 7.18. No Fiduciary Relationship. The provisions of Section 8.26 of the Facility Agreement are incorporated by reference herein, with the same force and effect as if fully set forth herein, *mutatis mutandis*.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first written above.

THE BORROWER:

SIENTRA, INC.

By: /s/ Andrew Schmidt

Name: Andrew Schmidt

Title: CFO

OTHER LOAN PARTIES:

MIST HOLDINGS, INC.

By: /s/ Andrew Schmidt

Name: Andrew Schmidt

Title: CFO

MIST, INC.

By: /s/ Andrew Schmidt

Name: Andrew Schmidt

Title: CFO

MIST INTERNATIONAL, INC.

By: /s/ Andrew Schmidt

Name: Andrew Schmidt

Title: CFO

[Signature Page to Temporary Waiver and Exchange Agreement]

AGENT AND LENDER:

DEERFIELD PARTNERS, L.P.

By: Deerfield Mgmt, L.P., its General Partner

By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark

Name: David J. Clark

Title: Authorized Signatory

[Signature Page to Temporary Waiver and Exchange Agreement]

Exhibit A
Form of Pre-Funded Warrant

**SIENTRA REPORTS PRELIMINARY UNAUDITED THIRD QUARTER 2023 FINANCIAL
RESULTS AND PROVIDES UPDATE ON OUTLOOK**

IRVINE, Calif., October. 30, 2023 (GLOBE NEWSWIRE) -- Sientra, Inc. (NASDAQ: SIEN) (“Sientra” or the “Company”), a surgical aesthetics company delivering the safest and most innovative solutions for the best outcomes, today announced preliminary unaudited financial results for the fiscal third quarter ended September 30, 2023.

Total unaudited revenue for the third quarter of 2023 is expected to be in the range of \$19.2 million to \$19.7 million, compared to total revenue of \$22.6 million in the prior year period. Third quarter results were adversely affected by overall softness in the market as well as more pronounced seasonal headwinds that led to a reduced number of augmentation and reconstruction cases during the third quarter, particularly in July and August.

As a result of the preliminary third quarter financial performance and based on the Company’s expectations that a volatile operating environment will continue in the fourth quarter due to the macroeconomic and geopolitical factors, the Company is withdrawing its fiscal year 2023 guidance.

Unaudited net cash and cash equivalents as of September 30, 2023, are expected to be in the range of \$14.7 to \$15.2 million, compared to \$26.1 million on December 31, 2022, and \$18.6 million on June 30, 2023.

Sientra and its advisors continue to find ways to improve the Company’s balance sheet and, together with its financial partners, are exploring strategic alternatives to provide the strongest path forward for continued success. Throughout this process, it remains business as usual and Sientra will continue to deliver for its customers, patients, employees, and partners seamlessly.

“We remain focused on delivering the safest and most innovative solutions for the best aesthetic outcomes,” said Ron Menezes, President and CEO of Sientra. “While we continue to see softness in the augmentation market, we are encouraged by our growth in breast reconstruction as we gain momentum from new products such as Viality and SimpliDerm. We are also committed to enhancing our financial footing to position Sientra as a partner of choice for plastic surgeons.”

Conference Call

Sientra will host a conference call on Thursday, November 9, 2023, at 4:30 pm ET to discuss third quarter 2023 results. The dial-in numbers are (844) 735-3763 for domestic callers and (412) 317-5711 for international callers. The webcast link is the following: [Sientra Q3 2023 Earnings Call Webcast Registration Link](#). The webcast will be archived on the website following the call’s completion.

Use of Non-GAAP Financial Measures

Sientra has supplemented its U.S. GAAP net income (loss) with a non-GAAP measure of adjusted EBITDA, U.S. GAAP gross profit and gross margin with a non-GAAP measure of adjusted gross profit and gross margin, U.S. GAAP operating expenses with a non-GAAP measure of non-GAAP operating expenses, and U.S. GAAP cash flow from operating activities with a non-GAAP measure of free cash flow. Management believes that these non-GAAP financial measures provide useful supplemental information to management and investors regarding the performance of the Company, facilitate a more meaningful comparison of results for current periods with previous operating results, and assist management in analyzing future trends, making strategic and business decisions and establishing internal budgets and forecasts. Reconciliations of non-GAAP adjusted EBITDA, non-GAAP adjusted gross profit and gross margin, non-GAAP operating expenses, and free cash flow to U.S. GAAP net income (loss), U.S. GAAP operating expenses and U.S. GAAP cash flow from operating activities, the most directly comparable U.S. GAAP measures, are provided in the schedules below. There are limitations in using these non-GAAP financial measures because they are not prepared in accordance with U.S. GAAP and may be different from non-GAAP financial measures used by other companies. These non-GAAP financial measures should not be considered in isolation or as a substitute for U.S. GAAP financial measures. Investors and potential investors should consider non-GAAP financial measures only in conjunction with Sientra’s financial statements prepared in accordance with U.S. GAAP and the reconciliations of the non-GAAP financial measures provided in the schedules below.

About Sientra

Headquartered in Irvine, California, Sientra is a surgical aesthetics company focused on empowering people to change their lives through increased self-confidence and self-respect. Backed by unrivaled clinical and safety data, Sientra's platform of products includes a comprehensive portfolio of round and shaped breast implants, the first fifth-generation breast implants approved by the FDA for sale in the United States, the ground-breaking AlloX2® breast tissue expander with patented dual-port and integral drain technology, the next-generation AlloX2Pro™, the first and only FDA-cleared MRI-compatible tissue expander, the Viality™ with AuraClens™ enhanced viability fat transfer system, the SimpliDerm® Human Acellular Dermal Matrix, and BIOCORNEUM the #1 performing, preferred and recommended scar gel of plastic surgeons (*).

Sientra uses its investor relations website to publish important information about the Company, including information that may be deemed material to investors. Financial and other information about Sientra is routinely posted and is accessible on the Company's investor relations website at www.sientra.com.

To learn more about Sientra, visit our website and follow Sientra on LinkedIn, Instagram, and Facebook.

(*) Data on file

Forward-Looking Statements

This press release contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, based on management's current assumptions and expectations of future events and trends, which affect or may affect the Company's business, strategy, operations or financial performance, and actual results may differ materially from those expressed or implied in such statements due to numerous risks and uncertainties. Forward-looking statements are made only as of the date of this release. The words "believe," "may," "might," "could," "will," "aim," "estimate," "continue," "anticipate," "intend," "expect," "plan," "position," or the negative of those terms, and similar expressions that convey uncertainty of future events or outcomes are intended to identify estimates, projections and other forward-looking statements. Forward-looking statements may include information concerning the Company's unaudited financial information for the third quarter ended September 30, 2023, the Company's possible or assumed future results of operations, including descriptions of the Company's revenues, operating expense, profitability, outlook and overall business strategy, the Company's ability and timing to successfully integrate the Viality™ with AuraClens™ fat transfer system and SimpliDerm® human Acellular Dermal Matrix into its existing operations, the reception of plastic surgeons to the Company's products, the Company's ability to expand into aesthetic applications outside of breast procedures, the Company's ability to add additional products and strategic partnerships, the Company's ability to capture additional market share and customer accounts in the plastic surgery market, and the Company's ability to obtain and execute on any strategic alternatives. Such statements are subject to risks and uncertainties, including the audit of the Company's financial statements which audit is not yet complete and the numbers presented here could differ from the final audited financial statements presented by the Company, the Company's ability to recapture delayed procedures resulting from the COVID-19 pandemic and other macroeconomic pressures, the positive reaction from plastic surgeons and their patients to the Company's products, the ability to meet consumer demand including any potential supply issues resulting from the COVID-19 pandemic or the war in Ukraine, the growth of the plastic surgery market and breast procedures, and the ability of the Company to execute on its commercial, operational, marketing, research and development and regulatory plans, and the Company's ability to obtain and execute on any strategic alternatives. Additional factors that could cause actual results to differ materially from those contemplated in this press release can be found in the Risk Factors section of Sientra's public filings with the Securities and Exchange Commission. All statements other than statements of historical fact are forward-looking statements. The words "believe," "may," "might," "could," "will," "aim," "estimate," "continue," "anticipate," "intend," "expect," "plan," "position," or the negative of those terms, and similar expressions that convey uncertainty of future events or outcomes are intended to identify estimates, projections and other forward-looking statements. You are cautioned not to place undue reliance on these forward-looking statements, and such estimates, projections and other forward-looking statements speak only as of the date they were made, and, except to the extent required by law, the Company undertakes no obligation to update or review any estimate, projection or forward-looking statement. Actual results may differ from those set forth in this press release due to the risks and uncertainties inherent in the Company's business.

Investor Relations Contact

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