

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (date of earliest event reported): **December 11, 2023**

NightHawk Biosciences, Inc.

(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35994
(Commission
File Number)

26-2844103
(IRS Employer
Identification No.)

627 Davis Drive, Suite 300
Morrisville, North Carolina 27560
(Address of principal executive offices and zip code)

(919) 240-7133
(Registrant's telephone number including area code)

N/A
(Former Name and Former Address)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0002 par value per share	NHWK	NYSE American LLC
Common Stock Purchase Rights		NYSE American LLC

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

Emerging growth company

If an emerging growth company, indicate by checkmark 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.

Purchase Agreement

On December 11, 2023, NightHawk Biosciences, Inc. (the “Company”) entered into an Asset and Equity Interests Purchase Agreement (the “Agreement”) with Elusys Holdings Inc., a Delaware corporation (“Buyer”), which is a company controlled by the Company’s Chairman, Chief Executive Officer and President, Jeffrey Wolf, pursuant to which the Company agreed to sell to the Buyer (i) all of the issued and outstanding equity interests in Elusys Therapeutics, Inc., a wholly owned subsidiary of the Company (“Elusys”), and (ii) the exclusive right to use the name “NightHawk” and ownership of all trademark, goodwill and other rights in connection with such name (collectively, the “Purchased Assets”) (such transaction, the “Transaction”). A special committee of the Board (the “Special Committee”) comprised solely of independent board members who were not interested parties in the Transaction negotiated the Agreement with Mr. Wolf and his entity.

Upon execution of the Agreement, the Buyer agreed to assume at the closing of the Transaction (the “Closing”) certain specified liabilities and manufacturing commitments relating to Elusys’ business, currently estimated at \$40 million and paid the Company a cash payment of \$500,000. The assumed liabilities and manufacturing commitments include all amounts owed to the former owners of Elusys under that certain Agreement and Plan of Merger and Reorganization by and among the Company, Heat Acquisition Sub 1, Inc., Elusys Therapeutics and Fortis Advisors LLC, in its capacity as “Stockholders’ Representative,” and the assumption by Buyer of all operating costs of Elusys, including the costs incurred after the Closing related to Elusys employees, consultants, and regulatory and research costs (collectively, the “Assumed Liabilities”). Mr. Wolf and Mr. Ostrander will continue to serve in their current positions with the Company following the Closing and will also serve as the Chief Executive Officer and Chief Financial Officer, respectively, of the Buyer following the Closing.

Pursuant to the Purchase Agreement, the Buyer will also be obligated to pay to the Company on an annual basis a royalty fee equal to 3% of gross revenue received by Buyer or any of its affiliates or their respective successors or licensees from all sales of the anthrax antitoxin known as ANTHIM® during the period commencing on January 1, 2024 and ending on June 30, 2031; provided that, if as of December 31, 2028, the Company has not received an aggregate of \$5,000,000 in such royalty fees, Buyer will be obligated to pay to the Company no later than March 1, 2029 a cash payment equal to the difference between the aggregate amount of such royalty fees received by the Company and \$5,000,000.

The Buyer agreed, as a post-closing covenant, to purchase from the Company, no later than January 20, 2024, a convertible promissory note in the aggregate amount of \$2,250,000 (the “Note”), the conversion of which is subject to obtaining stockholder approval of the issuance of shares of the Company’s common stock upon such conversion. The Note will bear interest at a rate of 1% per annum, mature on the one-year anniversary of its issuance and convert into shares of our common stock at the option of the Buyer only if stockholder approval of the issuance of such shares of common stock issuable upon conversion of the Note is obtained prior to the maturity date. The conversion price will be equal to 110% of the volume weighted average price (VWAP) of the Company’s common stock for the seven trading days prior to December 11, 2023. Notwithstanding the foregoing, if the Company consummates a public financing, subject to certain exceptions, within sixty days of December 11, 2023, the conversion price shall be adjusted to be 110% of the per share purchase price of the common stock in such public financing. Such adjustment shall only be made upon the first financing in the event of multiple financings during the foregoing period. Based upon a conversion price of \$0.39281, which is 110% of the VWAP of our common stock for the seven trading days prior to December 11, 2023, upon conversion of the Note (exclusive of interest), Buyer would be issued 5,727,960 shares of the Company’s common stock upon conversion of the Note.

The Closing is subject to certain conditions, including receipt of all necessary governmental approvals, no injunction or restraining order preventing the consummation of the Transaction, no similar action from a governmental authority and no less than thirty days having passed since the time the Company provides a certain notice to the Stockholders’ Representative or a waiver of such notice by the Stockholders’ Representative. The Closing of the Transaction is expected to occur within two days after fulfillment of all conditions to Closing.

Pro forma financial information regarding the Transaction is provided as Exhibit 99.1 to this Current Report on Form 8-K.

Shared Services Agreement

In connection with the Transaction, the Company will enter into a shared services agreement (the “Shared Services Agreement”) with the Buyer on the date of Closing which will set forth the terms on which the Company will provide to Buyer, on a transitional basis, certain services or functions that it has historically provided to Elusys. Shared services will include various administrative, accounting, billing, cash management and banking and budgeting services and other support services.

In consideration for such services, the Buyer will pay fees to the Company for the services provided, and those fees will generally be in amounts intended to allow the Company to recover all of its direct and indirect costs incurred in providing those services. The Company will charge the Buyer a fee for services performed by (i) our employees which shall be a percentage of each employee’s base salary based upon an allocation of their business time spent providing such services and (ii) third parties, the fees charged by such third parties. Buyer will also pay the Company for general and administrative expenses incurred by the Company attributable to both the operation of the Buyer and the Company (other than the provision of the services performed by Company employees) and the provision of the shared services.

Stockholder Rights Agreement

On December 11, 2023, the Company adopted Amendment No. 6 (the “Amendment No. 6”) to the Rights Agreement, dated March 11, 2018, as amended by Amendment No. 1 thereto, dated March 8, 2019, as further amended by Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, as further amended by Amendment No. 4, dated March 11, 2022, and as further amended by Amendment No. 5, dated March 13, 2023, by and between the Company and Continental Stock Transfer & Trust Company, as rights agent (the “Rights Agreement”) exempting Mr. Wolf and the Buyer from becoming an Acquiring Person (as such term is defined in the Rights Agreement, as amended) by virtue or as a result of the entry into the execution and delivery of the Agreement, the execution and delivery of the Note, the public announcement of the Agreement, the Note, or any transactions contemplated thereby, the issuance of common stock in connection with the Note, the acquisition of or right to acquire shares of common stock issuable upon conversion of the Note, and the performance of any other transactions contemplated by the Agreement or the Note. Amendment No. 6 further provides that the Buyer or Mr. Wolf will become an acquiring person upon acquiring additional shares other than pursuant to the conversion of the Note and above the threshold required to become an “Acquiring Person”, subject to existing exceptions contained in the Rights Agreement.

The Agreement, the Transaction, the Shared Services Agreement, the Amendment No. 6 and the Note were each approved by the Audit Committee of the Board, the Special Committee and the full Board.

The foregoing description of the terms of the Agreement, the Shared Services Agreement, Amendment No. 6, and the Note does not purport to be complete and is qualified in its entirety by reference to the full text of such agreements, copies of which are attached hereto as Exhibit 2.1, 10.2, 4.7, and 4.8 respectively, and each of which is incorporated herein in its entirety by reference.

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

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 2.03 in its entirety.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 3.02 in its entirety. The Note and the shares of common stock that may be issued under the Note are being offered and sold in a transaction exempt from registration under the Securities Act in reliance on Section 4(a)(2) thereof and/or Rule 506(b) of Regulation D thereunder.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 3.03 in its entirety.

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

On December 11, 2023, the Company amended (the “Amendment”) the terms of the employment agreement that it entered into with William Ostrander, dated January 4, 2021, to provide that he shall use his best efforts to perform faithfully and efficiently the duties and responsibilities assigned to the Executive hereunder and devote the necessary business time and attention to the performance of his duties with the Company.

The foregoing description of the terms of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On December 12, 2023, the Company issued a press release disclosing the Transaction. A copy of the press release is furnished with this Current Report on Form 8-K as Exhibit 99.2 and incorporated by reference into this Item 7.01.

In addition, the Company updated its investor presentation. A copy of the presentation is furnished with this Current Report on Form 8-K as Exhibit 99.3 and incorporated by reference into this Item 7.01. The information in this Item 7.01 and in the press release furnished as Exhibit 99.2 to this Current Report on Form 8-K and the presentation furnished as Exhibit 99.3 to this Current Report on Form 8-K shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended and shall not be incorporated by reference into any filing with the SEC made by the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

The press release furnished as Exhibit 99.2 to this Current Report on Form 8-K and the presentation furnished as Exhibit 99.3 to this Current Report on Form 8-K includes “safe harbor” language pursuant to the Private Securities Litigation Reform Act of 1995, as amended, indicating that certain statements contained therein are “forward-looking” rather than historical.

Item 8.01 Other Events.

On December 12, 2023, the Company updated its investor presentation. The investor presentation investment highlights include the elimination of \$40 million of contractual obligations and reduced operating expenses by over \$13.0 million per year as a result of the Transaction and the fact that the Company currently has \$20.0 million in signed manufacturing contracts.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
2.1*+	<u>Asset and Equity Interests Purchase Agreement by and between NightHawk Biosciences, Inc. and Elusys Holdings Inc., dated as December 11, 2023</u>
4.1	<u>Rights Agreement dated as of March 11, 2018 by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 12, 2018 (File No. 001-35994))</u>
4.2	<u>Amendment No. 1 to the Rights Agreement dated as of March 8, 2019 to the Rights Agreement dated March 11, 2018 by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 12, 2019 (File No. 001-35994))</u>
4.3	<u>Amendment No. 2 to the Rights Agreement dated as of March 10, 2020 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Registration Statement on Form 8-A/A filed with the Securities and Exchange Commission on March 13, 2020 (File No. 001-35994))</u>

4.4	<u>Amendment No. 3 to the Rights Agreement dated as of March 8, 2021 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, and Amendment No. 2 thereto, dated March 10, 2020, by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 12, 2021 (File No. 001-35994))</u>
4.5	<u>Amendment No. 4 to the Rights Agreement dated as of March 11, 2022 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, by and between Heat Biologics, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 11, 2022 (File No. 001-35994))</u>
4.6	<u>Amendment No. 5 to the Rights Agreement dated as of March 11, 2023 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, and Amendment No. 4 thereto, dated March 11, 2022, by and between NightHawk Biosciences, Inc. and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to the Current Report on Form 8-K filed with the Securities and Exchange Commission on March 13, 2023 (File No. 001-35994))</u>
4.7*	<u>Amendment No. 6 to the Rights Agreement dated as of December 11, 2023 to the Rights Agreement dated March 11, 2018, as amended by Amendment No. 1 thereto, dated as of March 8, 2019, Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, Amendment No. 4 thereto, dated March 11, 2022, and Amendment No. 5 thereto, dated March 11, 2023, by and between NightHawk Biosciences, Inc. and Continental Stock Transfer & Trust Company, as rights agent.</u>
4.8*	<u>Form of Convertible Note</u>
10.1*	<u>Amendment No. 2 to William Ostrander Employment Agreement with the Company dated as of December 11, 2023</u>
10.2*	<u>Form of Shared Services Agreement between NightHawk Biosciences, Inc. and Elusys Holdings Inc</u>
99.1*	<u>Unaudited Pro Forma Condensed Consolidated Balance Sheet as of September 30, 2023; Unaudited Pro Forma Condensed Statements of Operations for the Nine Months Ended September 30, 2023; and Unaudited Pro Forma Condensed Statements of Operations for the Year Ended December 31, 2022.</u>
99.2*	<u>Press Release issued by NightHawk Biosciences, Inc. December 12, 2023</u>
99.3*	<u>Investor Presentation dated December 2023</u>
104	Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101)

* Filed herewith.

+ Schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

SIGNATURES

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

Dated: December 12, 2023

NIGHTHAWK BIOSCIENCES, INC.

By: /s/ William Ostrander
Name: William Ostrander
Title: Chief Financial Officer

ASSET AND EQUITY INTERESTS PURCHASE AGREEMENT

Dated as of December 11, 2023

Between

NIGHTHAWK BIOSCIENCES, INC.

And

ELUSYS HOLDINGS INC.

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Exhibit 1 Form of Convertible Note

Exhibit 2.4(b)(i) Form of Bill of Sale, Assignment and Assumption Agreement

ASSET AND EQUITY INTERESTS PURCHASE AGREEMENT

This Asset and Equity Interests Purchase Agreement (this “Agreement”) dated as of December 11, 2023 is entered into between Elusys Holdings Inc., a Delaware corporation (“Buyer”), and NightHawk Biosciences, Inc., a Delaware corporation (“Seller”). Buyer and Seller are sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties”. Certain capitalized terms used herein have the meanings ascribed to them in Section 1.1.

RECITALS

WHEREAS, Seller desires to sell all of Seller’s and its Affiliates’ right, title and interest in, to and under the Purchased Assets and transfer the Assumed Liabilities to Buyer, and Buyer wishes to purchase from Seller all of Seller’s and its Affiliates’ right, title and interest in, to and under the Purchased Assets and to assume the Assumed Liabilities, upon the terms and subject to the conditions set forth herein.

WHEREAS, in a separate transaction, Buyer desires to acquire from Seller, and Seller desires to issue to Buyer, a convertible promissory note, upon the terms and subject to the conditions set forth therein, which will be due on the first anniversary of its original issue date, in the aggregate amount of \$2,250,000, substantially in the form attached hereto as Exhibit 1 (the “Convertible Note”) reflecting the Note Investment, and for the avoidance of doubt, no consideration attributable to the Note Investment is being paid in connection with the sale of the Purchased Assets and assumption of the Assumed Liabilities.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, and of the representations, warranties, conditions, agreements and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS; INTERPRETATION

Section 1.1 Definitions. For purposes of this Agreement, the following terms shall have the corresponding meanings set forth below:

“Action” means any claim, action, suit, arbitration, inquiry, audit, proceeding or governmental investigation.

“Affiliate” of any Person means another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such first Person.

“Agreement” has the meaning set forth in the preamble hereof.

“ANTHIM Period” means the period commencing on January 1, 2024 and ending on June 30, 2031.

“Assumed Liabilities” means the Liabilities of the Business (but excluding any Liability arising from the Excluded Assets or the Excluded Taxes), including the Liabilities pursuant to any assumed contracts outstanding as of the Closing Date.

“Assumed Taxes” means any Taxes arising out of, or with respect to, the Purchased Assets for any Post-Closing Tax Period.

“Auditor” has the meaning set forth in Section 2.1(d).

“Bill of Sale, Assignment and Assumption Agreement” has the meaning set forth in Section 2.4(b)(i).

“Books and Records” means all books, records, files, documents and Tax Returns (other than Combined Tax Returns) related to the Purchased Assets (including, the ability to verify the Royalty Payments, the Regulatory Documentation, research and development records, correspondence and, to the extent not originals, true, accurate and complete copies of all files relating to the chain of title, filing, prosecution, issuance, maintenance, enforcement or defense of any Intellectual Property Rights, including any employee and independent contractor Intellectual Property Rights assignment agreement, confidentiality agreement and non-compete agreement, any written correspondence with any Third Party, including any laboratory and engineering notebooks and manufacturing records, procedures, tests, dosage, criteria for patient selection, study protocols and investigators brochures) in all forms in which they are stored or maintained (whether electronic or otherwise), and all data (including Seller Data) and information included or referenced in any of the foregoing, in each case that are owned or otherwise Controlled by or in the possession of Seller or any of its Affiliates.

“Business” means the business conducted by Elusys, including Exploiting all Intellectual Property Rights related to the anthrax antitoxin known as ANTHIM®, and certain related research and development rights and assets, as currently conducted.

“Business Day” means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in New York City are permitted or required by applicable Law to remain closed.

“Buyer” has the meaning set forth in the preamble hereof.

“Buyer Draft Allocation” has the meaning set forth in Section 2.6(a).

“Cash Consideration” has the meaning set forth in Section 2.1(b).

“Closing” has the meaning set forth in Section 2.4(a).

“Closing Date” has the meaning set forth in Section 2.4(a).

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

“Combined Taxes” means any Taxes which are the subject of a Combined Tax Return.

“Combined Tax Return” means any combined, consolidated or unitary Tax Return which includes Elusys on the one hand, and any of Seller or its Subsidiaries (other than Elusys), on the other.

“Commercially Reasonable Efforts” means the efforts that a pharmaceutical company of similar size would reasonably devote to its own product with similar commercial potential at a similar stage in the research, development or commercialization lifecycle, taking into consideration the anticipated profitability and the cost to develop the product.

“Common Stock” means the common stock, \$0.0002 par value per share, of the Seller.

“Consideration” has the meaning set forth in Section 2.1(b)(i).

“Consideration Allocation” has the meaning set forth in Section 2.6(a).

“Contracts” means any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, collaboration agreement, development agreement, distribution agreement, contract research organization agreement or other legally binding contract, agreement, obligation, commitment, arrangement, understanding or instrument, whether oral or written.

“Control” including its various tenses and derivatives (such as “Controlled” and “Controlling”) means (a) when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by Contract or otherwise, (b) when used with respect to any security, the possession, directly or indirectly, of the power to vote, or to direct the voting of, such security or the power to dispose of, or to direct the disposition of, such security and (c) when used with respect to any Intellectual Property Rights, possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to assign or grant a license, sublicense or other right to or under such Intellectual Property Rights or to compel another to do so.

“Dollars” or “\$” means United States dollars.

“Elusys” means Elusys Therapeutics, Inc., a wholly-owned subsidiary of Seller.

“Elusys Employees” means those persons who are set forth on Schedule 1.1(b).

“Elusys Equity Interests” means the 200,000 shares of common stock, \$0.001 par value per share, of Elusys, which are currently issued and outstanding and are held of record by Seller.

“Elusys Merger Agreement” means that certain agreement and plan of merger and reorganization, dated as of December 20, 2021, among the Seller, Heat Acquisition Sub 1, Inc., Elusys Therapeutics, Inc., and Fortis Advisors LLC.

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

“Excluded Assets” has the meaning set forth in Section 2.2(b).

“Excluded Taxes” means (i) any Taxes (whether assessed or unassessed) arising out of, or with respect to, the Purchased Assets, the Business, or the Assumed Liabilities for any Pre-Closing Tax Period, (ii) any Taxes of Seller or any of its Affiliates (or for which Seller or any of its respective Affiliates are liable) for any taxable period, including all income Taxes arising in connection with the consummation of the transactions contemplated by this Agreement and the Related Documents and including as a result of the application of “bulk sale” or “bulk transfer” Laws or similar Laws directly as a result of the transactions contemplated by this Agreement and the Related Documents, (iii) any Transfer Taxes that are allocated to Seller pursuant to Section 5.5(a), (iv) Taxes relating to the Excluded Assets for any taxable period, (v) any Taxes of Elusys with respect to any Pre-Closing Tax Period; (vi) any unpaid Taxes of any Person (other than Elusys) under Treasury Regulations Section 1.1502-6 (or any similar provision of Law) that are imposed on Elusys by reason of having been a member of an affiliated, combined, consolidated, unitary or similar group with respect to any Pre-Closing Tax Period; and (vii) any unpaid Taxes of any Person (other than Elusys) for which Elusys is liable as a transferee or successor, by contract or other agreement (other than any such contract or agreement entered into in the ordinary course of business the primary purpose of which is not Tax), or under applicable Law, which Taxes relate to an event or transaction occurring before the Closing.

“Exploit” means to make, have made, import, use, sell, offer for sale, or otherwise dispose of, including to research, develop, register, modify, enhance, improve, manufacture, have manufactured, store, formulate, optimize, export, transport, distribute, commercialize, promote, market, have sold or otherwise dispose of. “Exploiting”, “Exploitation” and other forms of the word “Exploit” shall have correlative meanings.

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

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

“Governmental Authority” means any Federal, state, local or foreign government, any court, tribunal, administrative or other governmental agency, department, commission or authority, any Regulatory Authority or any non-governmental self-regulatory agency, commission or authority including without limitation the New York Stock Exchange.

“Governmental Consent” has the meaning set forth in Section 3.2(c).

“IND” means (i) any investigational new drug application relating to a Product filed with the FDA pursuant to 21 C.F.R. Part 312, or any comparable filing made with a Governmental Authority in another country (including the submission to a competent authority of a request for an authorization concerning a clinical trial, as envisaged in Article 9, paragraph 2, of European Directive 2001/20/EC, or any other exemption legitimizing the use of a Product in a clinical

investigation), and (ii) all supplements and amendments that may be filed with respect to the foregoing.

“Independent Accounting Firm” means BDO USA, P.A. or a nationally recognized independent accounting firm which has not been engaged by the Sellers or Buyers or any of their respective Affiliates during the three year period ending on the Closing Date that is assigned by the American Arbitration Association.

“Intellectual Property Rights” means all of the following, in each case in any jurisdiction in the world: (a) patents, patent applications, (including in each case any continuation, continuation-in-part, division, renewal, patent term, extension (including any supplemental protection certificate), reexamination or reissue thereof) (collectively, “Patents”); (b) registered and unregistered trademarks, trade dress, trade names, logos, design rights, service marks and any other designation of source or origin, together with the goodwill pertaining to the foregoing, and all applications, registrations and renewals therefor (collectively, “Trademarks”); (c) registered and unregistered copyrights, works of authorship, copyrightable works (published or unpublished) and all applications, registrations and renewals therefor (collectively, “Copyrights”); (d) software, computer programs and applications (whether in source code, object code or other form), algorithms, databases and technology supporting the foregoing, and all error corrections, updates, upgrades, enhancements, translations, modifications, adaptations, further developments and derivative works thereto, and all designs and design documents, technical summaries, documentation (including flow charts, logic diagrams, white papers, manuals, guides and specifications), firmware and middleware associated with the foregoing (collectively, “Software”); and (e) confidential and proprietary technical, scientific, regulatory or other information, designs, ideas, concepts, invention disclosures and inventions (whether patentable or unpatentable and whether or not reduced to practice), research and development, discoveries, results, creations, improvements, know-how, techniques and data (including biological, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing and preclinical and clinical data), technology, algorithms, procedures, plans, processes, practices, methods, trade secrets, instructions, formulae, formulations, compositions, specifications, marketing, pricing, distribution, cost and sales information, customer and supplier names and lists, tools, materials, apparatus, creations, improvements and other similar materials, and all recordings, graphs, drawings, diagrams, flow charts, models, studies, reports, surveys, analyses and other writings (“Know-How”).

“IRS” means the United States Internal Revenue Service.

“Law” means any federal, state, local or foreign constitution, treaty, law, statute, ordinance, rule or regulation (including any written advisory comments or formal interpretation or guidance thereunder), directive, policy, order, writ, award, decree, injunction, judgment, stay or restraining order of any Governmental Authority, the terms of any permit, and any other ruling or decision of, agreement with or by, or any other requirement of, any Governmental Authority.

“Legal Restraints” has the meaning set forth in Section 6.1(b).

“Liabilities” means liabilities, obligations and commitments, whether accrued or fixed, absolute or contingent, known or unknown, determined or determinable, due or to become due, or otherwise.

“Liability Cap” has the meaning set forth in Section 8.1(b).

“Lien” means any lien (statutory or otherwise), security interest, pledge, hypothecation, mortgage, assessment, lease, claim, levy, charge, or any restriction on use or transfer, or other encumbrance.

“Losses” means all losses, damages, liabilities, obligations, deficiencies, fines, interest, judgments, penalties, Taxes, fees, costs or expenses, including reasonable attorneys’ and other professionals’ fees and expenses and other third-party costs of investigation and defense.

“Marketing Authorization Application” means a New Drug Application or Biologics License Application, each as defined in the Act, and any corresponding foreign application, registration or certification granted by a Governmental Authority, including any supplements, amendments or modifications submitted to or required by any Governmental Authority, necessary or reasonably useful to commercialize and market a Product in a particular country or group of countries, but not including pricing and reimbursement approvals.

“Material Adverse Effect” means any change, effect, event, occurrence, state of facts or development which individually or in the aggregate would reasonably be expected to result in, or has resulted in, any change or effect, that is materially adverse to the Business or the Purchased Assets; provided that, for purposes of this definition, none of the following shall be deemed, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (i) any change, effect, event, occurrence, state of facts or development relating to the economy in general in the United States or in any other jurisdiction in which the Seller has operations or conducts business, so long as the effects do not disproportionately impact the Business, (ii) any change, effect, event, occurrence, state of facts or development reasonably attributable to conditions affecting the pharmaceutical industry so long as the effects do not disproportionately impact the Business but, in such event, only the incremental disproportionate impact of any such effect will be taken into account in determining whether a Material Adverse Effect has occurred, (iii) any failure by Seller to meet internal projections or forecasts or third party revenue or earnings predictions for any period ending on or after the date of this Agreement (it being understood, however, that any effect causing or contributing to any such failure to meet projections or predictions may constitute a Material Adverse Effect and may be taken into account in determining whether a Material Adverse Effect has occurred); (iv) the execution, delivery, public announcement or performance of this Agreement, (v) earthquakes, hurricanes, tornadoes, natural disasters, epidemics, pandemics, disease outbreaks (including the COVID-19 virus) or global, national or regional political conditions, including hostilities, military actions, political instability, acts of terrorism or war or any escalation or material worsening of any such hostilities, military actions, political instability, acts of terrorism or war existing or underway as of the date hereof (other than any of the foregoing that causes any material damage or destruction

to or renders unusable any material Purchased Assets, (vi) any effect that results from any action taken at the prior written request of Buyer or with Buyer's prior written consent, or (vii) changes in Law or GAAP or any interpretation thereof so long as the effects do not disproportionately impact the Business but, in such event, only the incremental disproportionate impact of any such effect will be taken into account in determining whether a Material Adverse Effect has occurred.

“Note Investment” means the investment by Buyer of \$2,250,000 in exchange for and pursuant to the terms of the Convertible Note.

“Order” means any writ, judgment, decree, injunction or similar order, including consent orders, of any Governmental Authority (in each such case whether preliminary or final).

“Outside Date” has the meaning set forth in Section 7.1(b)(i).

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Permits” means all approvals, authorizations, certificates, filings, franchises, licenses, notices, clearances, registrations and permits of or with all Governmental Authorities, necessary for or related to the Business (and not specifically related to the Seller's facilities), including all applications for any of the foregoing, together with any renewals, extensions or modifications thereof and additions thereto.

“Permitted Liens” means, collectively, (i) statutory liens for Taxes, assessments and governmental charges not yet due and payable or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been maintained in accordance with GAAP; and (ii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, material men and other Liens imposed by law arising or incurred in the ordinary course of business for amounts that are not yet due and payable and, if required under GAAP, for which appropriate reserves have been created or that are being contested in good faith by appropriate proceedings and that are not resulting from any breach, violation or default by Seller or any of its Affiliates of any Contract or applicable Law.

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

“Post-Closing Payment Period” has the meaning set forth in Section 6.5(b).

“Post-Closing Payment Amounts” has the meaning set forth in Section 6.5(b)(ii).

“Post-Closing Tax Period” means any Tax period (or portion thereof) beginning after the Closing Date.

“Pre-Closing Tax Period” means any Tax period (or portion thereof) ending on or before the Closing Date.

“Privileged Communications” means any attorney-client communications, confidences, files, work product or other communications related to the Purchased Assets.

“Proxy Statement” has the meaning set forth in Section 5.9(b).

“Purchased Assets” has the meaning set forth in Section 2.2(a).

“Regulatory Authority” means any applicable supra-national, federal, national, regional, state, provincial, or local regulatory agencies, departments, bureaus, commissions, councils, or other government entities regulating or otherwise exercising authority with respect to the development and exploitation of Products.

“Regulatory Authorizations” means, with respect to any jurisdiction, any and all approvals (including pricing and reimbursement approvals), licenses, clearances, registrations or authorizations of any Regulatory Authority necessary or useful for the Exploitation of any compound or (bio)pharmaceutical product in such jurisdiction, including, where applicable, (i) INDs, Marketing Authorization Applications and supplements and amendments thereto, (ii) pre- and post-approval marketing authorizations (including any prerequisite manufacturing approval or authorization related thereto), (iii) labeling approval and (iv) technical, medical and scientific licenses.

“Regulatory Documentation” means any and all (i) applications, filings, submissions, registrations, licenses, permits, notifications, authorizations and approvals (including all Regulatory Authorizations), and non-clinical and clinical study authorization applications or notifications (including all supporting files, writings, data, studies and reports) prepared for submission to a Regulatory Authority or research ethics committee with a view to the obtaining or maintaining of any Regulatory Authorization, including any Investigational Medicinal Product Dossier (IMPD), (ii) correspondence to or with the FDA, European Medicines Agency (EMA) or any other Governmental Authority (including minutes and contact reports relating to any communications with any Governmental Authority), (iii) pharmacovigilance databases, adverse event reports and associated documents, investigations of adverse event reports, and any other records related to safety reporting or data contained or referenced in or supporting any of the foregoing, (iv) manufacturing records or data contained or referenced in or supporting any of the foregoing and (v) nonclinical, clinical and other data contained or referenced in or supporting any of the foregoing.

“Related Documents” means, other than this Agreement, all agreements, certificates and documents signed and delivered by either Party in connection with this Agreement or the transactions contemplated hereby.

“Representatives” means, with respect to any Person, such Person’s directors, officers, managers, employees, counsel, consultants, accountants, financial advisors, lenders and other agents and representatives.

“Revenue Derived by Buyer” means the gross dollar amount of payments received by Buyer or any of its Affiliates or any of their successors, assigns, licensees or sublicensees (or any person to whom the Business is sold, assigned or transferred) for all sales of ANTHIM® without any deductions.

“Reviewing Accountant” shall have the meaning set forth in Section 2.6(b).

“Rights Agreement” means the Rights Agreement, dated March 11, 2018, as amended by Amendment No. 1 thereto, dated March 8, 2019, as further amended by Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, and further amended by Amendment No. 4, dated March 11, 2022, by and between Seller (formerly known as Heat Biologics, Inc.) and Continental Stock Transfer & Trust Company, as rights agent, including as such agreement may be further amended.

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

“Securities Act” has the meaning set forth in Section 3.4.

“Seller” has the meaning set forth in the preamble hereof.

“Seller Allocation Notice” has the meaning set forth in Section 2.6(b).

“Seller Board” means the Board of Directors of Seller.

“Seller Indemnified Parties” has the meaning set forth in Section 8.1(e).

“Seller Regulatory Documentation” means any and all Regulatory Documentation, including all Seller Regulatory Authorizations, that is owned by, or otherwise Controlled by, Seller or any of its Affiliates on the Closing Date and that is primarily related to, or is reasonably necessary or useful in the Business.

“Seller’s Charter” means that certain third amended and restated certificate of incorporation of the Seller, as amended, filed with the Secretary of State of the State of Delaware.

“Straddle Period” has the meaning set forth in Section 5.5(b).

“Tax” or “Taxes” means all taxes, assessments, duties, fees or similar charges of any kind whatsoever and wheresoever chargeable (whether or not designated as a tax under applicable Law), in each case in the nature of a tax, including any surcharges, interest, penalties, and additions thereto.

“Tax Return” means all returns (including amended returns), requests for extensions of time, claims for refund, declarations of estimated Tax payments, reports, estimates, information returns and statements, including any schedule or attachment thereto or any related or supporting information with respect to any of the foregoing, filed or required to be filed with any Taxing

Authority in connection with the determination, assessment, collection or administration of any Taxes, and any amendment thereof.

“Taxing Authority” means any Governmental Authority or any quasi-governmental body exercising Tax regulatory authority.

“Third Party” means any Person other than: (a) Seller or Buyer or (b) any Affiliates of Seller or Buyer.

“Transfer Taxes” has the meaning set forth in Section 5.5(a).

Section 1.2 Interpretation. When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement, any Related Document or in any Exhibit or Schedule hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement, such Related Document or such Exhibit or Schedule. Whenever the words “include”, “includes” or “including” are used in this Agreement or any Related Document, they shall be deemed to be followed by the words “without limitation”. The word “or,” when used in this Agreement, has the inclusive meaning represented by the phrase “and/or.” The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to the “date hereof” refer to the date of this Agreement. “Extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if”. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement 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 Contract or statute defined or referred to herein or in any Contract that is referred to herein means (a) in the case of any statute, such statute and any comparable statute that from time to time replaces such statute by succession, and any rules and regulations promulgated thereunder and (b) in the case of any Contract, such Contract and all amendments, modifications and attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Purchased Assets; Consideration; Royalty Payment.

- (a) Purchase and Sale of Purchased Assets. Pursuant to the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, convey, deliver, transfer and assign to Buyer, free and clear of all Liens, other than Permitted Liens, and Buyer shall purchase, take delivery of and acquire from Seller (and its

Affiliates) all of Seller's (and its Affiliates') right, title and interest in, to and under all of the Purchased Assets.

- (b) Consideration. In consideration (the "Consideration") of the sale, conveyance, delivery, transfer and assignment of the Purchased Assets to Buyer and Seller's other covenants and obligations hereunder, upon the terms and subject to the conditions hereof:
- (i) on the date of this Agreement, Buyer shall pay to Seller in immediately available funds \$500,000 ("Cash Consideration");
 - (ii) at the Closing, Buyer shall assume the Assumed Liabilities in accordance with Section 2.3; and
 - (iii) from and after the Closing, Buyer shall assume all operating costs of Elusys, including the costs incurred after the Closing related to Elusys Employees, consultants, regulatory and research costs.
- (c) Royalty Payment. As additional consideration for the Purchased Assets and the other transactions contemplated by this Agreement, on an annual basis, Buyer shall pay to Seller a royalty equal to three percent (3%) of the Revenue Derived by Buyer from the sale of ANTHIM® during the ANTHIM Period, (all such payments being referred to as the "Royalty Payments"); in each case subject to the following additional terms and conditions:
- (i) Within sixty (60) days following the end of each calendar year during the ANTHIM Period, Buyer shall provide Seller with a report (the "Report") stating with respect to such calendar year (A) Revenue Derived by Buyer of ANTHIM® sold by Buyer, its Affiliates and its licensees and sublicensees, (B) a calculation of the Royalty Payments due to Seller pursuant to this Section 2.1(c), and (ii) make payment of such Royalty Payments to the bank account indicated by Seller; provided however, that with respect to the final calendar year of the ANTHIM Period, Buyer shall provide such Report and make such payment within sixty (60) days following the expiration of the ANTHIM Period.
 - (ii) All Royalty Payments under this Agreement shall be made in US Dollars. Any sales incurred in a currency other than US Dollars shall be converted to the US Dollar equivalent using the then-current standard exchange rate set forth in the Wall Street Journal or as otherwise agreed by the Parties in writing.
 - (iii) If as of December 31, 2028, Seller shall not have received an aggregate of \$5,000,000 in Royalty Payments under this Section 2.1(c), then Buyer shall pay to Seller no later than March 1, 2029, a cash payment equal to

the difference between \$5,000,000 and the aggregate Royalty Payments received by Seller from Buyer pursuant to this Section 2.1(c).

- (iv) Buyer shall pay to Seller to a bank account instructed by Seller in writing any and all Royalty Payments for the ANTHIM Period no later than 60 days following the end of each calendar year during the ANTHIM Period and for any amounts due under Section 2.1(c)(iii) no later than February 29, 2028; provided however, that with respect to the final calendar year of the ANTHIM Period, Buyer shall make such payment within sixty (60) days following the expiration of the ANTHIM Period.
- (v) The Royalty Payments shall be treated as an adjustment to the Cash Consideration for the Purchased Assets for income Tax purposes, unless otherwise required by a “determination ” within the meaning of Section 1313 (a) of the Code (or similar provisions of state, local, or foreign Tax Law).
- (d) Audit of Royalty Revenue. Buyer shall keep complete, true and accurate Books and Records containing all particulars that may be necessary for the purpose of calculating the Royalty Payments under this Agreement. Buyer will keep such Books and Records for at least three (3) years following the calendar year to which such payments relate at its principal place of business. Seller may, upon at least thirty (30) calendar days’ advance written notice, cause an Independent Accounting Firm (the “Auditor”), which is reasonably acceptable to Buyer, to inspect the relevant records of Buyer and its Affiliates to verify the payments payable by Seller and the related reports, statements and books of accounts, as applicable, and prepare a report pertaining to such payments. Before beginning its audit, the Auditor shall execute an undertaking reasonably acceptable to Buyer by which the Auditor agrees to keep confidential all information reviewed during the audit. The Auditor shall have the right to disclose only its conclusions regarding any payments owed under this Agreement to Seller, Buyer and their respective representatives. Buyer shall make payment to Seller of any undisputed underpayment promptly (but in no event later than thirty (30) days) following receipt of such Auditor’s report. Seller shall pay for such inspections except in the event of an underpayments of more than five (5%) of the total payments due for the applicable audit period is discovered, in which case, the fees and expenses charged by the Auditor shall be paid by Buyer.

Section 2.2 Purchased Assets; Excluded Assets.

- (a) The term “Purchased Assets” means all of Seller’s (and its Affiliates’) right, title and interest in and to the assets delineated below (whether tangible or intangible):
 - (i) the Elusys Equity Interests; and

- (ii) exclusive right to use the name “NightHawk” and ownership of any and all trademark, goodwill and other rights the Seller may have in connection with such name.
- (b) The Purchased Assets shall not include the assets described on Schedule 2.2(b) (collectively, the “Excluded Assets”). Notwithstanding anything to the contrary herein, Excluded Assets shall include:
 - (i) all cash and cash equivalents of Seller; and
 - (ii) all Privileged Communications.

Section 2.3 Assumed Liabilities.

- (a) Pursuant to the terms and subject to the conditions of this Agreement, at the Closing, Seller shall, and shall cause its Affiliates to, sell, convey (including by operation of law), deliver, transfer and assign to Buyer (or its designated Affiliate), and Buyer (or its designated Affiliate) shall assume from Seller and its applicable Affiliates, the Assumed Liabilities. Buyer shall pay, perform and discharge when due all of the Assumed Liabilities.

Section 2.4 Closing; Closing Deliverables.

- (a) Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place remotely by exchange of electronic copies of the agreements, documents, certificates and other instruments set forth in this Section 2.4, at 10:00 a.m. New York City time, on the second Business Day following the satisfaction (or, to the extent permitted, waiver) of the conditions set forth in ARTICLE VI (other than those conditions that by their terms are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place, time and date as shall be agreed between Buyer and Seller. The date on which the Closing occurs is referred to herein as the “Closing Date.”
- (b) Seller Closing Deliverables. At the Closing, Seller shall deliver or cause to be delivered to Buyer:
 - (i) the Bill of Sale, Assignment and Assumption Agreement, in a form reasonably acceptable to Buyer and Seller (the “Bill of Sale, Assignment and Assumption Agreement”), duly executed by Seller and/or its applicable Affiliates;
 - (ii) a duly completed and accurate IRS Form W-9 from Seller which meets the requirements of a certificate of non-foreign status under Treasury Regulations Section 1.1445-2(b)(2)(v);

- (iii) all physical or tangible Purchased Assets to a location reasonably designated by Buyer at least five Business Days prior to the Closing;
 - (iv) a duly executed stock power evidencing all of the Elusys Equity Interests;
 - (v) the certificate contemplated by Section 6.2(b); and
 - (vi) access to all Books and Records and Seller Regulatory Documentation that are, (A) Purchased Assets, and (B) in each case, stored in an electronic or digital format in a manner mutually agreed by the Parties.
 - (vii) any documentation that may be necessary to effect the transfer of the exclusive right to use the name "NightHawk," and ownership of any and all trademark, goodwill and other rights the Seller may have in connection with such name, to Buyer.
- (c) Buyer Closing Deliverables. At the Closing, Buyer shall deliver or cause to be delivered to Seller:
- (i) the Bill of Sale, Assignment and Assumption Agreement, duly executed by Buyer and/or its applicable Affiliates; and
 - (ii) the certificate contemplated by Section 6.3(b).

Section 2.5 Third Party Consents.

- (a) If the assignment or transfer of any asset included in the Purchased Assets or any claim, right or benefit arising thereunder or resulting therefrom, without the consent of a Third Party, would constitute a breach or other contravention of the rights of such Third Party, or would be ineffective with respect to any party to an agreement concerning such asset, claim, right or benefit, then, if requested by Buyer, Seller shall use commercially reasonable efforts, at Buyer's sole cost and expense, to obtain such consent after the execution of this Agreement until such consent is obtained. For the avoidance of doubt, nothing in this Section 2.5 shall affect any determination as to whether any of the conditions set forth in ARTICLE VI have been satisfied.
- (b) Buyer hereby acknowledges the terms and conditions of Section 12.1 of the Elusys Merger Agreement, including without limitation the terms and conditions of Section 12.1(c) thereof. On the date of this Agreement, Seller shall provide written notice to the Stockholders' Representative (as that term is defined in the Elusys Merger Agreement), in accordance with Section 12.1(c) of the Elusys Merger Agreement, of Seller's contemplated sale of Elusys pursuant to this Agreement.

Section 2.6 Consideration Allocation.

- (a) Within ninety (90) days following the Closing Date, Buyer shall provide the Seller with a proposed allocation of the Consideration and the applicable Assumed Liabilities (together with any other amounts treated as consideration for U.S. federal income Tax purposes) among the Purchased Assets (the “Buyer Draft Allocation”).
- (b) If the Seller disagrees with the Buyer Draft Allocation, the Seller may, within thirty (30) days after delivery of the Buyer Draft Allocation, deliver a notice (the “Seller Allocation Notice”) to Buyer to such effect, specifying the items with which the Seller disagrees and setting forth Seller’s proposed allocation of the Consideration (and other relevant amounts). If the Seller Allocation Notice is duly delivered, the Seller and Buyer shall, during the thirty (30) days following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine the allocation of the Consideration (and other relevant amounts). If the Seller and Buyer are unable to reach such agreement, the Seller and Buyer shall submit all matters that remain in dispute with respect to the Seller Allocation Notice (along with a copy of the Buyer Draft Allocation marked to indicate those line items not in dispute) to an Independent Accounting Firm mutually agreed to by the Seller and Buyer (the “Reviewing Accountant”). The Seller and Buyer shall instruct the Reviewing Accountant to make a determination no later than thirty (30) days following the submission of such dispute, based solely on the written submissions of the Seller, on the one hand, and Buyer, on the other hand. The Reviewing Accountant shall adjust the Buyer Draft Allocation based on these determinations. All fees and expenses relating to the work, if any, to be performed by the Reviewing Accountant shall be borne equally by the Seller and Buyer.
- (c) The Buyer Draft Allocation, as prepared by Buyer if the Seller has not delivered a Seller Allocation Notice in accordance with (b), as adjusted pursuant to any agreement between the Seller and Buyer, or as adjusted by the Reviewing Accountant (in each case, the “Consideration Allocation”), shall, absent fraud, be conclusive and binding on the Seller and Buyer for all Tax purposes. The Consideration Allocation shall be amended to reflect any adjustment to the Consideration in a manner consistent with applicable Tax Law (including Section 1060 of the Code).
- (d) Seller and Buyer shall file all applicable Tax Returns (including IRS Form 8594) in a manner consistent with the Consideration Allocation and shall not take any Tax position that is inconsistent with the Consideration Allocation in connection with any proceeding before any Taxing Authority, in each case unless otherwise required by a final “determination” as defined in Section 1313(a) of the Code (or a similar provision of state, local or foreign Tax Law). In the event that the Consideration Allocation is disputed by any Taxing Authority, the Party receiving

notice of the dispute shall promptly notify the other Party in writing of such notice and resolution of the dispute.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to (a) Schedules 3.2, 3.3, and 3.4 attached hereto (to the extent any such Schedule is numbered to correspond to a representation or warranty, and to the extent that it is reasonably clear from a reading of a disclosure in a Schedule that such disclosure is applicable to another representation or warranty, and provided that the inclusion of any information in the Schedules shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in a Material Adverse Effect, or is outside the ordinary course of business of Seller) and (b) the documents filed with or furnished to the SEC by Seller on or after January 1, 2023 and publicly available on the SEC's Electronic Data Gathering Analysis and Retrieval system on or before the day that is three (3) Business Days prior to the date of this Agreement (excluding disclosures to the extent predictive, cautionary or forward-looking in nature), Seller represents and warrants to Buyer as set forth in this ARTICLE III.

Section 3.1 Organization, Standing and Power. Seller is a corporation, duly organized, validly existing and in good standing under the laws of Delaware, and has all requisite corporate power and authority to own, lease or otherwise hold and operate its properties and other assets and to carry on its business as presently conducted, except where the failure to be in good standing or have such power or authority, individually or in the aggregate, has not been and would not reasonably be expected to result in a Material Adverse Effect. Each of Seller and Elusys is duly qualified or licensed to do business and is in good standing (in jurisdictions that recognize the concept of good standing) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed or to be in good standing individually or in the aggregate has not and would not reasonably be expected to result in a Material Adverse Effect.

Section 3.2 Authority: Noncontravention.

- (a) Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Related Documents and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the Related Documents by Seller and the consummation by Seller of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of Seller and no other corporate proceedings on the part of Seller or any of its Affiliates are necessary to authorize this Agreement or the Related Documents). Each of this Agreement and the Related Documents has been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by Buyer, constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its

terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies.

- (b) The execution and delivery of this Agreement and the Related Documents by Seller do not, and compliance by Seller with the provisions of this Agreement and the Related Documents will not, conflict with, or result in any violation or breach of, or default under (with or without notice or lapse of time, or both), or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any Lien (other than a Permitted Lien) in or upon the Purchased Assets under, (i) Seller's Charter, (ii) any Contract to which Seller or any of its Affiliates is a party or to which any of the Purchased Assets are subject or (iii) any (A) statute, ordinance, rule, regulation or other Law applicable to Seller, any of its Affiliates, the Business or the Purchased Assets or (B) Order applicable to Seller, any of its Affiliates, the Business or the Purchased Assets.
- (c) No consent, approval, Order or authorization of, action by or in respect of, or registration, declaration or filing with, any Governmental Authority (each, a "Governmental Consent") is required by or with respect to Seller, any of its Affiliates or the Business in connection with the execution and delivery of this Agreement or any Related Document by Seller or the transfer of the Purchased Assets to Buyer.

Section 3.3 Good Title; Sufficiency of Assets. Seller (together with its Affiliates) has good and marketable title to, or valid Contract rights to, as applicable, all of the Purchased Assets free and clear of all Liens (other than Permitted Liens), and has the complete and unrestricted power and unqualified right to sell, assign, transfer and deliver to Buyer, as applicable, the Purchased Assets or right of possession or use in or to any of the Purchased Assets. At the Closing, Buyer will acquire from Seller (and its Affiliates) good and marketable title to, or valid Contract rights to, as applicable, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens).

Section 3.4 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller or any of its Affiliates, other than Cassel Salpeter & Co., LLC, the fees, commissions and expenses of which will be paid by Seller.

Section 3.5 No Other Representations and Warranties. (A) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE III, NONE OF SELLER OR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, WITH RESPECT TO SELLER, THE BUSINESS, ELUSYS OR THE PURCHASED ASSETS; AND (B) NONE OF SELLER OR ANY OTHER

PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, AS TO THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) HERETOFORE FURNISHED TO BUYER AND ITS REPRESENTATIVES BY OR ON BEHALF OF SELLER AND ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) OTHERWISE AVAILABLE TO BUYER AND ITS REPRESENTATIVES , OTHER THAN IN THE CASE OF FRAUD.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as set forth in this ARTICLE IV.

Section 4.1 Organization, Standing and Power. Buyer is duly organized, validly existing and in good standing under the laws of the Delaware and has all requisite corporate power and authority to carry on its business as presently conducted, except where the failure to be in good standing or have such power or authority, individually or in the aggregate, has not been and would not reasonably be expected to be material to Buyer, taken as a whole. Buyer is duly qualified or licensed to do business and is in good standing (in jurisdictions that recognize the concept of good standing) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed or to be in good standing, individually or in the aggregate, has not been and would not reasonably be expected to be material to Buyer.

Section 4.2 Authority; Noncontravention.

- (a) Buyer has all requisite corporate power and authority to execute and deliver this Agreement and the Related Documents and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the Related Documents by Buyer have been duly authorized by all necessary corporate action on the part of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement, the Related Documents or to consummate the transactions contemplated by this Agreement. Each of this Agreement and the Related Documents has been duly executed and delivered by Buyer (or an Affiliate thereof) and, assuming the due authorization, execution and delivery by Seller, constitutes a legal, valid and binding obligation of Buyer (or an Affiliate thereof), enforceable against Buyer (or an Affiliate thereof) in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies.
- (b) The execution and delivery of this Agreement and the Related Documents by Buyer do not, and compliance by Buyer with the provisions of this Agreement

and the Related Documents will not, conflict with, or result in any violation or breach of, or default under (with or without notice or lapse of time, or both), or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon any of the properties or other assets of Buyer under (i) the certificate of incorporation or bylaws of Buyer, (ii) any Contract to which Buyer or to Buyer's knowledge, Seller any of its or their Affiliates is a party or to which any of its respective properties or other assets is subject, or (iii) any (A) statute, ordinance, rule, regulation or other Law applicable to Buyer or Seller or its properties or other assets or (B) Order applicable to Buyer, Seller any of its or their Affiliates or its properties or other assets, except in the cases of clauses (ii) and (iii), where the conflict, violation, breach, default, termination, cancellation, acceleration or creation of a Lien, individually or in the aggregate, would not reasonably be expected to prevent, materially impede or materially delay the consummation by Buyer of the transactions contemplated by this Agreement (including Buyer's payment of the Consideration to Seller pursuant to Section 2.1(b)(i)).

- (c) No Governmental Consent is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or any Related Document by Buyer or the consummation by Buyer of the transactions contemplated by this Agreement, except for the receipt, termination or expiration, as applicable, of approvals or waiting periods required under any applicable antitrust, competition, fair trade or similar Laws.

Section 4.3 Capital Resources; Ability to Perform. Buyer has, or will have, immediately available funds sufficient to consummate the transactions contemplated by this Agreement (including the payment required to be made pursuant to Section 2.1(b)(i)) on the terms contemplated by this Agreement, including the payment of all fees and expenses payable by Buyer in connection with the transactions contemplated by this Agreement. Buyer has the financial and other ability to perform its obligations under Section 6.5(c) of this agreement.

Section 4.4 Investor Representations. Buyer acknowledges that none of the Elusys Equity Interests, the Convertible Note or the shares of Common Stock of Seller issuable upon conversion of the Convertible Note (the "Conversion Shares" and together with the Elusys Equity Interests, and the Convertible Note, the "Securities") are registered under the Securities Act, nor will the Securities be registered or qualified under any state securities laws, and that the Elusys Equity Interests will be transferred by Seller and the Convertible Note and Conversion Shares will be issued to Buyer pursuant to an exemption from such registration and qualification based in part upon Buyer's representations and warranties contained herein. The Securities must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. Buyer recognizes that, upon the consummation of the transactions contemplated hereby, no public market shall exist for the Elusys Equity Interests or the Convertible Note and none may exist in the future. Buyer is an "accredited investor" as such term is defined in Rule 501(a) promulgated under the Securities Act and has such

knowledge and experience in financial and business matters that Buyer is capable of evaluating the merits and risks of Buyer's investment in the Securities, of making an informed investment decision with respect thereto, and has the ability and capacity to protect Buyer's interests. Neither the Buyer nor any of its affiliates is or are subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) to (viii) of Regulation D. Buyer is purchasing the whole Securities for investment purposes and not with a view to distribution or resale, nor with the intention of selling, transferring or otherwise disposing of all or any part thereof for any particular price, or at any particular time, or upon the happening of any particular event or circumstance, except selling, transferring, or disposing the Securities made in full compliance with all applicable provisions of the Securities Act, the rules and regulations promulgated by the Securities and Exchange Commission thereunder.

Any certificates representing the Securities shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS IN ACCORDANCE WITH APPLICABLE REGISTRATION REQUIREMENTS OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. THIS CERTIFICATE MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, TRANSFER, PLEDGE OR HYPOTHECATION OF ANY INTEREST IN ANY OF THE SECURITIES REPRESENTED HEREBY.

Section 4.5 Litigation. There is no Action pending or, to the actual knowledge of Buyer's officers, threatened before or by any Governmental Authority that, if successful, could reasonably be expected to result in restraining, enjoining or otherwise preventing the consummation by Buyer of the transactions contemplated by this Agreement. There is no outstanding Order of any Governmental Authority against Buyer that could reasonably be expected to result in restraining, enjoining or otherwise preventing the consummation by Buyer of the transactions contemplated by this Agreement.

Section 4.6 Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer or any of its Affiliates.

Section 4.7 Information Supplied. None of the information supplied by or on behalf of Buyer or its Affiliates, whether orally or in writing, contains any untrue statement of a material fact or

omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

Section 4.8 No Reliance; Independent Investigation; As Is, Where Is. BUYER AGREES THAT, NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IT HAS NOT BEEN INDUCED BY, HAS NOT RELIED, AND EXPRESSLY DISCLAIMS ANY RELIANCE UPON ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, MADE BY SELLER (OR ITS AFFILIATES OR REPRESENTATIVES) THAT ARE NOT EXPRESSLY SET FORTH IN ARTICLE III (AS MODIFIED BY THE SCHEDULES) OR IN ANY ANCILLARY DOCUMENTS AND ANY CERTIFICATE OR OTHER WRITING DELIVERED PURSUANT HERETO. BUYER ACKNOWLEDGES THAT IT HAS (I) CONDUCTED ITS OWN INDEPENDENT INVESTIGATION, REVIEW AND ANALYSIS OF THE PURCHASED ASSETS AND THE BUSINESS, (II) BEEN PROVIDED ACCESS TO THE PERSONNEL, PROPERTIES, ASSETS, PREMISES, BOOKS AND RECORDS, AND OTHER DOCUMENTS AND DATA OF SELLER AND ITS AFFILIATES (INCLUDING ELUSYS) FOR SUCH PURPOSE, AND (III) MADE ITS OWN INDEPENDENT JUDGMENT CONCERNING SELLER, THE BUSINESS, ELUSYS AND THE PURCHASED ASSETS AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND, IN MAKING ITS DETERMINATION TO PROCEED WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, BUYER HAS ONLY RELIED ON THE RESULTS OF ITS OWN INDEPENDENT INVESTIGATION AND INDEPENDENT JUDGMENT. BUYER AGREES, REPRESENTS AND WARRANTS THAT THE PURCHASED ASSETS ARE BEING TRANSFERRED BY SELLER ON AN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS” BASIS AND EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE 3, WITHOUT REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS, IMPLIED OR STATUTORY, WRITTEN OR ORAL, OF ANY KIND, NATURE OR DESCRIPTION, BY SELLER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES.

Section 4.9 Accredited Investor. Buyer is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D under the Securities Act, can bear the economic risk of its investment in the Seller Common Stock Buyer may receive through the Note Investment and possesses such knowledge and experience in financial and business matters that the Buyer is capable of evaluating the merits and risks of the investment in the Seller Common Stock Buyer may receive through the Note Investment.

ARTICLE V ADDITIONAL AGREEMENTS

Section 5.1 Conduct of Business.

- (a) From the date of this Agreement until the Closing Date, Seller shall, and shall cause its Affiliates to, (A) maintain and preserve in all respects the Purchased Assets, (B) conduct activities with respect to the Business in the ordinary course

of business consistent with past practice and (C) comply in all material respects with all Laws and Permits applicable to the Business.

- (b) Except as otherwise required by Law, without limiting the generality of the foregoing, from the date of this Agreement until the Closing Date, Seller shall not, and shall cause its Affiliates not to (without the prior written consent of Buyer):
- (i) (A) incur, create, assume or permit the incurrence, creation or assumption of any Lien (other than Permitted Liens) with respect to the Purchased Assets, (B) dispose of any of the Purchased Assets, other than Inventory in the ordinary course of business;
 - (ii) compromise or settle any Action if the terms of such compromise or settlement would be binding on Buyer or any of its Affiliates, or any Purchased Assets, after the Closing;
 - (iii) other than to the extent necessary to change the name of the Seller in accordance with Section 2.2(a)(ii), (A) terminate, amend or modify, or waive any material right under, or fail to perform in all material respects all obligations under, any assumed Contract, Permit or other document or instrument relating to or affecting the Business other than the Elusys Merger Agreement or (B) enter into any material Contract, document or instrument relating to or affecting the Business;
 - (iv) to the extent relating to the Purchased Assets (including with respect to Elusys), (A) make (inconsistent with past practices), revoke or change any Tax election, (B) adopt or change any Tax accounting method or period, (C) file any amended Tax Return, (D) enter into any closing agreement or settlement with respect to Taxes, (E) settle any Tax claim or assessment for Taxes, (F) consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment or (G) surrender any right to claim a refund of Taxes;
 - (v) fail to maintain true, accurate and complete Books and Records and Docket Files;
 - (vi) fail to keep in force and effect insurance in respect of the Purchased Assets comparable in amount and scope of coverage to that maintained as of the date of this Agreement; or
 - (vii) agree to or authorize, or commit to agree to or authorize, in writing or otherwise, any action that would conflict with the obligations set forth in clauses (i) through (vi) above.

Section 5.2 Reasonable Best Efforts.

- (a) Each of the Parties agrees to use its respective reasonable best efforts to take, or cause to be taken, all actions, to file, or cause to be filed, all documents and to do, or cause to be done, all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement as promptly as practicable, including (i) the obtaining of all necessary Governmental Consents, (ii) the execution and delivery of any additional documents or instruments necessary to consummate the transactions contemplated by this Agreement and (iii) the preparation of all physical or tangible Purchased Assets and all Books and Records and Seller Regulatory Documentation stored in an electronic or digital format for delivery by Seller to Buyer in accordance with Section 2.4(b).
- (b) If any objections are raised or asserted with respect to the transactions contemplated by this Agreement under applicable Law or if any Action is instituted (or threatened to be instituted) by any applicable Governmental Authority or any private party challenging any of the transactions contemplated by this Agreement as being in violation of any applicable Law or which would otherwise prevent, impede or delay the consummation of the transactions contemplated by this Agreement, the Parties shall use their reasonable best efforts to resolve any such objections or Actions so as to permit consummation of the transactions contemplated by this Agreement as soon as reasonably practicable.

Section 5.3 Advice of Changes.

- (a) From the date of this Agreement until the earlier of the Closing Date and the termination of this Agreement, Buyer and Seller shall promptly advise the other Party in writing of (i) the occurrence, or failure to occur, of any event which would reasonably be expected to cause any representation or warranty made by such Party contained in this Agreement to become untrue or incorrect or (ii) the failure of such Party to comply with or perform in any material respect any covenants, agreements or obligations required to be complied with or performed by such Party under this Agreement. For the avoidance of doubt, no disclosure pursuant to this Section 5.3 shall be deemed to cure any breach of any representation, warranty, covenant, agreement or obligation or affect any determination as to whether any of the conditions set forth in ARTICLE VI have been satisfied.
- (b) Subject to Section 5.2, from the date of this Agreement until the earlier of the Closing Date and the termination of this Agreement, Buyer and Seller shall reasonably cooperate and make such arrangements as are necessary to ensure that all applicable safety data relating to the Business will transfer to Buyer upon the Closing.

Section 5.4 Confidentiality; Privileged Communications.

- (a) From and after the Closing, Seller will, and will cause its Affiliates and its and their Representatives, to keep confidential, not disclose to any Person and not use any non-public, confidential or proprietary information in its possession, under its Control or to which it has access relating to the Business. The obligations of Seller under this Section 5.4(a) shall not apply to information to the extent such information (A) becomes generally available to the public without breach of Seller's obligations under Section 5.1 or this Section 5.4(a) or (B) is required to be disclosed by Law or any Order; provided, however, that in the case of the foregoing clause (B), to the extent not prohibited by such Law or Order, Seller shall notify Buyer as early in advance of such disclosure as is practicable to allow Buyer to take appropriate measures (and Seller shall reasonably cooperate, at the expense of Buyer, in the taking of such measures) to preserve the confidentiality of such information.
- (b) Buyer and Seller hereby acknowledge and agree that notwithstanding any provision of this Agreement, neither Buyer nor any of its Affiliates shall have access to (and each hereby waives any right of access it may otherwise have with respect to) any Privileged Communications, whether or not the Closing occurs. Without limiting the generality of the foregoing, Buyer hereby acknowledges and agrees, upon and after the Closing: (i) neither Buyer nor any of its Affiliates shall be a holder of, or have any right, title or interest to the Privileged Communications, (ii) only Sellers shall hold property rights in the Privileged Communications and shall have the right to waive or modify such property rights and (iii) Sellers shall have no duty whatsoever to reveal or disclose any Privileged Communications to Buyer or any of its Affiliates.
- (c) To the extent that any Privileged Communications are disclosed or made available to Seller, the Parties hereby agree (i) that the disclosure, receipt and/or review of such Privileged Communication is entirely inadvertent and shall not waive, modify, limit or impair in any form or fashion the protected nature of the Privileged Communications, (ii) it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, common interest privilege, work product doctrine or other applicable privilege and (iii) Sellers shall have the right in its sole discretion and at any time to require the return and/or destruction of the Privileged Communications.

Section 5.5 Certain Tax Matters.

- (a) Transfer Taxes. All recordation, transfer, documentary, excise, sales, value added, use, stamp, conveyance or other similar Taxes, duties or governmental charges, and all recording or filing fees or similar costs, imposed or levied by reason of, in connection with or attributable to this Agreement and the Related Documents (collectively, "Transfer Taxes") shall be borne fifty percent (50%)

by Seller and 50 percent (50%) by Buyer. The Party responsible under applicable Law for filing the Tax Return with respect to such Transfer Taxes shall prepare and timely file any such Tax Return and promptly provide a copy of such Tax Return to the other Party. Seller and Buyer shall, and shall cause their respective Affiliates to, use reasonable best efforts to cooperate to timely prepare and file any Tax Returns or other filings relating to Transfer Taxes, including providing each other with any appropriate certifications or claim for exemption or exclusion from the application or imposition of any Transfer Taxes.

(b) Tax Year and Tax Returns.

- (i) Closing of Tax Year. The Parties agree that they intend that, as a result of the purchase and sale of the Elusys Equity Interests and Elusys ceasing to be a member of Seller's consolidated group as of the end of the day on the Closing Date pursuant to Treasury Regulations Section 1.1502-76(b)(1)(ii)(A), the taxable year of Elusys for federal Tax purposes (and for purposes of similar provisions under state, local and foreign Tax Law) at such time) will terminate at the close of the Closing Date and if Elusys is permitted but not required, under any applicable Tax Law, to treat the Closing Date as the last day of a Taxable period, each Party, as applicable, shall, and shall cause its Affiliates to, treat the Closing Date as the last day of that Taxable period.
- (ii) The Seller shall prepare and timely file (or shall cause to be prepared and timely filed) all Tax Returns that are required to be filed (i) with respect to the Purchased Assets or (ii) by Elusys, in each case, with respect to any taxable period ending on or before the Closing Date whether due before or after the Closing Date (taking into account any extensions of time to file such Tax Returns) ("Pre-Closing Tax Returns"), and Seller shall be liable and responsible for, and timely pay or cause to be paid, in full any Taxes shown as due and owing on such Pre-Closing Tax Returns; provided, that Seller shall provide Buyer with a copy of any such filed Tax Returns other than Combined Tax Returns and shall submit to Buyer not less than thirty (30) Business Days prior to the due date for filing such Tax Returns for review and comment by Buyer, and Seller shall take into account any reasonable changes to such Tax Returns which are delivered to Seller in writing within fifteen (15) Business Days prior to the due date for filing such Tax Returns. Such Pre-Closing Tax Returns shall be prepared in a manner consistent with past practices unless otherwise required by applicable Law or to the extent required to reflect the consummation of the transactions contemplated by this Agreement. If such Pre-Closing Tax Returns are filed by Buyer (excluding, for the avoidance of doubt, any Combined Tax Returns) in accordance with the next sentence, Seller shall pay all such amounts shown as due on such Tax Returns to Buyer at least

ten (10) Business Days prior to the due date of such Tax Returns. To the extent Seller has prepared but has been unable to file such Pre-Closing Tax Return because the Closing Date has passed, Buyer will file, or cause to be filed, any and all such Pre-Closing Tax Returns as have been prepared in accordance with this Section 5.5(b)(ii).

- (iii) The Buyer shall prepare and timely file (or shall cause to be prepared and timely filed) all Tax Returns (other than Combined Tax Returns) that are required to be filed (i) with respect to the Purchased Assets or (ii) by Elusys, that are not described above, including for Tax periods that begin before and end after the Closing Date (a "Straddle Period") and such Tax Returns relating to a Straddle Period prepared by Buyer, "Buyer Returns"). Such Buyer Returns shall be prepared in a manner consistent with past practices unless otherwise required by applicable Law or to the extent required to reflect the consummation of the transactions contemplated by this Agreement. Buyer shall submit to Seller not less than thirty (30) Business Days prior to the due date for filing such Buyer Returns for review and comment by Seller, and Buyer shall take into account any reasonable changes to such Buyer Returns which are delivered to Buyer in writing within fifteen (15) Business Days prior to the due date for filing such Buyer Returns. The Seller agrees to pay to Buyer within ten (10) Business Days after the date on which Taxes are paid with respect to such periods an amount equal to the portion of such Taxes, if any, that relate to the portion of such Tax period ending on the Closing Date as determined pursuant to Section 5.5(c). With respect to the Buyer Returns described in this Section 5.5(b)(iii), the Buyer shall provide the Seller with a copy of such filed Buyer Returns.
- (c) Allocation of Taxes. In the case of a taxable period that includes, but does not end on, the Closing Date (a "Straddle Period"), (a) Taxes imposed on a periodic basis (such as real, personal and intangible property taxes) for the Pre-Closing Tax Period shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and (b) Taxes (other than Taxes described in clause (a)) for any Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date.
- (d) Withholding. Notwithstanding anything in this Agreement to the contrary, Buyer and its Affiliates shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement (including the Royalty Payments) such amounts as Buyer believes in good faith are required to be deducted and withheld with respect to the making of such payment under any provision of federal, state

or local (in each case, whether domestic or foreign) Tax Law and pay such amounts over to the appropriate Taxing Authority. The Buyer shall use commercially reasonable efforts to notify Seller reasonably in advance of the date that the applicable payment is to be made to provide such Seller with an opportunity to provide any form or documentation or take such other steps to avoid such withholding. To the extent that amounts are so deducted and withheld and paid over to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the party in respect of which such deduction and withholding was made.

- (e) Cooperation and Exchange of Information. Each of Seller and Buyer shall, and shall cause their respective Affiliates to, (i) provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, audit or other examination by any Taxing Authority or Action relating to liability for Taxes in connection with the Purchased Assets, (ii) retain and provide the other with any records or other information that may be relevant to such Tax Return, audit or examination, Action or determination and (iii) provide the other with any final determination of any such audit or examination, Action or determination that affects any amount required to be shown on any Tax Return of the other for any period.
- (f) Termination of Existing Tax Sharing Agreements. The Seller shall cause all Tax sharing arrangements other than any such arrangements entered into in the ordinary course of business the primary purpose of which is not Tax (whether written or not) with respect to or involving Elusys to be terminated as of the Closing Date and, after the Closing Date, Elusys shall not be bound thereby or have any Liability thereunder.
- (g) Tax Indemnification.
 - (i) Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 5.5 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.
 - (ii) Indemnification. Seller shall indemnify Buyer and its Affiliates (including Elusys), and each of their respective officers, directors, employees, agents, and Representatives (each a “Buyer Indemnified Party”) against, and shall hold any Buyer Indemnified Parties harmless from and against, any and all Losses incurred or sustained by, or imposed upon, a Buyer Indemnified Party based upon, arising out of, with respect to or by reason of any Excluded Taxes, provided, however, that Seller shall not have any obligation to indemnify Buyer Indemnified Parties for Taxes to the extent such Taxes (x) are due to the unavailability in any Tax periods (or portions thereof) beginning after the Closing Date of any net operating losses,

credits or other Tax attributes (such as capital loss carry forwards, foreign tax credit carry forwards, asset bases, research and development credits, and depreciation periods) from a Tax period (or portion thereof) ending on or before the Closing Date, (y) result from any transactions or actions outside the ordinary course of business taken by the Buyer or any of its Affiliates on the Closing Date after the Closing that are not contemplated by this Agreement (it being understood that any actions taken pursuant to Section 5.8 are expressly contemplated by this Agreement), or (z) would not have been imposed but for a breach by Buyer or any of its Affiliates of the covenant contained in Section 5.5(i).

- (h) Tax Refunds. The Seller shall be entitled to receive any refunds of the Taxes with respect to the Purchased Assets (including, any Taxes of Elusys) or credits received in lieu thereof (including, for the avoidance of doubt, any such refunds that are available to be claimed and for which an election is made to apply such refunds to estimated or other Taxes) plus any interest received with respect thereto from the applicable Tax Authorities for any Pre-Closing Tax Period but only to extent such Taxes were paid by the Seller or by or on behalf of Elusys prior to the Closing Date (any such refund, a “Pre-Closing Refund”). Notwithstanding the foregoing, Pre-Closing Refunds shall not include, and Buyer shall not be required to pay any amounts to Seller in respect thereof, any refunds or credits of Taxes to the extent attributable to any carryback of any Tax asset or attribute that originates in a taxable period (or portion thereof) ending after the Closing Date to a Pre-Closing Tax Period. Any refunds or credits of Taxes for any Straddle Period shall be apportioned between Seller and Buyer in the same manner as the liability for such Taxes is apportioned pursuant to Section 5.5(c). To the extent permitted by Law, any Pre-Closing Refund shall be claimed in cash rather than as a credit against future Tax Liabilities for a Tax period beginning after the Closing Date. Within thirty (30) Business Days, after receipt of any Pre-Closing Refund by the Buyer or any of its Affiliates (or, in the case of a credit obtained in lieu of such refund, no later than thirty (30) Business Days following the filing of the income Tax Return on which such credit is available to be used to offset Tax otherwise payable), the Buyer shall pay over to the Seller the amount of such Pre-Closing Refund, net of the amount of any Taxes imposed on Buyer or any of its Affiliates thereof in connection with the receipt or realization of such Pre-Closing Refund and any reasonable out-of-pocket expenses incurred by the Buyer or any of its Affiliates in obtaining such Pre-Closing Refund (including any income Taxes imposed thereon).
- (i) Post-Closing Tax Covenant. Except as required by applicable Law, without the prior written consent of Seller (not to be unreasonably withheld, conditioned or delayed), Buyer shall not nor shall it permit any of its Affiliates to, with respect to the Purchased Assets or Elusys, (i) take any action on the Closing Date after the Closing other than in the ordinary course of business or as otherwise

contemplated by this Agreement, (ii) make any retroactive Tax election effective for any Pre-Closing Tax Period except as contemplated by Section 5.8, (iii) amend, file or re-file any Tax Return for any Pre-Closing Tax Period, except as contemplated by Section 5.5(b)(iii), or (iv) waive or extend any statute of limitations for the assessment or collection of any Excluded Tax.

Section 5.6 Public Announcements.

- (a) Neither Buyer nor Seller, nor any Affiliate of either Party, shall issue any press release or otherwise make any public statement with respect to the provisions of this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other Party. Notwithstanding anything to the contrary in this Agreement or any Related Document, either Party may issue a press release or make a public statement with respect to the transactions contemplated by this Agreement without the consent of the other Party as may be required by Law or the rules and regulations of any applicable securities exchange or market. If any Party proposes to issue a press release or make a public statement with respect to the transactions contemplated by this Agreement pursuant to this Section 5.6, it will provide copies of such press release or public statement to the other Party before such press release or public statement is made, unless this would be in breach of any Law or the rules and regulations of any applicable securities exchange or market, in which case a copy of such press release or public statement will be provided to the other Party as soon as reasonably practicable or in accordance with such Law, rules or regulations.
- (b) From and after the Closing, except as required by Law or the rules and regulations of any applicable securities exchange or market, neither Seller nor any of its Affiliates shall issue any press release or otherwise make any public statement with respect to the Business without the consent of Buyer.

Section 5.7 Expenses. Except as expressly set forth herein, each of Seller and Buyer shall bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement.

Section 5.8 Tax Election.

- (a) If requested by Buyer, Seller shall participate in making an election under Section 338(h)(10) of the Code and any corresponding election permitted under the applicable Laws of any local, state, or foreign jurisdiction (the "Election") relative to transactions contemplated by this Agreement. Seller shall cooperate with Buyer to do all things reasonably necessary to make the Election, including but not limited to (i) joining with Buyer in making the Election, (ii) reasonably cooperating with Buyer and taking all actions necessary or appropriate to effect and preserve a timely Election, and (iii) participating in the timely filing of IRS Form 8023 and related or comparable forms for state, local, or foreign Law

purposes (collectively, the “Section 338(h)(10) Forms”). At Buyer’s request, Seller shall furnish to Buyer such information reasonably requested by Buyer in order to prepare the Section 338(h)(10) Forms, shall review and timely provide comments on such Section 338(h)(10) Forms as provided by Buyer to Seller, and shall, at Buyer’s request, execute such Section 338(h)(10) Forms prepared by Buyer (and agreed upon by the Parties) and deliver such Section 338(h)(10) Forms to Buyer for timely filing by Buyer with the applicable Governmental Authority.

- (b) Promptly following the Closing, the Parties will jointly negotiate and calculate in good faith the amount of additional consideration, if any, which would compensate the Seller for the difference between (x) the after-Tax net proceeds that the Seller would receive if the Election is not made with respect to the sale of the Elusys Equity Interests and (y) the after-Tax net proceeds that the Seller would receive with the Election in effect with respect to the sale of the Elusys Equity Interests (the “Tax Adjustment”). The Parties shall endeavor in good faith to finalize the Tax Adjustment no later than 60 days before the deadline for filing the Section 338(h)(10) Election. If Buyer requests that Seller make the Election, the payment of the Tax Adjustment by Buyer to Seller shall be made no later than ten (10) Business Days after the final determination of the Tax Adjustment.
- (c) Each Party hereto shall, and shall cause their Affiliates, to treat all payments of the Tax Adjustment as payments of additional Purchase Price for all income Tax purposes (including for purposes of computing the Tax Adjustment). Buyer and Seller shall file all Tax Returns consistently with the Election, the Section 338(h)(10) Forms and the Purchase Price Allocation (as appropriately adjusted) and shall not take any position on any Tax Returns or during the course of any audit or other action or proceeding that is inconsistent with such election, forms or schedule, unless required by a determination of an applicable Governmental Authority that is final.

Section 5.9 Further Assurances.

- (a) Seller shall, and shall cause its Affiliates to, at any time and from time to time after the Closing Date, upon the reasonable request of Buyer, do, execute, acknowledge, deliver and file, or cause to be done, executed, acknowledged, delivered or filed, all such further acts, deeds, transfers, conveyances, assignments or assurances as may be reasonably required for the transferring, conveying, assigning and assuring to Buyer, or for the aiding and assisting in the reducing to possession by Buyer of, any of the Purchased Assets, or for otherwise carrying out the purposes of this Agreement and the Related Documents.
- (b) At a time mutually agreed by the parties hereto, Seller (with the assistance and cooperation of Buyer as reasonably requested by Seller) shall use reasonable best efforts to cause to be filed with the SEC a proxy statement (the “Proxy”

Statement”) in connection with a special meeting of Seller’s stockholders to be held in order for Seller’s stockholders to approve and adopt the issuance of Seller’s common stock to Buyer as contemplated by the Note Investment. Seller shall use its reasonable best efforts to (i) cause the Proxy Statement when filed with the SEC to comply in all material respects with all legal requirements applicable thereto, (ii) respond as promptly as reasonably practicable to and resolve all comments received from the SEC concerning the Proxy Statement, and (iii) to take such other action related to the Proxy Statement as necessary or desirable in connection therewith, including, but not limited to, (x) establishing the record date for, duly calling, giving notice of, convening and holding the special meeting in accordance with applicable Law, (y) causing the Proxy Statement to be disseminated to the stockholders of Seller, and (x) soliciting proxies from the stockholders of Seller to vote in favor of the proposals set forth in the Proxy Statement. Seller shall, through the recommendation of its Board of Directors, recommend to its stockholders that such stockholders approve the proposals relating to the issuance of shares of Seller’s common stock to Buyer that is included by Seller in the Proxy Statement and shall include such unqualified recommendation of the Seller’s Board of Directors in the Proxy Statement. No filing of, or amendment or supplement to, the Proxy Statement will be made by Seller without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Seller will advise Buyer promptly after it receives notice thereof of any request by the SEC for amendment of the Proxy Statement or requests by the SEC for additional information. Each of Seller and Buyer shall cooperate and mutually agree upon (such agreement not to be unreasonably withheld, conditioned or delayed), any response to comments of the SEC or its staff with respect to the Proxy Statement or any amendment to the Proxy Statement filed in response thereto.

- (c) Subject to, and without altering the rights and obligations set forth in, Section 2.6, for a period of 18 months from and after the Closing Date, if either Buyer or Seller becomes aware that any of the Purchased Assets have not been transferred to Buyer or that any of the Excluded Assets have been transferred to Buyer, it shall promptly notify the other and the Parties hereto shall, as promptly as reasonably practicable, use commercially reasonable efforts to ensure such assets are transferred to the correct owner, with any necessary Third Party consents.

ARTICLE VI
CONDITIONS PRECEDENT; COVENANTS

Section 6.1 Conditions to Each Party's Obligations. The respective obligations of each party to effect the Closing are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

- (a) Governmental Approvals. Any authorizations, consents, Orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Authority under any applicable Law that are required to effect the Closing shall have been made, obtained or terminated or shall have expired.
- (b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other Order issued by any court of competent jurisdiction or other Law (collectively, "Legal Restraints") which has the effect of restraining, enjoining or otherwise preventing the consummation of the transactions contemplated by this Agreement shall be in effect.
- (c) No Actions. There shall not be pending or threatened in writing any Action brought by any Governmental Authority or any other Person having a reasonable likelihood of prevailing challenging or seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement.
- (d) Elusys Merger Agreement. No less than thirty (30) days have passed since the time Seller has given the notice contemplated by Section 2.5(b); provided, however, that the condition set forth in this Section 6.1(d) shall be satisfied immediately upon the waiver by the Stockholders' Representative (as that term is defined in the Elusys Merger Agreement) of the notice requirement set forth in Section 12.1(c) of the Elusys Merger Agreement.

Section 6.2 Conditions to Obligations of Buyer. The obligation of Buyer to effect the Closing is subject to the satisfaction or waiver by Buyer on or prior to the Closing Date of the following additional conditions:

- (a) Representations and Warranties. The representations and warranties of Seller set forth in in ARTICLE III shall be true and correct (disregarding all qualifications or limitations as to "materiality", "Material Adverse Effect" and words of similar import set forth therein) as of the Closing Date with the same effect as though made on and as of the Closing Date (except to the extent expressly made as of a specified date, in which case as of such specified date), except where the failure to be so true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (b) Performance of Obligations of Seller. Seller shall have performed and complied in all material respects with all of its covenants, agreements and obligations

contained in this Agreement and required to be performed or complied with on or prior to the Closing Date. Buyer shall have received a certificate signed on behalf of Seller by an authorized executive officer of Seller to such effect with respect to the conditions set forth in Sections 6.2(a) and (b).

- (c) Amendment to Rights Agreement. Seller shall have entered into an amendment to its Rights Agreement in order to permit Buyer to acquire the shares of Common Stock that are contemplated by the Note Investment without Buyer being considered an “Acquiring Person” thereunder.

Section 6.3 Conditions to Obligations of Seller. The obligation of Seller to effect the Closing is subject to the satisfaction or waiver by Seller on or prior to the Closing Date of the following additional conditions:

- (a) Representations and Warranties. The representations and warranties of Buyer set forth in (i) Section 4.1 shall be true and correct as of the Closing Date with the same effect as though made on and as of the Closing Date, (ii) set forth in Section 4.2 shall be true and correct in all material respects (disregarding all qualifications or limitations as to “materiality”, “Material Adverse Effect” and words of similar import set forth therein) as of the Closing Date with the same effect as though made on and as of the Closing Date, and (iii) the remaining representations and warranties of Buyer set forth in ARTICLE IV shall be true and correct as of the Closing Date with the same effect as though made on and as of the Closing Date (except to the extent expressly made as of a specified date, in which case as of such specified date, and disregarding all qualifications or limitations as to “materiality”, “Material Adverse Effect” and words of similar import set forth therein), except where the failure to be so true and correct would not, individually or in the aggregate, reasonably be expected to prevent, materially impede or materially delay the consummation by Buyer of the transactions contemplated by this Agreement.
- (b) Performance of Obligations of Seller. Buyer shall have performed and complied in all material respects with all of its covenants, agreements and obligations contained in this Agreement and required to be performed or complied with on or prior to the Closing Date. Seller shall have received a certificate signed on behalf of Buyer by an authorized executive officer of Buyer to such effect with respect to the conditions set forth in Sections 6.3(a) and (b).

Section 6.4 Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in Section 6.1 or Section 6.2, as the case may be, to be satisfied if such failure was caused by such party’s failure to comply with the terms of this Agreement.

Section 6.5 Covenants Post Closing.

- (a) Buyer shall make the Note Investment pursuant to the terms of the Convertible Note no later than forty (40) days following the date of this Agreement.
- (b) From and after the Closing and for so long as any Royalty Payment may occur pursuant to the terms of this Agreement (the “Post-Closing Payment Period”), Buyer hereby agrees that during the Post-Closing Payment Period:
 - (i) Buyer shall, and shall cause Elusys, as applicable, to (A) use Commercially Reasonable Efforts to maintain, finance, operate and promote ANTHIM®;
 - (ii) Buyer shall, and shall cause Elusys to, at all times be operated to permit and facilitate the appropriate tracking and calculation of all Royalty Payments amounts that may become due and owing under this Agreement (collectively, the “Post-Closing Payment Amounts”), and Buyer will, and will cause Elusys to, at all times maintain appropriate and necessary Books and Records in accordance with GAAP to evidence and account for, and to pay over, the Post-Closing Payment Amounts and the calculation of such amounts pursuant to this Agreement; and
 - (iii) Buyer shall not, and shall cause Elusys not to, take any action, or fail to take any action, with the intention to reduce, or with the goal or purpose of reducing, any Post-Closing Payment Amount. Without limiting the foregoing, Buyer shall not take, and shall ensure that Elusys does not take any action or fail to take any action with the goal of (A) delaying the execution of a Contract for the sale or distribution of ANTHIM®, or otherwise delay the occurrence of a Royalty Payment, or (B) decreasing or delaying the Revenues Derived By Buyer, so as to minimize, reduce or eliminate any Post-Closing Payment Amount.
- (c) Further, from and after the Closing and for so long as any Royalty Payments may occur pursuant to the terms of this Agreement:
 - (i) Buyer shall use and shall cause Elusys, as applicable, to use Commercially Reasonable Efforts to maintain, finance, operate and promote ANTHIM®;
 - (ii) Buyer shall not, and shall cause Elusys not to, directly or indirectly, sell, transfer or assign the Business, Elusys, or the equity of any entity or any material assets used or held for use in the operation of, or otherwise related to, the Business or Elusys (whether by merger, sale of stock, sale of assets or otherwise) unless (i) the purchaser, transferee or assignee of such assets expressly agrees to assume the Royalty Payments and (ii) Seller provides express, written consent to such sale, transfer, or assignment (such consent not to be unreasonably withheld); and

- (iii) Buyer shall fulfill, and hereby agrees to be bound by, the terms and conditions set forth in the Elusys Merger Agreement with respect to the maintenance and operation of the Business (as that term is defined in the Elusys Merger Agreement) (including without limitation Sections 5.2, 5.4, and 12.1 of the Elusys Merger Agreement) for the benefit of the Stockholders (as that term is defined in the Elusys Merger Agreement).
- (d) Commencing from and after the first anniversary of the Closing Date, if Seller proposes to register any of its Common Stock under the Securities Act of 1933, as amended, in connection with the public offering of such securities solely for cash, Seller shall, at such time, promptly give Buyer notice of such registration. Buyer shall have the right to request that Seller include the Conversion Shares as part of any other registration of securities filed by Seller (other than in connection with a transaction contemplated by Rule 145(a) promulgated under the Securities Act or pursuant to Form S-8 or any equivalent form); provided, however, that if, solely in connection with any primary underwritten public offering for the account of Seller, the managing underwriter(s) thereof shall, in its or their reasonable discretion, impose a limitation on the number of shares of Common Stock which may be included in the registration statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then Seller shall be obligated to include in such registration statement only such limited portion of the Conversion Shares with respect to which Buyer requested inclusion hereunder as the underwriter(s) shall reasonably permit. Upon the request of Buyer given within ten (10) days after such notice is given by Seller, Seller shall, subject to the provisions of this Agreement, use reasonable efforts to cause to be registered all of the Conversion Shares that Buyer has requested to be included in such registration. Seller shall not be required to include any Conversion Shares in any underwritten offering unless the Buyer accepts the terms of such underwriting as agreed between Seller and the underwriter(s) and executes any documents as may be reasonably requested by the underwriter(s).
- (e) Seller shall bear all fees and expenses attendant to registering the Conversion Shares pursuant to Section 6.5(d) above, but Buyer shall pay any and all underwriting commissions and the expenses of any legal counsel selected by Buyer to represent it in connection with the sale of the Conversion Shares. In the event of such a proposed registration, Seller shall furnish Buyer with not less than thirty (30) days written notice prior to the proposed date of filing of such registration statement. Such notice to Buyer shall continue to be given for each registration statement filed by Seller until such time as all of the Conversion Shares have been sold by Buyer. Buyer shall exercise the "piggy-back" registration rights provided for herein by giving written notice within ten (10) days of the receipt of Seller's notice of its intention to file a registration statement.

**ARTICLE VII
TERMINATION**

Section 7.1 Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by the written consent of Buyer and Seller;
- (b) by either Buyer or Seller, if:
 - (i) the Closing shall not have occurred on or before thirty-two (32) days following the date of this Agreement (the “Outside Date”); provided, however, that if the condition set forth in Section 6.1(d) hereof has not been satisfied on or before thirty-two (32) days following the date of this Agreement, the “Outside Date” shall be such later date; provided further, however, that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available to any Party whose failure to perform and comply with any covenant, agreement or obligation contained in this Agreement has been the primary cause of, or primarily resulted in, the failure of the Closing to occur on or before such date;
 - (ii) if any Legal Restraint having the effect of restraining, enjoining or otherwise preventing the consummation of the transactions contemplated by this Agreement shall be in effect and shall have become final and non-appealable; or
 - (iii) the other Party shall have breached or failed to perform any of its representations, warranties, covenants, agreements or obligations contained in this Agreement, and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.2(a) or Section 6.2(b) or in Section 6.3(a) or Section 6.3(b), as applicable, and (B) cannot be cured by the Outside Date or, if capable of being cured by the Outside Date, has not been cured prior to the date that is 15 days from the date that such other Party receives written notice of such breach or failure to perform.

Section 7.2 Notice of Termination. In the event of termination of this Agreement by either or both of Buyer and Seller pursuant to Section 7.1, written notice of such termination shall be given by the terminating Party to the other Party specifying the provision hereof pursuant to which such termination is made.

Section 7.3 Effect of Termination. Notwithstanding anything to the contrary in this Agreement, in the event of termination of this Agreement by either or both of Buyer and Seller pursuant to Section 7.1, this Agreement shall terminate and become void and have no effect, and there shall be no liability or obligation on the part of any Party, other than the provisions of Section 5.4, this Section 7.3 and Article VIII, which shall survive any such termination; provided

that no such termination shall relieve any Party from liability for damages to another Party that accrue prior to such termination resulting from fraud or an intentional and knowing breach by a Party of any of its representations, warranties, covenants, agreements, obligations or undertakings set forth in this Agreement.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1 Survival; Waiver of Claims; Limitation of Damages; Indemnification.

- (a) Survival. None of Seller's representations, warranties, covenants, agreements and obligations in this Agreement shall survive beyond the Closing; provided that this Section 8.1 shall not limit any covenant, agreement or obligation contained in this Agreement that by its terms applies in whole or in part after the Closing, and the representations, warranties, covenants, agreements and obligations of Buyer in this Agreement shall survive the Closing until all of Buyer's obligations under this Agreement have been fully satisfied and Seller shall be able to make a claim or commence an Action for any breaches by Buyer of such representations, warranties, covenants, agreements, and obligations.
- (b) Waiver of Claims. IF THE CLOSING OCCURS, BUYER SHALL BE DEEMED TO HAVE WAIVED, AND HEREBY WAIVES, IN FULL ANY BREACH AND CLAIMS ARISING THEREFROM, OF ANY SELLER'S REPRESENTATIONS OR WARRANTIES, WHETHER OR NOT BUYER IS AWARE OF, OR BECOMES AWARE OF, SUCH BREACH BEFORE, AT OR AFTER THE CLOSING.
- (c) Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IF THE CLOSING OCCURS, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY FOR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER RELATING TO A BREACH OF A REPRESENTATION AND WARRANTY, COVENANT, AGREEMENT OR OBLIGATION IN THIS AGREEMENT AND WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAWS OR OTHERWISE, EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) ("SELLER'S LIABILITY CAP"); PROVIDED, HOWEVER, THAT, SUCH LIMITATION ON LIABILITY SHALL NOT APPLY TO ANY SUCH LOSSES RESULTING FROM, ARISING OUT OF OR RELATING TO SECTION 5.5(g) (TAX INDEMNIFICATION) OR ANY FEES AND EXPENSES OWED TO ANY PERSON WHO HAS ACTED, DIRECTLY OR INDIRECTLY, AS A BROKER, FINDER OR FINANCIAL ADVISOR TO SELLERS IN CONNECTION WITH THE TRANSACTIONS (WHICH LOSSES SHALL BE LIMITED TO THE ACTUAL DOLLAR AMOUNT OF SUCH FEES AND EXPENSES). THE PARTIES AGREE THAT SELLER'S

LIABILITY CAP IS AN AMOUNT THAT IS REASONABLE IN LIGHT OF THE ANTICIPATED OR ACTUAL HARM CAUSED BY ANY SUCH BREACH CONTEMPLATED ABOVE, THE DIFFICULTIES OF PROOF OF LOSS ARISING FROM SUCH BREACH, AND THE INCONVENIENCE OR INFEASIBILITY OF OTHERWISE OBTAINING AN ADEQUATE REMEDY FOR SUCH BREACH.

- (d) **Limitation of Damages.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES (INCLUDING LOSS OF REVENUE, INCOME OR PROFITS BUT ONLY TO THE EXTENT THE SAME ARE NOT DIRECT DAMAGES), DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OF ANY OTHER PARTY OR ANY OF SUCH PARTY'S AFFILIATES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE; PROVIDED, HOWEVER, THAT SUCH LIMITATIONS SHALL NOT LIMIT ANY PARTY'S RIGHT TO RECOVER CONTRACT DAMAGES IN CONNECTION WITH THE OTHER PARTY'S FAILURE TO CLOSE IN VIOLATION OF THIS AGREEMENT.

- (e) **Indemnification.** Buyer shall indemnify, defend, and hold harmless Seller and its Affiliates and their respective partners managers, members, directors, officers, shareholders, Representatives, agents, employees, successors and assigns (collectively the "Seller Indemnified Parties") from and against any and all Losses suffered, sustained or incurred by any Seller Indemnified Party to the extent based upon, relating to, with respect to, arising or resulting from or in connection with, or alleged to result from, arise out of or in connection with any breach, non-performance or non-fulfilment of any covenant, restriction or agreement made, or required to be performed, by Seller in the Elusys Merger Agreement for any alleged action or omission (i) undertaken in connection with this Agreement or the transactions contemplated hereby or (ii) otherwise occurring on and after the date of this Agreement.

Section 8.2 Rules of Construction. The Parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and have together drafted this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

Section 8.3 Notices. All notices, requests, claims, demands and other communications hereunder shall be given (and shall be deemed to have been duly given upon receipt) by hand delivery, by prepaid overnight courier (providing written proof of delivery), by electronic transmission or by certified or registered mail (return receipt requested and first class postage

prepaid), addressed as follows (or at such other address for a Party as shall be specified by like notice):

if to Buyer, to:

Elusys Holdings Inc.
7700 Congress Avenue, Suite 2207
Boca Raton, FL 33487
Attention: Jeff Wolf

with copies (which shall not constitute notice) to:

Thompson Hine LLP
300 Madison Avenue, 27th Floor
New York, New York 10017-6232
Attention: Faith Charles, Esq.
Email: #####

if to Seller, to:

NightHawk Biosciences, Inc.
627 Davis Drive, Suite 300
Morrisville, North Carolina 27560
Attention: William Ostrander

Email: #####

with copies (which shall not constitute notice) to:

Blank Rome LLP
1271 Avenue of the Americas
New York, New York 10020
Attention: Leslie Marlow, Esq.
Email: #####

Richards, Layton & Finger, P.A.
920 N. King St., 10th Floor
Wilmington, Delaware 19102
Attention: Michael D. Allen, Esq.
Email: #####

provided that any notice received at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day.

Section 8.4 Consents and Approvals. For any matter under this Agreement requiring the consent or approval of either Party to be valid and binding on the Party, such consent or approval must be in writing.

Section 8.5 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic transmission), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

Section 8.6 Entire Agreement; No Third-Party Beneficiaries. This Agreement and the other Related Documents constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter of this Agreement and the other Related Documents. This Agreement is for the sole benefit of the Parties and is not intended to and does not confer upon any Person other than the Parties any legal or equitable rights or remedies.

Section 8.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise by either of the Parties without the prior written consent of the other Party, and any assignment without such consent shall be null and void, except that Buyer may assign any or all of its rights and obligations under this Agreement to any of its Affiliates without the consent of Seller.

Section 8.8 GOVERNING LAW. THIS AGREEMENT AND ALL ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 8.9 Enforcement.

- (a) All Actions arising out of or relating to this Agreement shall be heard and determined exclusively in the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or in the event, but only in the event, that the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, the Superior Court of the State of Delaware (Complex Commercial Division) or the United States District Court for the District of Delaware and the appellate court(s) therefrom). The parties hereto hereby (a) irrevocably submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or in the event, but only in the event, that if the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, the

Superior Court of the State of Delaware (Complex Commercial Division) or the United States District Court for the District of Delaware and the appellate court(s) therefrom) for the purpose of any Action arising out of or relating to this Agreement or the transactions brought by any party hereto, (b) irrevocably waive, and agree not to assert by way of motion, defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement may not be enforced in or by the above-named courts, and (c) agree that such party will not bring any Action arising out of or relating to this Agreement in any court other than the Court of Chancery of the State of Delaware (or in the event, but only in the event, that if the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, the Superior Court of the State of Delaware (Complex Commercial Division) or the United States District Court for the District of Delaware and the appellate court(s) therefrom). Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 8.3 shall be deemed effective service of process on such party.

- (b) EACH PARTY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY. Each Party (i) certifies that no Representative, agent or attorney of the other Party has represented, expressly or otherwise, that such Party would not, in the event of any Action, suit or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other Party has been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section 8.9(b).
- (c) The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the courts named in Section 8.9(a), this being in addition to any other remedy to which they are entitled at law or in equity and as further set forth in this Section 8.9.

Section 8.10 Severability. If any term or other provision of this Agreement or any Related Document is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement or such Related Document shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement or such Related Document so as to effect the original intent of the

Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 8.11 Amendment; Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against whom enforcement of any such modification, amendment or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of either Party, shall be deemed to constitute a waiver by the Party taking such action of compliance by the other Party with any representation, warranty, covenant, agreement or obligation contained herein. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. Neither the failure of either Party to enforce, nor the delay of either Party in enforcing, any condition or part of this Agreement at any time shall be construed as a waiver of that condition or part or forfeit any rights to future enforcement thereof.

Section 8.12 Non-Recourse. No past, present or future director, officer, employee, agent, advisor, incorporator, member, manager, partner, creditor, stockholder, interest holder or other non-Seller Affiliate of Seller shall have any liability for any obligations or liabilities of Seller under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers hereunto duly authorized, all as of the date first written above.

SELLER:

NIGHTHAWK BIOSCIENCES, INC.

By: /s/ William Ostrander

William Ostrander

Chief Financial Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers hereunto duly authorized, all as of the date first written above.

BUYER:

ELUSYS HOLDINGS INC.

By: /s/ Jeffrey Wolf

Jeffrey Wolf

President

AMENDMENT TO RIGHTS AGREEMENT

This Amendment No. 6 (this “Amendment”) dated the 11th day of December, 2023 to the Rights Agreement, dated March 11, 2018, as amended by Amendment No. 1 thereto, dated March 8, 2019, as further amended by Amendment No. 2 thereto, dated March 10, 2020, Amendment No. 3 thereto, dated March 8, 2021, Amendment No. 4 thereto, dated March 11, 2022, and Amendment No. 5 thereto, dated March 13, 2023 (the “Agreement”), by and between NightHawk Biosciences, Inc. (formerly known as Heat Biologics, Inc.) (the “Company”) and Continental Stock Transfer & Trust Company, as Rights Agent (the “Rights Agent”). Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

WHEREAS, the Company and the Rights Agent are parties to the Agreement;

WHEREAS, pursuant to Section 27 of the Agreement, the Company and the Rights Agent may, for so long as the Rights are redeemable, from time to time, change or supplement the provisions under the Agreement as the Company may deem necessary or desirable, without the approval of any holders of the Rights;

WHEREAS, as of the date hereof, a Flip-In Event has not occurred and, as such, the Rights are presently redeemable; and

WHEREAS, the Board of Directors of the Company has determined that it is desirable and in the best interest of the Company and its stockholders to amend the definition of “Acquiring Person” in Section 1(a) of the Agreement in accordance with Section 27 of the Agreement.

NOW THEREFORE, in consideration of the premises and the respective agreements set forth herein, the parties hereby agree as follows:

1. Amendment to Section 1(a); Definition of “Acquiring Person.” The definition of “Acquiring Person” in Section 1(a) of the Agreement is amended by inserting the following at the end of such section:

“Notwithstanding anything in this Section 1(a) or this Agreement to the contrary, none of Jeffrey Wolf or Elusys Holdings Inc. (“Elusys Holdings,” collectively with Mr. Wolf, the “Purchase Agreement Parties” and each an “Purchase Agreement Party”) nor any of their respective Affiliates or Associates, either individually or together, is, nor shall any of them, be deemed to be, an “Acquiring Person” solely by virtue of, or as a result of (i) the approval, execution, and delivery of the Asset and Equity Interests Purchase Agreement, to be dated on or about December 11, 2023, by and between the Company and Elusys Holdings (as it may be amended from time to time, the “Purchase Agreement”), (ii) the approval, execution, and delivery of the Convertible Promissory Note contemplated by the Purchase Agreement (the “Convertible Note”), (iii) the public announcement or public disclosure of the Purchase Agreement, the Convertible Note or any of transactions contemplated thereby, (iv) the issuance to the Purchase Agreement Parties of, or the right to be issued, shares of Common Stock pursuant to the Convertible Note, (v) the acquisition of, or the right to acquire, Beneficial Ownership by the Purchase Agreement Parties of any shares of Common Stock issued or issuable upon the conversion of the Convertible Note, or (vi) the

performance or consummation of any of the other transactions contemplated by the Purchase Agreement or Convertible Note (the foregoing actions being referred to herein as the “Permitted Events”). Notwithstanding the foregoing and for the avoidance of doubt, a Purchase Agreement Party shall be deemed an Acquiring Person if such Purchase Agreement Party shall become the Beneficial Owner of any additional shares of Common Stock (other than pursuant to one or more Permitted Events or pursuant to one of the specifically identified exceptions contained herein) unless, immediately prior to the time, and as a result, of becoming the Beneficial Owner of such additional shares, such Purchase Agreement Party, together with all Affiliates and Associates thereof, is not the Beneficial Owner of 20% or more of the then outstanding shares of Common Stock.”

2. Continuing Effect. The term “Agreement” as used in the Agreement shall be deemed to refer to the Agreement, as amended hereby. The Agreement, as modified by this Amendment, will remain in full force and effect. Upon the execution and delivery of this Amendment as of the date first above written, the Agreement shall thereupon be deemed to be amended as set forth as fully and with the same effect as if the amendments made hereby were originally set forth in the Agreement, and this Amendment and the Agreement shall be read, taken and construed as one and the same instrument, but such amendments shall not operate so as to render invalid or improper any action taken under the Agreement.
3. Severability. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other applicable authority to be invalid, illegal or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
4. Governing Law. Section 32 of the Agreement shall apply *mutatis mutandis* to this Amendment.
5. Counterparts. This Amendment may be executed in any number of counterparts (including facsimile, PDF or other electronic means), and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.
6. Officer’s Certificate. The undersigned officer of the Company hereby certifies to the Rights Agent that the amendments to the Agreement set forth in this Amendment are in compliance with the terms of Section 27 of the Agreement and the certification contained in this Section 6 shall constitute the certification required by Section 27 of the Agreement.

[Signature Page Follows]

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

NIGHTHAWK BIOSCIENCES, INC.

By: /s/ William Ostrander
William Ostrander
Chief Financial Officer

**CONTINENTAL STOCK TRANSFER & TRUST
COMPANY, as Rights Agent**

By: /s/ Stacy Aquí
Staci Aquí
Vice President

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

Original Issue Date: January [●], 2024

\$2,250,000

CONVERTIBLE PROMISSORY NOTE

THIS CONVERTIBLE PROMISSORY NOTE (the “Note”) is issued by NightHawk Biosciences, Inc., a Delaware corporation (the “Company”).

FOR VALUE RECEIVED, the Company promises to pay to Elusys Holdings Inc . or its registered assigns (the “Holder”), the principal amount of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000) (“Principal Amount”) together with simple interest on the outstanding Principal Amount at a rate of 1% per annum until paid in full or converted. Interest shall be computed on the basis of a year of 365 days for the actual number of days elapsed. Unless earlier converted into Common Stock as provided in this Note, all payments of interest and principal under the Note shall be in lawful money of the United States of America. This Note is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

“Bankruptcy Event” means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, or (f) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

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

“Common Stock” shall mean the common stock, par value \$0.0002 per share, of the Company.

“Company Stockholder Meeting” shall mean the meeting at which holders of the Company’s Common Stock vote on whether to approve the Conversion.

“Conversion” shall have the meaning ascribed to such term in Section 2.

“Conversion Date” means the date specified in the Conversion Notice as the effective date of the Conversion and if no date is specified then the Conversion Date shall be the date the Conversion Notice is deemed delivered pursuant to Section 6(b); provided, however that the Conversion Date shall not be prior to the date on which Stockholder Approval is received and deemed effective under Delaware General Corporation Law.

“Conversion Notice” shall have the meaning set forth in Section 2(c).

“Conversion Price” shall have the meaning set forth in Section 2(b).

“Conversion Price Adjustment” shall have the meaning set forth in Section 2(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of Principal Amount of this Note and all accrued and unpaid interest thereon in accordance with the terms hereof.

“Event of Default” shall have the meaning set forth in Section 5(a).

“Financing Period” shall have the meaning set forth in Section 2(b).

“Maturity Date” shall have the meaning set forth in Section 3.

“Original Issue Date” means the date of the first issuance of the Note, regardless of any transfers of the Note and regardless of the number of instruments which may be issued to evidence such Note.

“Outstanding Balance” shall mean the Principal Amount of this Note and any accrued and unpaid interest as of the applicable date.

“Principal Amount” means Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000).

“Purchase Agreement” means the Asset and Equity Purchase Agreement, dated as of December 11, 2023 between the Company and the Holder, as amended, modified or supplemented from time to time in accordance with its terms.

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

“Shareholder Approval” means such approval as may be required by the applicable rules and regulations of the NYSE American, LLC (or any successor entity) from the stockholders of the Company with respect to conversion of all outstanding amounts owed under this Note and the issuance of all of the Conversion Shares upon conversion thereof.

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

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, LLC, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTCQB Venture Market (“OTCQB”) or the OTCQX Best Market (“OTCQX”) is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (“Pink Market”) operated by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Section 2. Conversion.

(a) Conversion upon Shareholder Approval. If prior to the Maturity Date, Shareholder Approval is obtained, the Outstanding Balance on the Conversion Date shall, upon the election of the Holder, at any time after Shareholder Approval is obtained, convert in whole or in part, without any further action of the Holder into a number of fully paid and nonassessable shares of Common Stock as shall equal the quotient obtained by dividing (i) the Outstanding Balance by (ii) the Conversion Price in effect at the time of such conversion. Notwithstanding anything in this Note to the contrary, this Note may not be converted into shares of Common Stock unless Shareholder Approval is obtained.

(b) Conversion Price. The “Conversion Price” means 110% of the VWAP for the seven (7) Trading Days prior to the date of the Purchase Agreement; provided, however, that if the Company consummates a public financing involving an issuance of the Company’s Common Stock (which shall exclude any at-the-market public offering by the Company) within sixty (60) days of the date of the Purchase Agreement (the “Financing Period”), the Conversion Price shall be 110% of the per-share purchase price of the Common Stock in such public financing transaction (such adjustment to the Conversion Price, the “Conversion Price Adjustment”); provided further, however, that if multiple public financings involving an issuance of the Company’s Common Stock occur within Financing Period, the Conversion Price Adjustment shall only occur upon the consummation of the first such financing and upon no subsequent financings.

(c) Mechanics of Conversion.

(i) Delivery of Shares Upon Conversion. The Holder may elect at any time after obtaining Shareholder Approval and while the Outstanding Balance remains outstanding to convert the Outstanding Balance in full into shares of Common Stock by providing written notice (the “Conversion Notice”) to the Company together with the delivery of this Note to the Company at its address as required pursuant to Section 6(b). Any conversion of this Note pursuant to Section 2(a) shall be deemed to have been made immediately as of the close of business on the Conversion Date. Not later than three (3) Business Days after Conversion Date (the “Share Delivery Date”), the Company shall (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of Conversion Shares to which the Holder shall be entitled pursuant to such conversion to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, upon the request of the Holder, issue in book entry form the Conversion Shares, registered in the name of the Holder or his designee, for the number of Conversion Shares to which the Holder shall be entitled pursuant to such conversion under this Section 2(c), which shares shall bear a restrictive legend until they are eligible to be sold under Rule 144 without the need for current public information and the Company has

received an opinion of counsel to such effect reasonably acceptable to the Company (which opinion the Company will be responsible for obtaining at its own cost), shall be free of restrictive legends and trading restrictions. Notwithstanding anything contained herein to the contrary, this Note shall not be converted unless and until the Holder elects to convert this Note, in whole or in part, pursuant to Section 2(a).

Any certificates representing shares of Common Stock issued pursuant to this Section 2 shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS IN ACCORDANCE WITH APPLICABLE REGISTRATION REQUIREMENTS OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS. THIS CERTIFICATE MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, TRANSFER, PLEDGE OR HYPOTHECATION OF ANY INTEREST IN ANY OF THE SECURITIES REPRESENTED HEREBY.

(ii) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Note. In lieu of any fractional share to which Holder would otherwise be entitled, the Company will pay to Holder in cash the amount of the unconverted principal and interest balance of this Note that would otherwise be converted into such fractional share.

(iii) Transfer Taxes and Expenses. The issuance of shares of the Common Stock on conversion of this Note shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that, the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of this Note so converted and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Conversion Notice and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

(iv) Release. Upon full conversion of this Note and the payment of the amounts specified in paragraph (e) above, the Company shall be forever released from all its obligations and liabilities under this Note.

Section 3. Maturity

Unless this Note has been converted in accordance with the terms of Section 2 above on or prior to the first anniversary of the Original Issue Date (the "Maturity Date"), then upon the Maturity Date, the entire outstanding Principal Balance and all accrued interest of this Note shall become fully due and payable at the request of Holder.

Section 4. Certain Adjustments

(a) If the Company at any time subdivides (by any stock split, stock dividend, recapitalization, reorganization, reclassification or otherwise) the shares of Common Stock acquirable hereunder into a greater number of shares, then, after the date of record for effecting such subdivision, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time combines (by any reverse stock split, recapitalization, reorganization, reclassification or otherwise) the shares of Common Stock acquirable hereunder into a smaller number of shares, then, after the date of record for effecting such combination, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(b) Upon the occurrence of each adjustment or readjustment of the Conversion Rate as a result of the events described in this Section 4, the Company, at its expense, shall compute such adjustment or readjustment and prepare and furnish to the Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. Failure to give such notice or any defect therein shall not affect the legality or validity of the subject adjustment.

Section 5. Events of Default. (a) The Company must notify the Holder within one (1) Business Day after it has become aware of an Event of Default. If there shall be any Event of Default hereunder, at the option and upon the declaration of the Holder and upon written notice to the Company (which declaration and notice shall not be required in the case of an Event of Default under this Section 5(b)), this Note shall accelerate and the Outstanding Balance shall become due and payable. The occurrence of any one or more of the following shall constitute an Event of Default:

- (i) The Company fails to pay timely any of the principal amount due under this Note on the date the same becomes due and payable or any accrued interest or other amounts due under this Note on the date the same becomes due and payable;
- (ii) There is a Bankruptcy Event.

(b) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding principal amount of this Note and all other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash. Upon the payment in full of such amounts, the Holder shall promptly surrender this Note to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable Law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Note until such time, if any, as the Holder receives full payment pursuant to this Section 5(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon. Notwithstanding anything to the contrary contained in this Note, once the Shareholder Approval is received, Holder shall not have any right to accelerate payment and the Note shall be automatically converted.

Section 6. Miscellaneous.

(a) No Rights as Stockholder Until Conversion. This Note does not entitle the Holder to any voting rights, or other rights as a stockholder of the Company prior to the conversion hereof other than as explicitly set forth in Section 4.

(b) Notices. All notices, offers, acceptance and any other acts under this Agreement (except payment) shall be in writing, and shall be sufficiently given if delivered to the addressees in person, by Federal Express or similar receipted next business day delivery, as follows:

If to the Company:

NightHawk Biosciences,
Inc.

627 Davis Drive, Suite 300

Morrisville, North Carolina

Telephone No.: #####
Attention: William Ostrander, CFO
E-mail: #####

with a copy to:

Leslie Marlow, Esq.
Blank Rome LLP
1271 Avenue of the Americas
New York, NY 10020

Telephone No.: #####

E-mail: #####

If to Holder:

Address on signature page

or to such other address as any of them, by notice to the other may designate from time to time. Time shall be counted to, or from, as the case may be, the date of delivery.

(c) Absolute Obligation; Ranking. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and accrued interest on this Note at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of the Company.

(d) Lost or Mutilated Note. If this Note shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership hereof, reasonably satisfactory to the Company. The applicant for a new Note under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of the new Note.

(e) Exclusive Jurisdiction; Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. All Actions arising out of or relating to this Note shall be heard and determined exclusively in the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or in the event, but only in the event, that the Court of Chancery of the State of Delaware does not have jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware and the appellate court(s) therefrom). The parties hereto hereby (a) irrevocably submit

to the exclusive jurisdiction of the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or in the event, but only in the event, that if the Court of Chancery of the State of Delaware does not have jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware and the appellate court(s) therefrom) for the purpose of any Action arising out of or relating to this Note or the transactions brought by any party hereto, (b) irrevocably waive, and agree not to assert by way of motion, defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Note may not be enforced in or by the above-named courts, and (c) agree that such party will not bring any Action arising out of or relating to this Note in any court other than the Court of Chancery of the State of Delaware (or in the event, but only in the event, that if the Court of Chancery of the State of Delaware does not have jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware and the appellate court(s) therefrom). Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 6(b) shall be deemed effective service of process on such party. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable Law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Note or the transactions contemplated hereby.

(f) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Note. The failure of the Company or the Holder to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note on any other occasion. Any waiver by the Company or the Holder must be in writing.

(g) Severability. If any provision of this Note is invalid, illegal or unenforceable, the balance of this Note shall remain in effect, as long as the essential terms and conditions of this Note for each party remain valid, binding, and enforceable.

(h) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note at Law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at Law for any such breach would be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

(i) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(j) Authorized Shares. The Company covenants that, subject to and following its receipt of Shareholder Approval, during the period the Note is outstanding it will reserve from its authorized and

unissued Common Stock, free of preemptive rights, a sufficient number of shares equal to the number of shares of Common Stock issuable upon conversion of this Note. The Company will take all such commercially reasonable action as may be necessary to assure that the Conversion Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the NYSE American or any other trading market upon which the Common Stock may be listed. The Company covenants that all Conversion Shares will, upon exercise of the purchase rights represented by this Note, be duly authorized, validly issued, fully paid and non-assessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, 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 Note, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Note against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any shares of Common Stock issuable upon conversion of this Note above the amount payable therefor upon such exercise immediately prior to such increase in par value; (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock issuable upon conversion of this Note upon the conversion of this Note; and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Note.

(Signature Pages Follow)

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by a duly authorized officer as of the date first above indicated.

NIGHTHAWK BIOSCIENCES, INC.

By:

Name: William Ostrander
Title: Chief Financial Officer

ANNEX A
NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the Convertible Promissory Note issued by NightHawk Biosciences, Inc., a Delaware corporation (the "Company") on November [●], 2023, into shares of common stock (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

The undersigned agrees to comply with applicable securities laws in connection with any transfer of the aforesaid shares of Common Stock.

Conversion calculations:

Date to Effect Conversion:

Amount of Note to be Converted:

Number of shares of Common Stock to be issued:

Signature:

Name:

AMENDMENT NO. 2 TO EMPLOYMENT AGREEMENT

This Amendment No. 2 (this "**Amendment**") effective as of December 11, 2023 to the Employment Agreement, dated January 1, 2022, as amended December 7, 2022 (the "**Employment Agreement**"), by and between NightHawk Biosciences, Inc. (the "**Corporation**") and William Ostrander ("**Executive**"). Capitalized terms used herein without definition shall have the meanings assigned in the Employment Agreement.

WHEREAS, Executive was retained under the Employment Agreement by the Corporation to serve as its Chief Financial Officer and Corporate Secretary; and

WHEREAS, the Corporation desires to amend the duties of Executive as set forth in the Employment Agreement.

NOW THEREFORE, for the mutual promises contained herein and for ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to amend the Employment Agreement as follows:

1. **Amendment.** The first sentence of Section 1(b) of the Employment Agreement is hereby deleted and replaced with the following:

"During the Term, the Executive shall use his best efforts to perform faithfully and efficiently the duties and responsibilities assigned to the Executive hereunder and devote the necessary business time and attention to the performance of the Executive's duties with the Corporation."

2. **Severability.** The provisions of this Amendment are severable and if any part or it is found to be unenforceable the other paragraphs shall remain fully valid and enforceable.

3. **No Other Amendments; Confirmation.** All other terms of the Agreement shall remain in full force and effect. The Agreement, as amended by this Amendment, constitutes the entire agreement between the parties with respect to the subject matter thereof.

4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument.

5. **Governing Law.** This Amendment is made and shall be construed and performed under the laws of the State of North Carolina without regard to its choice or conflict of law principles and the parties agree to North Carolina as the exclusive venue for any disputes arising hereunder.

[Signature Page Follows]

SHARED SERVICES AGREEMENT

Shared Services Agreement (the “Agreement”), dated as of December 11, 2023 (the “Effective Date”), by and between NightHawk Biosciences, Inc., a Delaware corporation (“NightHawk”), and Elusys Therapeutics, Inc., a [Delaware] corporation (“Elusys”) (each, a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, NightHawk desires to provide, directly or indirectly, certain administrative, legal, tax, financial, information technology and other services to Elusys, and Elusys desires to accept and receive such services as described hereinbelow.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NightHawk and Elusys agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions. The following terms, as used herein, have the following meanings:

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with, the Person in question.

“Business Days” shall mean all weekdays except those that are official holidays of employees of the United States government. Unless specifically stated as “Business Days,” a reference in this Agreement to “days” means calendar days.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. For purposes of this Agreement, the terms “controlling” and “controlled” have correlative meanings.

“Direct Expenses” means, for any fiscal quarter, all third party costs and expenses incurred by NightHawk during such fiscal quarter that are directly attributable to the operations of any Elusys Party (for the avoidance of doubt, excluding any Shared Employee Expenses and any Shared Non-Employee Expenses).

“Governmental Authority” means the United States or any state, provincial, local or foreign government, or any subdivision, agency or authority of any thereof having competent jurisdiction over any Elusys Party.

“Person” means any individual, partnership, limited partnership, limited liability Elusys, corporation, unincorporated association, joint venture or other entity.

“NightHawk Headcount Allocation” means, with respect to any Shared Employee for any fiscal quarter, the percentage of such Shared Employee’s time at work during such period that, in the reasonable estimation of NightHawk, has been spent engaged in activities for the benefit of a Elusys, expressed as a decimal number equal to or greater than 0.00 and less than or equal to 1.00.

“Shared Employee” means any employee of NightHawk that provides services to Elusys.

“Shared Employee Expenses” means, with respect to any costs and expenses attributable to the compensation and benefits (other than any equity compensation) provided to any Shared Employee for any fiscal quarter, the product of (i) the amount of such costs and expenses, multiplied by (ii) the NightHawk Headcount Allocation for such Shared Employee for such fiscal quarter.

“Shared Non-Employee Expenses” means, with respect to any general and administrative costs and expenses incurred by NightHawk for any fiscal quarter that are attributable to both the operation of NightHawk (other than the provision of the Shared Services) and the provision of the Shared Services, including but not limited to information technology, data subscription and corporate overhead expenses, the portion of such costs and expenses that are attributable to the provision of the Shared Services, as reasonably determined by NightHawk.

“Subsidiary” means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, (i) of which such Person or any other Subsidiary of such Person is a general partner (excluding partnerships, the general partnership interests of which held by such Person or any Subsidiary of such Person do not have a majority of the voting interests in such partnership), or (ii) at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

ARTICLE II SHARED SERVICES; COST ALLOCATION

Section 2.01. Provision of Shared Services. NightHawk may provide Elusys with certain general and administrative services necessary or useful for the conduct of its business, including but not limited to the services identified on Exhibit A (collectively, the “Shared Services”), all of which are currently being provided by NightHawk to Elusys.

Section 2.02. Performance of Shared Services by Affiliates and Third Parties. In discharging its obligations hereunder, NightHawk may engage any of its Affiliates or any qualified third party to provide the Shared Services (or any part thereof) on its behalf and the performance of the Shared Services (or any part thereof) by any such Affiliate or third party will be treated as if NightHawk performed such Shared Services itself. Notwithstanding the foregoing, the engagement of any such Affiliate or third party to provide Shared Services shall not relieve NightHawk of its obligations hereunder. In the performance of the Shared Services, NightHawk shall perform the Shared Services at a service level equal to or better than the current service level for that particular Shared Service as provided by NightHawk to itself or its Affiliates, provided, that with respect to a particular Shared Service, NightHawk and Elusys may agree on a specific service level relevant to such Shared Service, consistent with this general principle.

Section 2.03. Elusys Expenses. Elusys shall be responsible for all Direct Expenses, all Shared Employee Expenses and all Shared Non-Employee Expenses associated with the provision of any Shared Services (collectively, the “Elusys Expenses”).

Section 2.04. Invoicing and Payment

(a) NightHawk shall pay on Elusys’s behalf all Elusys Expenses, except that Elusys may elect, or NightHawk may cause Elusys, to pay directly certain Direct Expenses. Within 10 days of the date hereof for the current fiscal quarter and thereafter, at least 10 days prior to the beginning of each subsequent fiscal quarter, NightHawk shall send Elusys an invoice in writing of its good faith estimate of the Elusys Expenses (other than any Direct Expenses that are to be paid directly by Elusys) for such fiscal quarter (the “Estimated Quarterly Expenses”) (the date of delivery of such invoice being referred to herein as the “Invoice Date”). Elusys agrees to pay on or before the date that is 30 days after the Invoice Date by wire transfer of immediately available funds to an account of NightHawk an amount equal to the Estimated Quarterly Expenses.

(b) In the event the actual Elusys Expenses (other than Direct Expenses that were paid directly by Elusys) for any fiscal quarter (the “Actual Quarterly Expenses”) differ from the Estimated Quarterly Expenses for such fiscal quarter, NightHawk shall send Elusys a notice in writing setting forth such difference. Elusys agrees to pay on or before the date that is 30 days after receipt of such notice by wire transfer of immediately available funds to an account of NightHawk an amount equal to the Actual Quarterly Expenses *less* the Estimated Quarterly Expenses. In the event the Estimated Quarterly Expenses exceed the Actual Quarterly Expenses, the shortfall will be deducted from the calculation of the Estimated Quarterly Expenses and Actual Quarterly Expenses for the succeeding fiscal quarter.

(c) Each Party agrees to maintain, and to cause its applicable Affiliates to maintain, books and records arising from or related to any Shared Services provided hereunder that are accurate and complete in all material respects during the term of each Shared Service and for a period of four (4) years following the termination or expiration of such Shared Service, including but not limited to accounting records and documentation produced in connection with the rendering of any Shared Service and in the calculation of any compensation payable pursuant hereto (the "Records").

(d) During the term hereof and for one year thereafter, no more than once, Elusys shall have the right to audit the Records of NightHawk and its Affiliates pertaining to the Shared Services received during that fiscal year. Elusys may use an independent auditor to perform any such audit that is reasonably acceptable to NightHawk. Prior to Elusys using an independent auditor, such independent auditor shall enter into an agreement with the Parties, on terms that are agreeable to both Parties, under which such independent auditor agrees to maintain the confidentiality of the information and materials reviewed during the course of such audit. The findings of such audit shall be considered Confidential Information for the purposes of this Agreement.

(e) Any audit shall be conducted during regular business hours and in a manner that does not interfere unreasonably with the operations of NightHawk or its Affiliates. Each audit shall begin upon the date agreed by the Parties, but in no event more than ten (10) days after notice from Elusys of such audit, and shall be completed as soon as reasonably practicable. Elusys shall pay or cause to be paid the costs of conducting such audit, unless the results of an audit reveal an overpayment of the applicable audited Shared Service of 7.5% or more, in which case, NightHawk shall pay or cause to be paid the lesser of the pro-rata portion of the audit fees for auditing such Shared Service or an amount equal to the amount of the overpayment. If the audit concludes that an overpayment or underpayment has occurred during the audited period, such payment shall be remitted by the Party or its Affiliate responsible for such payment to the other Party or its Affiliate to whom such payment is owed within thirty (30) days after the date such auditor's written report identifying the overpayment or underpayment is delivered to the Party who is, or whose Affiliate is, responsible for such payment.

Section 2.05. Taxes.

(a) Elusys shall pay directly to the relevant Governmental Authority, and without duplication shall reimburse or indemnify NightHawk or its applicable Affiliates for, all applicable sales, use and value-added taxes incurred with respect to provision of the Shared Services ("Sales Taxes"), regardless of whether such Sales Taxes are invoiced with the applicable fee payment, added retroactively or subsequently imposed, and including Sales Taxes imposed with respect to the Shared Services in connection with any tax audit, claim, assessment or other tax proceeding. These taxes shall be incremental to other payments or charges identified in this Agreement. For the avoidance of doubt, each Party shall be responsible for any income, franchise or other similar taxes due on amounts payable to such Party under this Agreement.

(b) If applicable law requires that an amount in respect of any taxes, levies or charges be withheld from any payment to NightHawk under this Agreement, Elusys shall (i) promptly notify NightHawk of such required withholding, (ii) withhold from amounts otherwise due to NightHawk hereunder any taxes required to be withheld and (iii) pay such withheld taxes when due to the applicable taxing authorities and the amount payable to NightHawk shall be increased as necessary so that, after such withholding, NightHawk receives an amount equal to the amount it would have received had no such withholding been required. Elusys shall promptly deliver to NightHawk an original receipt from the applicable taxing authorities evidencing the amount of tax withheld. Further, if NightHawk is denied a foreign tax credit due to the failure of Elusys to provide the original receipt, Elusys shall pay to NightHawk an additional amount, so that the amount that NightHawk receives hereunder is the same that it would have received had withholding taxes not applied. Elusys shall provide NightHawk with any cooperation or reasonable assistance as may be necessary to enable NightHawk to claim exemption from, or a reduction in the rate of, any withholding taxes (including, without limitation, pursuant to any applicable double taxation or similar treaty), to receive a refund of such withholding taxes or to claim a tax credit therefor.

**ARTICLE III
INDEMNITY**

Section 3.01. Indemnity by Elusys. Elusys shall indemnify, defend and hold harmless NightHawk, its Affiliates, Subsidiaries and its and their respective officers, directors and employees from and against any and all costs and expenses, losses, damages, claims, causes of action and liabilities (including reasonable attorneys' fees, disbursements and expenses of litigation) (collectively, "Losses") arising from, relating to, or in any way connected with the provision of Shared Services by NightHawk to any Elusys Party, except to the extent caused by the gross negligence or willful misconduct of NightHawk.

Section 3.02. Procedure. NightHawk shall promptly provide Elusys with written notice of any claim, action or demand for which indemnification is claimed provided however that the failure to provide notice shall not preclude NightHawk from such indemnification unless such failure adversely affect Elusys's rights. Elusys shall be entitled to control the defense of any such claim, action or demand; provided, that NightHawk may participate in any such claim, action or demand with counsel of its choice at its own expense; and provided, further, that Elusys shall not settle any claim, action or demand without the prior written consent of NightHawk, such consent not to be unreasonably withheld or delayed. If Elusys so requests, NightHawk shall reasonably cooperate in the defense of such claim, action or demand at Elusys's expense.

Section 3.03. Limitation on Liability. Notwithstanding anything contained herein to the contrary, in no event shall NightHawk, its Affiliates and/or its or their respective directors, officers, employees, representatives or agents (collectively, the "NightHawk Parties") be liable to Elusys for any Losses arising from, relating to, or in any way connected with the provision of the Shared Services by NightHawk to any Elusys Party, except in the case of gross negligence or willful misconduct of NightHawk, in which case NightHawk's liability shall be capped at the aggregate Elusys Expenses (other than Direct Expenses) paid to NightHawk under this Agreement (and in no event shall any NightHawk Parties be liable for any (i) indirect, incidental, special, exemplary, consequential or punitive damages or (ii) damages for, measured by or lost profits, diminution in value, multiple of earnings or other similar measure).

**ARTICLE IV
COVENANTS AND OTHER AGREEMENTS**

Section 4.01. Relationship of the Parties. NightHawk is providing the Shared Services hereunder as an independent contractor. Nothing in this Agreement shall be deemed to constitute the Parties hereto as joint venturers, alter egos, partners or participants in an unincorporated business or other separate entity, nor in any manner create any employer-employee or principal-agent relationship between any Elusys Party on the one hand, and any NightHawk Party on the other hand (notwithstanding the fact that Elusys and NightHawk may have in common any officers, directors, stockholders, members, managers, employees, or other personnel).

Section 4.02. Directors and Officers. Nothing in this Agreement shall be construed to relieve the directors or officers of any Elusys Party from the performance of their respective duties or limit the exercise of their powers in accordance with such Elusys Party's charter, bylaws, operating agreement, other organizational documents, applicable law, or otherwise. The activities of any Elusys Party shall at all times be subject to the Control and direction of their respective directors and officers. Each Elusys Party reserves the right to make all decisions with regard to any matter upon which NightHawk has rendered its advice, consultation and services. Elusys and NightHawk expressly acknowledge and agree that NightHawk is being engaged by Elusys to provide the Shared Services to Elusys, for which NightHawk will be compensated and reimbursed pursuant to the terms of this Agreement. NightHawk shall not, and shall have no authority to, Control any Elusys Party or any Elusys Party's day-to-day operations. Moreover, although an Elusys Party may grant to NightHawk authority to sign, review or approve such Elusys Party's checks, payments, expenditures, transfers and/or conveyances, any such grant of authority shall be made by such Elusys Party and accepted by NightHawk with the express understanding and limitation that NightHawk shall possess and exercise such authority solely in its capacity as a provider of the Shared Services pursuant to the terms of this Agreement, and in no other capacity, and that no inference shall be drawn therefrom as to any ability of NightHawk to Control such Elusys Party or such Elusys Party's day-to-day operations or any liability or responsibility therefor. The directors, officers and employees of each Elusys Party shall retain all responsibility for each such Elusys Party and their operations as and to the extent required by the each such Elusys Party's charter, bylaws, operating agreement, other organizational documents and applicable law.

Section 4.03. Certain Intellectual Property Matters. If, in connection with its provision of the Shared Services, either Party provides, or provides access to, the other Party and/or its Affiliates any intellectual property, such Party hereby grants the other Party and/or its Affiliates, during the term of this Agreement, a non-exclusive, revocable, non-transferable, non-sublicensable, royalty-free, fully paid up license or sublicense (as applicable) to such intellectual property, solely to the extent necessary to provide or receive the Shared Services in accordance with this Agreement; provided, that if the applicable Party does not own such intellectual property, the other Party's and its Affiliates' access to, use of and rights for such third-party intellectual property shall be subject in all regards to any restrictions, limitations or other terms or conditions imposed by the licensor of such intellectual property, which terms and conditions were disclosed or otherwise made available to such Party by the other Party. Upon the termination or expiration of any element or sub-element of the Shared Services pursuant to this Agreement, the license or sublicense, as applicable, to the relevant intellectual property provided in connection with that element or sub-element will automatically terminate; provided, however, that all licenses and sublicenses granted under this Agreement shall terminate immediately upon the expiration or earlier termination of this Agreement in accordance with the terms hereof (except that licenses or sublicenses of a Party's intellectual property that is embedded in any deliverable provided to the other Party that is intended to be used by such other Party after expiration or termination of the Agreement shall continue solely to the extent necessary to allow such other Party to continue to use such deliverable). Except as expressly provided in this Agreement, each Party shall not acquire any right, title or interest in the other Party's intellectual property by reason of the provision or receipt of the Shared Services provided under this Agreement. If a Party creates any improvements or derivative works of the other Party's intellectual property in the course of performing the Shared Services, the other Party shall own all rights in the same. If, in the course of providing any Shared Service, NightHawk creates or develops any intellectual property in connection with such Shared Services for or on behalf of Elusys ("Newly Developed IP"), then, as between the Parties, such Newly Developed IP shall be solely and exclusively owned by NightHawk and Elusys hereby irrevocably assigns and transfers (and shall cause its Affiliates to assign and transfer) to NightHawk all of Elusys's right, title and interest in, to and under such Newly Developed IP. Elusys shall take any and all actions and execute any and all other documents reasonably necessary to perfect, confirm and record NightHawk's ownership of such Newly Developed IP.

Section 4.04. Network Access and Security.

(a) All interconnectivity by NightHawk to the computing systems and/or networks of Elusys, and all attempts at such interconnectivity, shall be only through the security gate-ways/firewalls of the Parties; provided, that, during the term of this Agreement, Elusys may transition any such computing systems and/or networks to such security gateways/firewalls as determined by Elusys, and, subject to the limitations set forth below, NightHawk shall provide commercially reasonable cooperation to Elusys in connection with such transition; provided, that Elusys shall reimburse NightHawk in full for its reasonable costs or expenses incurred in relation to such cooperation.

(b) Neither Party shall access, and the Parties shall take reasonable actions designed to prevent unauthorized Persons to access, the computing systems and/or networks of the other Party without the other Party's express written authorization or except as otherwise authorized or reasonably required by the other Party pursuant to this Agreement, and any such actual or attempted access shall be consistent with any such authorization or this Agreement.

(c) The Parties shall use commercially reasonable efforts to maintain, and update pursuant to a commercially reasonable schedule, and more frequently in response to specific threats that become known from time to time, a virus detection/scanning program in connection with the connectivity by Elusys to NightHawk computing systems and/or networks, which shall be consistent in all material respects with that used by such Parties immediately prior to the date of this Agreement.

(d) Each Party shall use commercially reasonable efforts to maintain a prudent security program, consistent in all material respects with that used by NightHawk immediately prior to the date of this Agreement, including appropriate physical, electronic and procedural safeguards, designed to (i) maintain the security and confidentiality of such Party's systems and confidential information of the other Party on such systems, (ii) protect against any threats or hazards to the security or integrity of such Party's systems, including the confidential, non-public and proprietary information of the other Party on such Party's systems, and (iii) prevent unauthorized access to or use of such Party's systems, including the confidential, non-public and proprietary information of the other Party on such Party's systems. Elusys shall comply with all physical, electronic and procedural security policies and procedures maintained by NightHawk pursuant to this Agreement that have been made available by NightHawk to Elusys.

Section 4.05 Confidential Information.

(a) “Confidential Information” of a Party means all business, operational, customer, employee, technological, financial, commercial and other proprietary information and materials disclosed by a Party and its Affiliates to the other Party, its Affiliates and third-Person vendors pursuant to this Agreement, and shall include all information and materials that: (b) relate to the determination of the fees to be paid pursuant to this Agreement; (c) are obtained by the other Party in the course of an audit pursuant to Section 3.3; (d) are obtained by the other Party after the Effective Date in the course of the receipt or provision of any of the Shared Services; (e) embody or otherwise summarize Confidential Information; or (f) are identified in writing by the disclosing Party as confidential and/or proprietary.

(b) Except as expressly authorized by prior written consent of the disclosing Party, the receiving Party shall:

(i) limit access to any Confidential Information of the other Party received by it to its and its Affiliates’ directors, officers, employees, subcontractors, agents and representatives, including third-Person vendors, who need to know in connection with this Agreement and the obligations of the Parties hereunder;

(ii) advise such directors, officers, employees, subcontractors, agents and representatives, including third-Person vendors, having access to the Confidential Information of the other Party of the proprietary nature thereof and of the obligations set forth in this Agreement and confirm their agreement that they will be bound by such obligations (provided that no individual may perform technology Shared Services without previously having executed a written non-disclosure agreement with a Party or its Affiliate);

(iii) safeguard all Confidential Information of the other Party received using a reasonable degree of care, but not less than that degree of care used by the receiving Party in safeguarding its own similar information or material;

(iv) comply in all material respects with all applicable:

(x) laws relating to maintaining the confidentiality of the Confidential Information of the other Party; and

(y) privacy policies provided to the receiving Party relating to Confidential Information of the disclosing Party;

(v) except as set forth in this Agreement, not reproduce or use any Confidential Information of the other Party or disclose the Confidential Information of the other Party to any other Person without the prior written consent of the other Party; and

(vi) use the Confidential Information of the other Party only for the purposes and in connection with the performance of the receiving Party’s obligations set forth in this Agreement.

(c) Notwithstanding the obligations set forth in Section 4.05 (b), the obligations of confidentiality, non-use and non-disclosure imposed under this Section 4.05 shall not apply to any Confidential Information of the other Party:

(i) that the recipient can demonstrate has been published or otherwise been made available to the general public without breach of this Agreement;

(ii) that the recipient can demonstrate has been furnished or made known to the recipient without any obligation to keep it confidential by a third Person under circumstances which are not known or should not have reasonably been known to the recipient to involve a breach of the third Person's obligations to a Party hereto;

(iii) that the recipient can demonstrate was developed or acquired independently by an employee or agent of the recipient without access to or use of Confidential Information of the other Party furnished to the recipient pursuant to this Agreement;

(iv) that the recipient can demonstrate was also provided to it, independent of this Agreement, in its capacity as a director or shareholder of the other Party and is governed by confidentiality obligations in its capacity as such.

(d) Injunctive Relief. Each Party acknowledges that the disclosing Party would not have an adequate remedy at Law for the breach of any one or more of the covenants contained in this Section 4.05 and agrees that, in the event of such breach, the disclosing Party may apply to a court for an injunction to prevent breaches of this Section 4 and to enforce specifically the terms and provisions of this Section 4.05.

(e) Disclosure Required by Law. The provisions of this Section 4.05 shall not preclude disclosures required by Law; provided, however, that each Party shall use reasonable efforts to notify the other Party prior to making any such disclosure, in order to permit the other Party to take such steps as it deems appropriate to minimize any loss of confidentiality.

ARTICLE V TERM AND TERMINATION

Section 5.01. Term.

(a) The Agreement shall commence on the date hereof and shall terminate upon the earlier to occur of (i) the mutual agreement of the Parties to terminate this Agreement, (ii) NightHawk terminating this Agreement in accordance with Section 5.01(b) (iii) Elusys terminating this Agreement in accordance with Section 5.01(c), and (d) the date upon which all Shared Services provided pursuant to this Agreement have been terminated in accordance with Section 5.01(c) and (iv) February 29, 2024.

(b) NightHawk may terminate this Agreement, and the rights of Elusys, by written notice to Elusys immediately (or upon such other time period as indicated below) upon the occurrence of any of the following:

(i) Elusys has committed a breach of this Agreement and fails to remedy such breach within 30 days of receipt of written notice of such breach;

(ii) Elusys files a voluntary petition under the United States Bankruptcy Code or the insolvency laws of any state; or has an involuntary petition filed against it under the United States Bankruptcy Code, or a receiver appointed for its business, unless such petition or appointment of a receiver is dismissed within 30 days; or

(iii) Elusys assigns or transfers or attempts to assign or transfer this Agreement in violation of Section 7.04.

(c) Elusys may terminate this Agreement, and the rights of NightHawk, by written notice to NightHawk immediately (or upon such other time period as indicated below) upon the occurrence of any of the following:

(i) NightHawk has committed a breach of this Agreement and fails to remedy such breach within 30 days of receipt of written notice of such breach;

(ii) NightHawk files a voluntary petition under the United States Bankruptcy Code or the insolvency laws of any state; or has an involuntary petition filed against it under the United States Bankruptcy Code, or a receiver appointed for its business, unless such petition or appointment of a receiver is dismissed within 30 days; or

(iii) NightHawk assigns or transfers or attempts to assign or transfer this Agreement in violation of Section 7.04.

(d) Elusys may terminate its receipt of, and NightHawk may terminate its provision of, any Shared Service for its convenience, without cause, by giving the other Party written notice not less than thirty (30) days prior to the effective date of such termination.

Section 5.02. Effect of Termination. Other than as required by applicable law, upon termination of this Agreement pursuant to Section 5.01, NightHawk and its Affiliates shall have no further obligation to provide any Shared Services and Elusys shall have no

obligation to pay any Elusys Expenses; provided, that notwithstanding such termination, (i) Elusys shall remain liable to NightHawk for Elusys Expenses owed and payable in respect of Shared Services provided prior to the effective date of the termination and (ii) the provisions of Sections 3.01, 3.02, 3.03, 5.02, 7.07, 7.09 and 7.14 shall survive any such termination indefinitely.

**ARTICLE VI
DISPUTE RESOLUTION**

Section 6.01. Resolution Procedure. Each Party agrees to use its reasonable best efforts to resolve disputes under this Agreement by a negotiated resolution between the Parties. If the Parties have not resolved the matter in dispute within thirty (30) days after the commencement of good-faith negotiations, either Elusys or NightHawk may submit the dispute to arbitration in accordance with Section 7.07 and Section 7.08 of this Agreement.

**ARTICLE VII
MISCELLANEOUS**

Section 7.01. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the Party to be notified, (b) when sent, if sent by electronic mail or facsimile (if any) during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next Business Day, (c) five (5) Business Days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) Business Day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next Business Day delivery, with written verification of receipt.

(a) All communications to Elusys Therapeutics, Inc. shall be sent to: Elusys Holdings Inc., Attn: Jeffrey Wolf, email: #####.

(b) All communications sent to NightHawk shall be sent to: NightHawk Biosciences, Inc., 627 Davis Drive, Suite 300, Morrisville, North Carolina 27560, Attn: William Ostrander, Chief Financial Officer, email: #####.

Section 7.02. Entire Agreement. This Agreement, together with any documents, instruments and writings that are delivered pursuant hereto or referenced herein, constitutes the entire agreement and understanding of the Parties in respect of its subject matter and supersedes all prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof or the transactions contemplated hereby.

Section 7.03. Successors. All of the terms, agreements, covenants, representations, warranties, and conditions of this Agreement are binding upon, and inure to the benefit of and are enforceable by, the Parties and their respective successors. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

Section 7.04. Assignments. Except as otherwise specifically provided herein, neither Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party.

Section 7.05. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

Section 7.06. Headings. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

Section 7.07. Governing Law. This Agreement, the entire relationship of the Parties and any legal matter arising hereunder between the Parties (whether grounded in contract, tort, statute, law or equity) shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Delaware, without giving effect to its choice of laws principles.

Section 7.08. Arbitration. ANY DISPUTE, CLAIM OR CONTROVERSY ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE INTERPRETATION, APPLICATION, BREACH, TERMINATION OR VALIDITY THEREOF, INCLUDING ANY CLAIM OF INDUCEMENT OF THIS AGREEMENT BY FRAUD OR OTHERWISE, WILL BE SUBMITTED FOR RESOLUTION TO ARBITRATION BEFORE A SINGLE ARBITRATOR IN DURHAM, NORTH CAROLINA PURSUANT TO THE COMMERCIAL ARBITRATION RULES THEN PERTAINING OF THE AMERICAN ARBITRATION ASSOCIATION (AAA). The arbitration proceedings and award will be confidential. Any court of competent jurisdiction may enter judgment upon any award. Each party has the right before or during the arbitration to seek and obtain from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, etc. to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the arbitration. Each party shall bear its own costs of arbitration, unless otherwise determined by the arbitrator.

Section 7.09. Waiver of Jury Trial. The Parties hereby waive any right to a jury trial in connection with any litigation pursuant to this Agreement and the transactions contemplated hereby.

Section 7.10. Amendments. This Agreement may not be amended, modified or waived as to any particular provision, except with the written consent of Elusys and NightHawk.

Section 7.11. Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided, that if any provision of this Agreement, as applied to either Party or to any circumstance, is adjudged by a governmental authority, arbitrator, or mediator not to be enforceable in accordance with its terms, the Parties agree that the governmental authority, arbitrator, or mediator making such determination will have the power to modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its reduced form, such provision will then be enforceable and will be enforced.

Section 7.12. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring either Party because of the authorship of any provision of this Agreement. Any reference to any federal, state, local, or foreign law will be deemed also to refer to law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “include,” “includes,” and “including” will be deemed to be followed by “without limitation.” Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words “this Agreement,” “herein,” “hereof,” “hereby,” “hereunder,” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The Parties intend that each representation, warranty, and covenant contained herein will have independent significance. If either Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such Party has not breached will not detract from or mitigate the fact that such Party is in breach of the first representation, warranty, or covenant.

Section 7.13. Waiver. No waiver by either Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent occurrence.

Section 7.14. Confidentiality. Each Party hereby acknowledges that in connection with its examination of certain confidential information that has been or will be provided to such Party in connection with the Shared Services provided pursuant to this Agreement, each Party may have access to material non-public information concerning the other Party. Each Party agrees to keep this information confidential.

Section 7.15. Specific Performance. Each Party hereto agrees that irreparable damage would occur in the event that any provision of this Agreement was not performed by the other Party in accordance with the specific terms hereof or was otherwise breached, and that money damages or legal remedies would not be an adequate remedy for any such damages. Therefore, it is accordingly agreed that each Party hereto shall be entitled to enforce specifically the terms and provisions of this Agreement, or to enforce compliance with, the covenants and obligations of the other Party, in any court of competent jurisdiction, and appropriate injunctive relief shall be granted in connection therewith. Each Party, in seeking an injunction, a decree or order of specific performance, shall not be required to provide any bond or other security in connection therewith and any such remedy shall be in addition and not in substitution for any other remedy to which each Party is entitled at law or in equity.

Section 7.16. Outside Activities. Elusys hereby acknowledges and agrees that one or more of the NightHawk Parties have had, and from time to time may have, outside activities or interests that conflict or may conflict with the best interests of Elusys Parties or any of their Affiliates (collectively, "Outside Activities"), including (without limitation) investment opportunities or investments in, ownership of, or participation in entities that are or could be complementary to, or competitive with, the Elusys Parties or any of their Affiliates. Elusys hereby consents to all such Outside Activities, and none of the NightHawk Parties shall be liable to the Elusys Parties or any of their Affiliates for breach of any duty (contractual or otherwise), including without limitation any fiduciary duties, by reason of any such activities or of such Person's participation therein. In the event that any of the NightHawk Parties acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Elusys Parties or any of their Affiliates, on the one hand, and any of the NightHawk Parties, on the other hand, or any other Person, none of the NightHawk Parties shall have any duty (contractual or otherwise), including without limitation any fiduciary duties, to communicate, present or offer such corporate opportunity to Elusys Parties or any of their Affiliates and, notwithstanding any provision of this Agreement to the contrary, shall not be liable to the Elusys Parties or any of their Affiliates for breach of any duty (contractual or otherwise), including without limitation any fiduciary duties, by reason of the fact that any of the NightHawk Parties directly or indirectly pursues or acquires such opportunity for itself, directs such opportunity to another Person, or does not present or communicate such opportunity to the Elusys Parties or any of their Affiliates, even though such corporate opportunity may be of a character that, if presented to the Elusys Parties or any of their Affiliates, could be taken by the Elusys Parties or any of their Affiliates, as applicable. Elusys hereby renounces any interest, right, or expectancy in any such opportunity not offered to it by the NightHawk Parties to the fullest extent permitted by law. For the avoidance of doubt, the provisions of this Section 7.16 shall not limit in any respect the provisions of Section 4.02 of this Agreement.

[Signature Page follows]

IN WITNESS WHEREOF, the Parties hereto have executed or caused this Agreement to be executed and delivered as of the day and year first above written.

NIGHTHAWK BIOSCIENCES, INC.

By: _____
Name:
Title:

ELUSYS HOLDINGS INC.

By: _____
Name:
Title:

[Signature Page to Shared Services Agreement]

Exhibit A

Shared Services

The Shared Services may include, without limitation:

- Accounting services-
Prepare monthly accounting of the Company
Billing services
Cash management and banking services
Budgeting services
- Tax advisory services
- Financial advisory services
- Auditing services
Audit preparation work
- Corporate record keeping
- Risk management
- Information technology services-
Hardware and software systems,
Access to NightHawk VPN and computer servers
- Insurance administration and claims processing
- Regulatory compliance and government relations
- Tax preparation-
preparation of initial tax returns
- Human resources-
Payroll
- Other administrative services as the Parties may agree from time to time

NIGHTHAWK BIOSCIENCES, INC.
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

On December 11, 2023, NightHawk Biosciences, Inc. (“NightHawk” or the “Company”) entered into an Assets and Equity Interest Purchase Agreement (the “Agreement”) with Elusys Holdings, Inc. (the “Buyer”) pursuant to which the Company agreed to sell to the Buyer (i) all of the issued and outstanding equity interests in the Company’s subsidiary, Elusys Therapeutics, Inc. (“Elusys”) and (ii) the exclusive right to use the name “NightHawk” and ownership of all trademark, goodwill and other rights in connection with such name (collectively, the “Purchased Assets”) (such transaction, the “Transaction”). The Buyer is a subsidiary of a company controlled by the Company’s Chairman, President and Chief Executive Officer.

Upon execution of the Agreement, the Buyer paid the Company a cash payment of \$500,000 and agreed to assume at the closing of the Transaction (the “Closing”) certain specified liabilities and manufacturing commitments relating to Elusys’ business and the assumption by Buyer of all operating costs of Elusys, including the costs incurred after the Closing related to Elusys employees, consultants, and regulatory and research costs (collectively, the “Assumed Liabilities”). The Buyer will also be obligated to pay to the Company on an annual basis a royalty fee equal to 3% of gross revenue received by Buyer or any of its affiliates or their respective successors or licensees from all sales of the anthrax antitoxin known as ANTHIM® during the period commencing on January 1, 2024 and ending on June 30, 2031; provided that, if as of December 31, 2028, the Company has not received an aggregate of \$5,000,000 in such royalty fees, Buyer will be obligated to pay to the Company no later than March 1, 2029 a cash payment equal to the difference between the aggregate amount of such royalty fees received by the Company and \$5,000,000.

In addition, the Buyer agreed, as a post-closing covenant, to purchase from the Company no later than January 20, 2024, in a separate transaction (the “Note Investment”) a convertible promissory note in the aggregate amount of \$2,250,000 (the “Note”). The Note will bear interest at rate of 1% per annum, mature on the one-year anniversary of its issuance and convert into shares of our common stock only if shareholder approval of the issuance of such shares of common stock is obtained prior to the maturity date. The conversion price will be equal to 110% of the volume weighted average price (VWAP) of the Company’s common stock for the seven trading days prior to December 11, 2023, provided however that the conversion price shall be adjusted if the Company consummates a financing within sixty days of December 11, 2023, to be 110% of the per share purchase price of the common stock in such public financing; provided further that such adjustment shall only be made one time regardless of multiple financings. Because the Note Investment was made contemporaneously with entering into the Agreement, we preliminarily expect that for accounting purposes proceeds received in excess of the fair value of the Note Investment will be accounted for as additional consideration for the Transaction as described below in Pro Forma Adjustments.

The following unaudited pro forma condensed consolidated balance sheet as of September 30, 2023, is presented as if the sale of Elusys, as described in the notes to these unaudited pro forma condensed consolidated financial statements, had occurred on September 30, 2023.

The unaudited pro forma condensed consolidated statements of operations for the nine months ended September 30, 2023 and the year ended December 31, 2022 are presented as if the sale of Elusys had occurred on April 18, 2022, the date Nighthawk originally acquired Elusys. Since Nighthawk acquired Elusys on April 18, 2022, no pro forma adjustments are reflected prior to that date and no pro forma statements of operations for periods prior to the year ended December 31, 2022 are presented. All adjustments shown in the unaudited pro forma condensed consolidated financial statements are transaction accounting adjustments.

The unaudited pro forma condensed consolidated statements of operations are subject to the assumptions and adjustments described in the accompanying notes. These assumptions and adjustments are based on information presently available. The unaudited pro forma condensed consolidated statements of operations are based on the historical financial statements of NightHawk for the periods presented and in the opinion of NightHawk management, all adjustments and disclosures necessary for a fair presentation of the pro forma data have been made.

The unaudited pro forma condensed consolidated financial statements were prepared in accordance with Article 11 of Regulation S-X. Such unaudited pro forma condensed consolidated financial statements are presented for illustrative purposes only and are not necessarily indicative of the results of operations that would have been achieved had the events reflected been completed as of the dates indicated or of the results that may be obtained in the future. The accounting conclusions and corresponding amounts reflected in the unaudited pro forma condensed consolidated financial statements for the convertible note, valuations and proceeds received are preliminary. These unaudited pro forma condensed consolidated financial statements and the notes thereto should be read together with NightHawk’s audited consolidated financial statements and the notes thereto as of and for the year ended December 31, 2022, and Management’s Discussion and Analysis included in NightHawk’s Annual Report on Form 10-K for the year ended December 31, 2022, as well as NightHawk’s unaudited consolidated financial statements and the notes thereto as of and for the nine months ended September 30, 2023, and Management’s Discussion and Analysis included in NightHawk’s Quarterly Report on Form 10-Q for the nine months ended September 30, 2023.

NIGHTHAWK BIOSCIENCES, INC.
UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEETS
September 30, 2023

	NightHawk Historical	Proforma Adjustments	Proforma
Current Assets			
Cash and cash equivalents	\$ 2,042,741	\$ 2,750,000	(a) (b) \$ 4,792,741
Short-term investments	4,167,755	-	4,167,755
Accounts receivable	313,906	-	313,906
Grant receivable	-	-	-
Prepaid expenses and other current assets	1,261,228	-	1,261,228
Current assets held for sale	16,394,533	(16,394,533)	(b) -
Total Current Assets	24,180,163	(13,644,533)	10,535,630
Property and Equipment, net	18,683,898	-	18,683,898
Operating lease right-of-use asset	5,346,910	-	5,346,910
Finance lease right-of-use asset	20,979,923	-	20,979,923
Other assets	453,135	-	453,135
Deposits	271,115	-	271,115
Contingent consideration receivable	-	1,680,000	(b) 1,680,000
Total Assets	\$ 69,915,144	\$ (11,964,533)	\$ 57,950,611
Liabilities and Stockholders' Equity			
Current Liabilities			
Accounts payable	\$ 2,873,696	\$ -	\$ 2,873,696
Deferred revenue, current portion	4,056,646	-	4,056,646
Note payable	-	1,982,000	(a) 1,982,000
Operating lease liability, current portion	404,566	-	404,566
Finance lease liability, current portion	895,625	-	895,625
Accrued expenses and other liabilities	2,031,618	275,000	(c) 2,306,618
Current liabilities held for sale	14,225,696	(14,225,696)	(b) -
Total Current Liabilities	24,487,847	(11,968,696)	12,519,151
Long Term Liabilities			
Deferred revenue, net of current portion	32,500	-	32,500
Operating lease liability, net of current portion	2,825,536	-	2,825,536
Financing lease liability, net of current portion	9,122,617	-	9,122,617
Non-current liabilities held for sale	-	-	-
Total Liabilities	36,468,500	(11,968,696)	24,499,804
Stockholders' Equity			
Common stock, \$0.0002 par value; 250,000,000 shares authorized, 26,081,890 and 25,661,488 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively	5,217	-	5,217
Additional paid-in capital	285,090,202	-	285,090,202
Accumulated deficit	(248,962,791)	4,163	(b) (c) (248,958,628)
Accumulated other comprehensive income	159,929	-	159,929
Total Stockholders' Equity - NightHawk Biosciences, Inc.	36,292,557	4,163	36,296,720
Non-Controlling Interest	(2,845,913)	-	(2,845,913)
Total Stockholders' Equity	33,446,644	4,163	33,450,807
Total Liabilities and Stockholders' Equity	\$ 69,915,144	\$ (11,964,533)	\$ 57,950,611

NIGHTHAWK BIOSCIENCES, INC.
UNAUDITED PRO FORMA CONSOLIDATED STATEMENTS OF OPERATIONS
Nine Months Ended September 30, 2023

	NightHawk Historical	Proforma Adjustments	Pro Forma
Revenue	\$ 2,146,804	\$ -	\$ 2,146,804
Operating expenses:			
Cost of revenues	1,540,454	-	1,540,454
Research and development	16,600,186	-	16,600,186
Selling, general and administrative	19,603,075	-	19,603,075
In-process research and development impairment	-	-	-
Change in fair value of contingent consideration	-	-	-
Total operating expenses	<u>37,743,715</u>	<u>-</u>	<u>37,743,715</u>
Operating loss	<u>(35,596,911)</u>	<u>-</u>	<u>(35,596,911)</u>
Change in fair value of warrant liability	-	-	-
Other (expense) income, net	(329,103)	(79,860) (aa)(bb)	(408,963)
Unrealized (loss) gain on available-for-sale securities	99,437	-	99,437
Total non-operating loss	<u>(229,666)</u>	<u>(79,860)</u>	<u>(309,526)</u>
Net loss before income taxes from continuing operations	(35,826,577)	(79,860)	(35,906,437)
Income tax (expense) benefit	<u>571,120</u>	<u>-</u>	<u>571,120</u>
Net loss from continuing operations	(35,255,457)	(79,860)	(35,335,317)
Net loss - non-controlling interest	<u>(1,359,734)</u>	<u>-</u>	<u>(1,359,734)</u>
Loss from continuing operations attributable to NightHawk Biosciences, Inc.	(33,895,723)	(79,860)	(33,975,583)
Net loss per share, basic and diluted - continuing operations	\$ (1.30)		\$ (1.31)
Weighted-average common shares outstanding, basic and diluted	26,022,244		26,022,244

NIGHTHAWK BIOSCIENCES, INC.
UNAUDITED PRO FORMA CONSOLIDATED STATEMENTS OF OPERATIONS
Year Ended December 31, 2022

	NightHawk Historical	Elusys Discontinued Operations (cc)	NightHawk Continuing Operations	Proforma Adjustments	Pro Forma
Revenue	\$ 6,383,169	\$ (6,012,993)	\$ 370,176	\$ -	\$ 370,176
Operating expenses:					
Cost of revenues	6,401,018	(6,319,723)	81,295	-	81,295
Research and development	23,461,400	(3,237,905)	20,223,495	-	20,223,495
Selling, general and administrative	21,130,879	(1,000,333)	20,130,546	275,000	20,405,546
Amortization of intangible asset	1,030,625	(1,030,625)	-	-	-
Change in fair value of contingent consideration	(3,452,015)	109,500	(3,342,515)	-	(3,342,515)
Impairment loss	3,500,000	-	3,500,000	-	3,500,000
Total operating expenses	52,071,907	(11,479,086)	40,592,821	275,000	40,867,821
Operating loss	(45,688,738)	5,466,093	(40,222,645)	(275,000)	(40,497,645)
Change in fair value of warrant liability	11,020	-	11,020	-	11,020
Other (expense) income, net	228,012	94,037	322,049	(179,400)	142,649
Unrealized (loss) gain on available-for-sale securities	(1,701,428)	-	(1,701,428)	-	(1,701,428)
Total non-operating loss	(1,462,396)	(94,037)	(1,368,359)	(179,400)	(1,547,759)
Net loss before income taxes from continuing operations	(47,151,134)	5,560,130	(41,591,004)	(454,400)	(42,045,404)
Income tax (expense) benefit	3,288,937	(3,073,000)	215,937	-	215,937
Net loss from continuing operations	(43,862,197)	2,487,130	(41,375,067)	(454,400)	(41,829,467)
Net loss - non-controlling interest	(427,491)	-	(427,491)	-	(427,491)
Net loss attributable to NightHawk Biosciences, Inc.	\$ (43,434,706)	\$ (2,487,130)	\$ (40,947,576)	\$ (454,400)	\$ (41,401,976)
Net loss per share, basic and diluted - continuing operations	\$ (1.70)		\$ (1.60)		\$ (1.62)
Weighted-average common shares outstanding, basic and diluted	25,606,326		25,606,326		25,606,326

Basis of Presentation

The unaudited pro forma consolidated balance sheet and statements of operations are based upon the historical consolidated financial statements of NightHawk Biosciences, Inc. (the "Company"), which were included in its Quarterly Report on Form 10-Q for the three and nine months ended September 30, 2023 and its Annual Report on Form 10-K for the year ended December 31, 2022. Unless the context indicates otherwise, any reference in this report to the "Company," "we," "us," and "our" refers to NightHawk Biosciences, Inc.

The unaudited pro forma condensed consolidated statements of operations reflect the sale by the Company of the business of the Company's wholly owned subsidiary, Elusys Therapeutics, Inc., as if the sale had been consummated on April 18, 2022 (the original Elusys acquisition date). The unaudited pro forma condensed consolidated balance sheet as of September 30, 2023 reflect such sale as if it had been consummated on that date.

Pro Forma Adjustments

(a) Reflects the proceeds from the sale and issuance of a convertible promissory note to the Buyer of \$2,250,000 with an estimated fair value of \$1,982,000. The excess of the amount received from the Buyer for the note over its fair value (representing the discount on the note) of \$268,000 is reflected as consideration received from the sale of Elusys. The note bears a contractual interest rate of 1% per annum, matures on the one-year anniversary of its issuance and converts into shares of our common stock only if shareholder approval of the issuance of such shares of common stock is obtained prior to the maturity date. The preliminary valuation of the convertible note was determined using a present value of future payments at a market rate of 14.7%. The Company will subsequently revalue the note at each reporting period under the fair value option per ASC 825, *Financial Instruments*.

(b) Reflects consideration received from the sale of Elusys in the form of cash of \$768,000 and contingent consideration with a fair value of \$1,680,000. The preliminary estimated fair value of the contingent consideration was valued using a discounted cash flow analysis. Any changes to the contingent consideration liability after the Closing Date that are not part of an adjustment associated with an initial change in value during the measurement period will be recognized in our statement of operations as a component of operating income or expense. A component of cash consideration is the excess amount of \$268,000 received from the Buyer of Elusys over the fair value of the convertible promissory note. Contingent consideration is measured at fair value to determine the expected gain from the sale of a business as required under ASC Subtopic 810-10 (Consolidations). Subsequent measurement of contingent consideration will be remeasured to fair value through earnings. The sale of Elusys will result in an estimated gain of \$279,163 calculated as follows:

Cash Consideration	\$500,000
Off market value related to convertible promissory note	\$268,000
ANTHIM Earnout - 3%	<u>\$1,680,000</u>
Fair value of consideration received	\$2,448,000
Less: Carrying value of Elusys	<u>\$(2,168,837)</u>
Expected gain on sale of Elusys	\$279,163

(c) Reflects accrual of transaction expenses incurred of \$275,000 related to the pending sale of Elusys.

(aa) For the year ended December 31, 2022, this adjustment of \$(200,610) reflects the change in fair value on the convertible promissory note from April 18, 2022, the original acquisition date of Elusys, through December 31, 2022. For the nine months ended September 30, 2023, this adjustment reflects the change in fair value on the convertible promissory note from January 1, 2023 through April 18, 2023, the proforma maturity date as if the issuance of the convertible promissory note occurred on April 18, 2022. The convertible promissory note matures one year from date of issuance. The change in fair value was calculated assuming that the market interest rate of 14.7% would not change.

(bb) In connection with the disposition of Elusys, the Company expects to finalize a Shared Services Agreement ("SSA") pursuant to which the Company will provide certain administrative, legal, tax, financial, information technology and other support services ("Services") to the Buyer. Services provided by the Company are anticipated to start on the closing of the transaction and end by December 31, 2024. The pro forma adjustment of \$21,210 reflects the amounts the Company can be reasonably estimated as billings for Services under the SSA as if the disposal occurred on April 18, 2022.

(cc) Discontinued Operations column in the unaudited pro forma consolidated financial statements represents the historical financial results of the Elusys business in accordance with ASC Subtopic 205-20 (Discontinued Operations).

(dd) Reflects accrual of transaction expenses incurred of \$275,000 related to the pending sale of Elusys as if the sale occurred on April 18, 2022, the original acquisition date of Elusys by the Company.



**NightHawk Biosciences Announces Strategic Shift into a Pure-Play Large Molecule
Biomanufacturing CDMO to Capitalize on Rapid Growth in Sales Pipeline
along with Divestiture of Non-Core Assets**

*Over \$20 million in signed manufacturing contracts which include
premier biotech/pharma companies and research institutes*

*Elusys divestiture and R&D cuts expected to eliminate over \$40 million in commitments and reduce
annual operating expenses by more than \$13 million*

Durham, NC – December 12, 2023 – **NightHawk Biosciences** (NYSE American: **NHWK**) today (“NightHawk” or the “Company”) announced its strategic shift into a pure-play biomanufacturing Contract Development & Manufacturing Organization (CDMO), as well as the divestiture of certain non-core assets, in order to focus on the growing sales within its Scorpius BioManufacturing, Inc. subsidiary (“Scorpius”). The Company has booked contracts thus far in 2023, Scorpius’ first full year of operation that are expected to generate over \$20 million in revenue, a substantial portion of which will be recognized over the next year. To facilitate this strategic shift, the Company has divested its Elusys subsidiary and related assets, and has eliminated most of its R&D and associated expenses to focus its resources on growing and expanding Scorpius.

The assets will be acquired by a private company established by Jeff Wolf, CEO of NightHawk, which will assume Elusys’ contracted financial commitments, currently estimated at over \$40 million. Under the terms of the transaction, the private company will also provide an upfront payment of \$500,000, a note for \$2.25 million that is convertible into shares of NightHawk’s common stock subject to receipt of stockholder approval, and royalties of 3% on all of Elusys’ gross sales until June 30, 2031. The royalties are subject to a mandatory minimum payment of \$5 million during the first five years of such royalty term. The divestiture of Elusys and R&D cuts are expected to reduce the Company’s annual operating expenses by over \$13 million and fully eliminate the need for NightHawk to raise capital to support Elusys’ programs.

Jeff Wolf, Chief Executive Officer of NightHawk and Elusys following the closing, commented, “Given the strength of our CDMO operations at Scorpius, we have made the strategic decision to refocus our efforts around those activities that hold the potential to generate meaningful cash flow while substantially reducing non-core costs and associated overhead. Scorpius booked \$3 million in contracted sales in 2022, which has grown to over \$20 million in contracted sales thus far in 2023. As contracted sales are generally recognized as revenue as work is performed, we expect to recognize substantial revenue on these booked contracts in 2024. We also have a very significant and growing sales pipeline, which includes contracts from premier pharma and

biotech companies, as well as leading research institutes. We expect to close a number of new contracts before year-end and believe the growth in our sales pipeline is strong validation of the meaningful investments we have made in our Scorpius subsidiary. As we continue to grow our revenue and leverage our fixed costs, we expect our CDMO business to generate high margins and long-term profitability.”

Mr. Wolf added, “There is a significant shortage of clinical scale biologic manufacturing capacity within the industry as a result of growing demand for large molecule CDMO services. In turn, this has led to significant M&A activity within the sector. We believe we are extremely well positioned to capitalize on these trends given our state-of-the-art facility, experienced and dedicated team, broad service offering, and robust sales pipeline.”

John Prendergast, Ph.D., NightHawk’s lead director stated, “The divestiture of our non-core assets enables NightHawk to focus its resources on growing its Scorpius subsidiary, and will result in the immediate elimination of approximately \$40 million of contractual obligations and reduction of over \$13 million in operating expenses per year. Moreover, NightHawk will receive both an upfront cash payment, as well as a \$2.25 million convertible loan and at least \$5 million in royalties on future Elusys gross payment receipts for approximately 7.5 years. This was vetted and approved by an independent committee of the board to be in the best long-term interests of NightHawk and its shareholders. As a pure-play CDMO, the board of NightHawk believes that NightHawk now has the opportunity to create substantial shareholder value in an underserved marketplace.”

Mr. Wolf further noted, “The senior management team and board of directors are laser-focused on transforming our company into a revenue-generating CDMO. We have shuttered most all of our research, substantially cut costs and divested our non-core assets to achieve this. Our interrelated goals are clear; provide the highest quality manufacturing services to our CDMO customers and focus on driving near and long-term revenue. We believe this strategic shift and divestiture of non-core assets will not only enhance our balance sheet and cashflow, but also drive meaningful returns to our shareholders for years to come.”

NightHawk Biosciences, Inc.

NightHawk Biosciences, through its Scorpius BioManufacturing subsidiary, is an integrated contract development and manufacturing organization (CDMO) focused on rapidly advancing biologic and cell therapy programs to the clinic and beyond. Scorpius offers a broad array analytical testing, process development, and manufacturing services to pharmaceutical and biotech companies at its state-of-the art facilities in San Antonio, TX. With an experienced team and new, purpose-built U.S. facilities, Scorpius is dedicated to transparent collaboration and flexible, high-quality biologics biomanufacturing. For more information, please visit: www.nighthawkbio.com or www.scorpiusbiologics.com, and also follow us on [Twitter](#).

Forward Looking Statement

This release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. In some cases forward-looking statements can be identified by

terminology such as "may," "should," "potential," "continue," "expects," "anticipates," "intends," "plans," "believes," "estimates," and similar expressions, and include statements such as booking over \$20 million in booked contracts in 2023 alone; the Elusys divestiture and research and development cuts to eliminating over \$40M of commitments and reducing annual operating expenses by more than \$13 million; recognizing substantial revenue on contracts next year; closing a number of new contracts before year-end; the growth in the Company's sales pipeline being strong validation of the meaningful investments it has made in its Scorpius subsidiary; the CDMO business generating high margins and achieving long-term profitability; being extremely well positioned to capitalize on trends given the Company's state-of-the-art facility, broad service offering, and robust sales pipeline; the reduction in personnel and other expenses substantially reducing the Company's operating expenses; transforming the Company into a revenue-generating CDMO; providing the highest quality manufacturing services to CDMO customers and driving near and long-term revenue; and the strategic shift into a pure-play, large molecule CDMO and divestiture of non-core assets, enhancing the Company's balance sheet and cashflow and also helping to drive meaningful returns for shareholders for years to come. Important factors that could cause actual results to differ materially from current expectations include, among others, the Company's ability to generate over \$20 million in future revenue from manufacturing contracts booked in 2023; the Company's ability to close on a number of new CDMO contracts before year-end; the Company's ability to continue to grow revenue, leverage fixed costs and achieve long-term profitability; the Company's ability to create substantial shareholder value as a pure-play CDMO in an underserved marketplace; the Company's financing needs, its cash balance being sufficient to sustain operations and its ability to raise capital when needed, the Company's ability to successfully operate as a CDMO, the continued maintenance and growth of the Company's and its subsidiaries' patent estates the ability to obtain regulatory approval or to comply with ongoing regulatory requirements, regulatory limitations relating to the Company's ability to successfully promote its services and compete as a pure-play CDMO, and other factors described in the Company's annual report on Form 10-K for the year ended December 31, 2022, subsequent quarterly reports on Form 10-Qs and any other filings the Company makes with the SEC. The information in this presentation is provided only as of the date presented, and the Company undertakes no obligation to update any forward-looking statements contained in this presentation on account of new information, future events, or otherwise, except as required by law.

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NightHawk Biosciences

*A rapidly growing, highly scalable biomanufacturing
Contract Development & Manufacturing Organization*

Investor Presentation - December 2023
NYSE: NHWK



Forward Looking Statements

This presentation includes statements that are, or may be deemed, "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, as amended. In some cases, these forward-looking statements can be identified by the use of forward-looking terminology, including the terms "believes", "estimates", "anticipates", "expects", "plans", "intends", "may", "could", "might", "will", "should", "approximately" or, in each case, their negative or other variations thereon or comparable terminology, although not all forward-looking statements contain these words. They appear in a number of places throughout this presentation and include statements regarding our intentions, beliefs, projections, outlook, analyses or current expectations, concerning, among other things, the demand for contract development & manufacturing organization services growing, our recognizing revenue in 2024 from over \$20M in Scorpius signed manufacturing contracts, leveraging fixed costs as revenue continues to grow resulting in high margins and long-term profitability, the industry in which we operate and the trends that may affect the industry or us.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events, competitive dynamics, and healthcare, regulatory and scientific developments and depend on the economic circumstances that may or may not occur in the future or may occur on longer or shorter timelines than anticipated. Although we believe that we have a reasonable basis for each forward-looking statement contained in this presentation, we caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and the development of the industry in which we operate may differ materially from the forward-looking statements contained in this presentation as a result of, among other factors, the factors referenced in the "Risk Factors" section of our Annual Report on Form 10-K for the year ended December 31, 2022, our quarterly reports on Form 10-Q for the subsequent quarters and our other subsequent filings with the Securities and Exchange Commission (collectively, our "SEC Filings"). In addition, even if results of operations, financial condition and liquidity, and the development of the industry in which we operate are consistent with the forward-looking statements contained in this presentation, they may not be predictive of results or developments in future periods. Any forward-looking statements that we make in this presentation speak only as of the date of such statement, and we undertake no obligation to update such statements to reflect events or circumstances after the date of this presentation, except as required by law.



Investment Highlights

- ✓ Growing demand for Contract Development & Manufacturing Organization (CDMO) services and significant shortage of dedicated clinical-scale manufacturing capacity within the industry
- ✓ Scorpius began 2023 with \$3M of signed manufacturing contracts, which has grown to over \$20M in signed manufacturing contracts, with recognized revenue from a substantial number of these contracts expected in 2024
- ✓ Customers include many premier pharma and biotech companies, as well as leading research institutes
- ✓ Recently divested non-core assets to focus on CDMO operations; eliminated approximately \$40M of contractual obligations and reduced operating expenses by over \$13 million per year
- ✓ Ability to leverage fixed costs as revenue continues to grow; expected to result in high margins and long-term profitability



About NightHawk

- NightHawk Biosciences, through its Scorpius BioManufacturing subsidiary, is an integrated CDMO focused on rapidly advancing biologic programs through the clinic
- With end-to-end capabilities from discovery to limited-scale commercial production, we provide a broad array of R&D, analytical testing, and manufacturing services to pharmaceutical and biotech companies
- We have an experienced team and new, purpose-built, U.S. facilities, dedicated to easily accessible, transparent collaboration and flexible biologics biomanufacturing



Leadership Team



Jeff Wolf

Founder & CEO

30+ Years Of Experience

Avigen, TyRx Pharma, EluSys Tx



Bill Ostrander

Chief Financial Officer

20+ Years Of Experience

KBI



Stephan Kutzer

Senior Advisor

25+ Years Of Experience

Alcami, Lonza



Joe Payne

VP, Quality & Regulatory

20+ Years Of Experience

Alcami, Tergus, Teva



Matt LeClair

VP, Manufacturing Operations

30+ Years Of Experience

Abzena, Takeda



Brian O'Mara

VP, Process Sciences

20+ Years Of Experience

Ambrx, Bristol-Myers Squibb,
Genencor, Wyeth



Steve Lavezoli

VP, Business Development

20+ Years Of Experience

Catalent, W.L. Gore



Ania Szymanska

Site Quality Head

25+ Years Of Experience

Opex Tx, Bellicum, Marker Tx



Lise Barley-Maloney

Sr. Dir., Program Management

30+ Years Of Experience

FUJIFILM, KBI Biopharma



Scorpius Snapshot



Clinical-scale biomanufacturing in **San Antonio, TX** located in the heart of a thriving innovation district



Highly skilled scientific leadership team



US-sourced supply chain



In-house process development and analytical services



San Antonio Facility Overview



Over 32,000 sq ft footprint among three buildings which include:

- ~2,000 sq. ft. (185 m²) of analytical support and QC testing space
- ~2,000 sq. ft. (185 m²) process development lab
- ~5,400 sq. ft. (500 m²) of cGMP cleanroom manufacturing space (mammalian and cell therapy)
- ~3,200 sq. ft. (300 m²) of cGMP cleanroom manufacturing space (microbial)
- 50-500-L for cGMP mammalian and cell-therapy based products
- 50-200-L for cGMP microbial-based products in adjacent building on same campus



SUPPORTED DRUG MODALITIES



Mammalian Cell Culture

- Antibody Production
 - Monoclonals, Bi-Specifics
- Recombinant Therapeutic Proteins
- Allogeneic Cell Therapy
 - Cells, Exosomes, Secretome






Microbial Fermentation

- Recombinant Therapeutic Proteins & Enzyme Products
- Bacterial Subunit Vaccines
- Plasmid DNA



INTEGRATED BIOANALYSIS SUPPORT FOR PRODUCT'S LIFECYCLE

Comprehensive bioassay and bioanalytical capabilities allow for seamless progression of therapeutic candidates throughout their lifecycle

 Discovery Research & Product Development Support	 CMC Analytical Support	 Clinical Trial Support
<ul style="list-style-type: none">• Bioanalytical Sampling• Comprehensive Immune Profiling• Cell-Based Potency Assays• Molecular Assays	<ul style="list-style-type: none">• CMC Analytical Testing Services<ul style="list-style-type: none">○ Lot Release Testing○ Product Stability Testing○ Operate under cGMP and ICH guidelines	<ul style="list-style-type: none">• Automated Whole Blood Fractionation• Clinical PK/Bioavailability Studies• PK/PD Analysis• Immunogenicity Testing• Functional Immune Profiling



Summary



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