

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

FORM 6-K

REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13a-16
OR 15d-16 UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the month of May, 2021

Commission File Number: 001-37891

AC IMMUNE SA

(Exact name of registrant as specified in its charter)

EPFL Innovation Park
Building B

1015 Lausanne, Switzerland
(Address of principal executive office)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F:

Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Yes No

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Yes No

AC IMMUNE SA

(Exact Name of Registrant as Specified in Its Charter)

EPFL Innovation Park

Building B

1015 Lausanne, Switzerland

(Address of Principal Executive Offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.

Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Yes No

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Yes No

On May 5, 2021, AC Immune SA (the “Company”), entered into an Open Market Sales Agreement (the “Open Market Sales Agreement”) with Jefferies LLC (the “Agent”) to replace its existing "at the market" program with the Agent. Pursuant to the terms of the Open Market Sales Agreement, the Company may sell from time to time through or to the Agent, as the Company’s sales agent, shares of the Company’s common shares, nominal value CHF 0.02, having the same aggregate offering price as the Company’s existing "at the market" program, of up to \$80,000,000 (the “Shares”). The sales, if any, of the Shares under the Open Market Sales Agreement will be made by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415 promulgated under the Securities Act of 1933, as amended (the “Securities Act”).

For the sales of Shares through the Agent, as the Company’s sales agent, the Company will pay the Agent a commission at a mutually agreed rate of 3.0% of the gross sales price per Share. In addition, the Company has agreed to pay certain expenses incurred by the Agent in connection with the offering. The Company may also sell Shares to the Agent as principal for such Agent’s own account at a price agreed upon at the time of sale. The Company has no obligation to sell any shares under the Open Market Sales Agreement, and may at any time suspend the offering of shares under the Open Market Sales Agreement.

The Open Market Sales Agreement contains customary representations and warranties of the parties and indemnification and contribution provisions under which the Company and the Agent have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act. The Company expects to use the net proceeds from sales, if any, under the Open Market Sales Agreement of the Shares, for research and clinical development of current and/or additional pipeline candidates, our technology platforms, working capital, capital expenditures and general corporate purposes.

The representations, warranties and covenants contained in the Open Market Sales Agreement were made only for purposes of that agreement and as of specific dates, were solely for the benefit of the parties to the Open Market Sales Agreement and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each contracting party to the other as a way of allocating contractual risk between them that differ from those applicable to investors. Moreover, the subject matter of the representations and warranties are subject to more recent developments. Accordingly, investors should be aware that these representations, warranties and covenants or any description thereof alone may not describe the actual state of affairs of the Company or its subsidiaries, affiliates, businesses or shareholders as of the date they were made or at any other time.

The Shares will be issued pursuant to the Company’s shelf registration statement on Form F-3 (File No. 333-255576). The Company filed a prospectus supplement, dated May 5, 2021, with the Securities and Exchange Commission in connection with the offer and sale of the Shares pursuant to the Open Market Sales Agreement.

The foregoing description of the Open Market Sales Agreement is not complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is filed herewith as Exhibit 1.1 to this Current Report on Form 6-K and is incorporated herein by reference.

The legal opinion of Bär & Karrer Ltd. relating to the common shares being offered is filed as Exhibit 5.1 to this Current Report on Form 6-K.

SIGNATURE

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

AC IMMUNE SA

By: /s/ Andrea Pfeifer

Name: Andrea Pfeifer

Title: Chief Executive Officer

By: /s/ Joerg Hornstein

Name: Joerg Hornstein

Title: Chief Financial Officer

Date: May 5, 2021

EXHIBIT INDEX

| Exhibit Number | Description |
|---------------------------|---|
| 1.1 | Open Market Sales Agreement, dated as of May 5, 2021, between AC Immune SA and Jefferies LLC. |
| 5.1 | Opinion of Bär & Karrer Ltd. |
| 23.1 | Consent of Bär & Karrer Ltd. (included in Exhibit 5.1). |

OPEN MARKET SALE AGREEMENTSM

May 5, 2021

JEFFERIES LLC
520 Madison Avenue

New York, New York 10022

Ladies and Gentlemen:

AC Immune SA, a company limited by shares (*Aktiengesellschaft*) incorporated under the laws of Switzerland, with registered seat in Ecublens (VD), Switzerland (the “**Company**”), proposes, subject to the conditions stated herein, to sell from time to time through Jefferies LLC, as sales agent and/or principal (the “**Agent**”), the Company’s common shares, nominal value CHF 0.02 per share (the “**Common Shares**”), having an aggregate offering price of up to \$80.0 million on the terms set forth in this agreement (this “**Agreement**”).

Section 1. DEFINITIONS

(a) **Certain Definitions.** For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:

“**Affiliate**” of a 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- mentioned Person. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agency Period**” means the period commencing on the date of this Agreement and expiring on the earliest to occur of (x) the date on which the Agent shall have placed the Maximum Program Amount pursuant to this Agreement and (y) the date this Agreement is terminated pursuant to Section 7.

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

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

“**Fiduciary**” means Treuco AG, Claridenstrasse 25, 8002 Zurich, Switzerland.

“**Floor Price**” means the minimum price set by the Company in the Issuance Notice below which the Agent shall not sell Shares during the applicable period set forth in the Issuance Notice, which may be adjusted by the Company at any time during the period set forth in the Issuance

SM “Open Market Sale Agreement” is a service mark of Jefferies LLC

Notice by delivering written notice of such change to the Agent and which in no event shall be less than \$1.00 without the prior written consent of the Agent, which may be withheld in the Agent's sole discretion.

"Issuance Amount" means the aggregate Sales Price of the Shares to be sold by the Agent pursuant to any Issuance Notice.

"Issuance Notice" means a written notice delivered to the Agent by the Company in accordance with this Agreement in the form attached hereto as Exhibit A that is executed by its Chief Executive Officer or Chief Financial Officer.

"Issuance Notice Date" means any Trading Day during the Agency Period that an Issuance Notice is delivered pursuant to Section 3(b)(i).

"Issuance Price" means the Sales Price less the Selling Commission.

"Maximum Program Amount" means Common Shares with an aggregate Sales Price of the lesser of (a) the number or dollar amount of Common Shares registered under the effective Registration Statement (defined below) pursuant to which the offering is being made, (b) the number of authorized but unissued Common Shares (less Common Shares issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company's authorized share capital), (c) the number or dollar amount of Common Shares permitted to be sold under Form F-3 (including General Instruction I.B.5 thereof, if applicable), or (d) the number or dollar amount of Common Shares for which the Company has filed a Prospectus (defined below).

"Person" means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

"Principal Market" means the Nasdaq Global Market or such other national securities exchange on which the Common Shares, including any Shares, are then listed.

"Sales Price" means the actual sale execution price of each Share placed by the Agent pursuant to this Agreement.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

"Selling Commission" means up to three percent (3%) of the gross proceeds of Shares sold pursuant to this Agreement, or as otherwise agreed between the Company and the Agent with respect to any Shares sold pursuant to this Agreement.

"Settlement Date" means the second business day following each Trading Day during the period set forth in the Issuance Notice on which Shares are sold pursuant to this Agreement, when the Company or any third party designated by the Company shall deliver to the Agent the amount of Shares sold on such Trading Day and the Agent shall deliver to the Company the Issuance Price received on such sales.

“**Shares**” shall mean the Company’s Common Shares to be delivered pursuant to this Agreement.

“**Trading Day**” means any day on which the Principal Market is open for trading.

Section 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to, and agrees with, the Agent that as of (1) the date of this Agreement, (2) each Issuance Notice Date, (3) each Settlement Date, (4) each Triggering Event Date and (5) as of each Time of Sale (as defined below) (each of the times referenced above is referred to herein as a “**Representation Date**”), except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto) on or before a Representation Date:

(a) Registration Statement. The Company has prepared and filed with the Commission a shelf registration statement on Form F-3 (File No. 333-255576) that contains a base prospectus (the “**Base Prospectus**”). Such registration statement registers the issuance and sale by the Company of the Shares under the Securities Act. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable, with respect to the Shares. Except where the context otherwise requires, such registration statement(s), including any information deemed to be a part thereof pursuant to Rule 430B under the Securities Act, including all financial statements, exhibits and schedules thereto and all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 6 of Form F-3 under the Securities Act as from time to time amended or supplemented, is herein referred to as the “**Registration Statement**,” and the prospectus constituting a part of such registration statement(s), together with any prospectus supplement filed with the Commission pursuant to Rule 424(b) under the Securities Act relating to a particular issuance of the Shares, including all documents incorporated or deemed to be incorporated therein by reference pursuant to Item 6 of Form F-3 under the Securities Act, in each case, as from time to time amended or supplemented, is referred to herein as the “**Prospectus**,” except that if any revised prospectus is provided to the Agent by the Company for use in connection with the offering of the Shares that is not required to be filed by the Company pursuant to Rule 424(b) under the Securities Act, the term “**Prospectus**” shall refer to such revised prospectus from and after the time it is first provided to the Agent for such use. The Registration Statement at the time it originally became effective is herein called the “**Original Registration Statement**.” As used in this Agreement, the terms “amendment” or “supplement” when applied to the Registration Statement or the Prospectus shall be deemed to include the filing by the Company with the Commission of any document under the Exchange Act after the date hereof that is or is deemed to be incorporated therein by reference.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date; and all references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to

mean and include, without limitation, the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in or otherwise deemed under the Securities Act to be a part of or included in the Registration Statement or the Prospectus, as the case may be, as of any specified date.

At the time the Registration Statement was or will be originally declared effective and at the time the Company's most recent annual report on Form 20-F was filed with the Commission, if later, the Company met the then-applicable requirements for use of Form F-3 under the Securities Act. During the Agency Period, each time the Company files an annual report on Form 20-F the Company will meet the then-applicable requirements for use of Form F-3 under the Securities Act.

(b) Compliance with Registration Requirements. The Original Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

The Prospectus when filed complied in all material respects with the Securities Act and, if filed with the Commission through its Electronic Data Gathering, Analysis and Retrieval system ("**EDGAR**") (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Agent for use in connection with the sale of the Shares at each Settlement Date. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became or becomes effective, complied and will comply in all material respects with the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the date of this Agreement, the Prospectus and any Free Writing Prospectus (as defined below) considered together (collectively, the "**Time of Sale Information**") did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Prospectus, as amended or supplemented, as of its date, did not and, at each Settlement Date, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the three immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to the Agent furnished to the Company in writing by the Agent expressly for use therein, it being understood and agreed that the only such information furnished by the Agent to the Company consists of the information described in Section 6 below. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required. The Registration Statement and the offer and sale of the Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said rule.

(c) Ineligible Issuer Status. The Company is not an “ineligible issuer” in connection with the offering of the Shares pursuant to Rules 164, 405 and 433 under the Securities Act. Any Free Writing Prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act. Each Free Writing Prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of Rule 433 under the Securities Act including timely filing with the Commission or retention where required and legending, and each such Free Writing Prospectus, as of its issue date and at each Settlement Date, does not and will not include any information that conflicted, conflicts with or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein. Except for the Free Writing Prospectuses, if any, and electronic road shows, if any, furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, or any Free Writing Prospectus.

(d) Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, at the time they were filed with the Commission, complied in all material respects with the requirements of the Exchange Act, as applicable, and, when read together with the other information in the Prospectus, do not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(e) Exchange Act Compliance. The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, and any Free Writing Prospectus or amendment or supplement thereto complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto become effective and at each Time of Sale (as defined below), as the case may be, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(f) The Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(g) Authorization of the Shares. The Company has sufficient authorized capital to issue shares to fulfill its delivery obligations under this Agreement and the Shares, when an Issuance Notice is delivered to the Agent, will have been duly authorized for sale pursuant to this Agreement and, when registered with the Commercial Register and issued and delivered by the Company or any third party designated by the Company against payment therefor pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and, other than as expressly set forth in this Agreement or the Prospectus, the issuance and sale of the Shares is not subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase the Shares that will not have been validly waived or excluded.

(h) No Applicable Registration Rights or Similar Rights. Except as disclosed in the Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act.

(i) No Material Adverse Change. Except as disclosed in the Registration Statement and the Prospectus, since the end of the period covered by the latest audited financial statements included in the Registration Statement and the Prospectus, (i) there has been no change in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company that is material and adverse, (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its share capital and (iii) there has been no material adverse change in the share capital, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company (any such change being referred to herein as a “**Material Adverse Change**”).

(j) Independent Accountants. PricewaterhouseCoopers SA, which has expressed its opinion with respect to certain financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as a part of the Registration Statement and the Prospectus, was, at the time of expressing such opinion, (i) an independent registered public accounting firm as required by the Securities Act, the Exchange Act, and the rules of the Public Company Accounting Oversight Board (“PCAOB”), (ii) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Securities Act, (iii) a registered public accounting firm as defined by the PCAOB whose registration has not been suspended or revoked and who has not requested such registration to be withdrawn and (iv) an independent qualified public accountant qualified under the applicable provisions of the CO, the Swiss Audit Supervision Act (*Revisionsaufsichtsgesetz*) and any ordinances promulgated thereunder.

(k) Financial Statements. The financial statements included or incorporated by reference in each Registration Statement and the Prospectus (including the statutory financial statements of the Company included or incorporated by reference in the Prospectus) present fairly in all material respects the financial position of the Company as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with International Financial Reporting Standards (“**IFRS**”) as issued by the International Accounting Standards Board (the “**IASB**”) applied on a consistent basis, or in the case of the statutory financial statement of the Company, have been prepared in accordance with Swiss law, and the schedules included in each of the Registration Statement and the Prospectus present fairly in all material respects the information required to be stated therein.

(l) Company’s Accounting System. Except as set forth in the Prospectus, the Company and the Company’s Board of Directors (the “**Board**”) are in compliance with the applicable provisions of Sarbanes-Oxley Act of 2002 (“**Sarbanes-Oxley**”) and the Exchange Act. The Company maintains a system of internal controls, including, but not limited to, disclosure controls and procedures, internal controls over accounting matters and financial reporting, an

internal audit function and legal and regulatory compliance controls (collectively, “**Internal Controls**”) that are designed to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with IFRS as issued by the ISAB and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences and (v) the interactive data in the eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission’s rules and guidelines thereto. The Internal Controls are, or upon consummation of the offering of the Shares will be, overseen by the Audit & Finance Committee (the “**Audit & Finance Committee**”) of the Board in accordance with Exchange Act. Except as disclosed in the Prospectus, the Company has not publicly disclosed or reported to the Audit & Finance Committee or the Board, and within the next 135 days the Company does not reasonably expect to publicly disclose or report to the Audit & Finance Committee or the Board, a significant deficiency, material weakness, adverse change in Internal Controls or fraud involving management or other employees who have a significant role in Internal Controls, any violation of, or failure to comply with, Sarbanes-Oxley, the Exchange Act and the rules of the Principal Market, or any matter which, if determined adversely, would have a Material Adverse Change.

(m) Incorporation and Good Standing of the Company. The Company has been duly incorporated and is duly organized and validly existing under the laws of Switzerland, with full power and authority (corporate and other) to own its properties and conduct its business as described in the Registration Statement and the Prospectus.

(n) Subsidiaries. The Company has no subsidiaries (as defined in Rule 405 under the Securities Act).

(o) Capitalization and Other Capital Stock Matters. The issued and outstanding share capital and the authorized share capital as well as the conditional share capital of the Company are as set forth in the Registration Statement and the Prospectus under the caption “Description of Share Capital and Articles of Incorporation” (other than for subsequent issuances, if any, pursuant to employee benefit plans, or upon the exercise of outstanding options or warrants, in each case described in the Registration Statement and the Prospectus). The Common Shares (including the Shares) conform in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding Common Shares have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with all federal and state securities laws and the CO. None of the outstanding Common Shares was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities or other rights convertible into or exchangeable or exercisable for, any capital stock of the Company other than those described in the Registration Statement and the Prospectus. The descriptions of the Company’s stock option, stock bonus and other stock plans or similar arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement and the

Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

(p) Stock Exchange Listing. The Common Shares are registered pursuant to Section 12(b) or 12(g) of the Exchange Act and are listed on the Principal Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act or delisting the Shares from the Principal Market, nor has the Company received any notification that the Commission or the Principal Market is contemplating terminating such registration or listing. To the Company's knowledge, it is in compliance with all applicable listing requirements of the Principal Market.

(q) Absence of Further Requirements. Other than (a) the issuance of the Shares to the Fiduciary in one or more installments and the registration of the Shares with the commercial register of the Canton of Vaud, the registration of the Fiduciary in the Company's book of uncertificated securities (*Wertrechtbuch*) as first holder of the Shares and in the Company's share register and the subsequent assignment and transfer of the Shares from the Fiduciary to the Agent and the registration of the Agent in the Company's share register, and (b) the implementing and declaratory resolutions (*Durchführungs- und Feststellungsbeschlüsse*) of the Board required in connection with the authorized capital increase(s) of the Company in order to create the Shares, no consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required for the consummation of the transactions contemplated by this Agreement in connection with the offering, issuance and sale of the Shares by the Company, except such as have been obtained or made or will be obtained or made at the Settlement Date and such as may be required under state securities laws or except such as would not reasonably be expected to result in a material adverse effect on the condition (financial or otherwise), results of operations, business, properties or prospects of the Company (a "**Material Adverse Effect**").

(r) Non-Contravention of Existing Instruments. Neither the issue and sale of the Shares nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms hereof will conflict with, result in a breach or violation of, or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to, (i) the Articles of Association of the Company, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company is a party or bound or to which its property is subject, or (iii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its properties, except in the cases of clauses (ii) and (iii) for such breach, violation or imposition as would not reasonably be expected to have a Material Adverse Effect.

(s) Absence of Existing Defaults and Conflicts. The Company is not in violation of its articles of association or similar organizational documents or in default (or with the giving of notice or lapse of time would be in default) under any existing obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which it is a party or by it is bound or to which any its properties is subject, except such defaults that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(t) Compliance with Laws. The Company has been and is in compliance with all applicable laws, rules and regulations, except where failure to be so in compliance could not be expected, individually or in the aggregate, to have a Material Adverse Effect.

(u) Litigation. Except as disclosed in the Registration Statement or the Prospectus, there are no pending actions, suits or proceedings (including any inquiries made to the Company or, to the Company's knowledge, investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company or any of its properties that, if determined adversely to the Company, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement, or which are otherwise material in the context of the sale of the Shares; and no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are, to the Company's knowledge, threatened or contemplated.

(v) Absence of Labor Disputes. No labor dispute with the employees of the Company exists or, to the knowledge of the Company, is imminent that would reasonably be expected to have a Material Adverse Effect.

(w) Intellectual Property Rights. The Company owns, possesses or can acquire on reasonable terms all trademarks, trade names, patent rights, copyrights, domain names, licenses, trade secrets, inventions, technology, know-how and other intellectual property and similar proprietary rights, including registrations and applications for registration thereof (collectively, "**Intellectual Property Rights**") described in the Prospectus and, to the knowledge of the Company and except as disclosed in the Prospectus, owns all Intellectual Property Rights necessary or material to the conduct of the business now conducted or proposed in the Prospectus to be conducted by it. Except as disclosed in the Prospectus, (i) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by any third party against the Company challenging the Company's rights in or to any of the Company's Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (ii) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others against the Company challenging the validity, enforceability or scope of any Intellectual Property Rights owned by the Company, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim against the Company by any third party that the Company infringes, misappropriates or otherwise violates any Intellectual Property Rights or other proprietary rights of such third party and the Company is unaware of any other fact which would form a reasonable basis for any such claim; and (iv) all assignments of intellectual property from the Company's employees and consultants to the Company are valid, binding and enforceable and, to the Company's knowledge, have appropriately vested ownership in the Company of any work product, developments or the like that is subject to such assignments, except in the case of clauses (i)-(iv) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(x) All Necessary Permits, etc. The Company possesses, and is in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits, including, without limitation, from the U.S. Food and Drug Administration ("**FDA**") and equivalent foreign

regulatory authorities (“**Licenses**”) necessary or material to the conduct of the business now conducted or proposed in the Registration Statement or the Prospectus to be conducted by it and has not received any notice of proceedings or other correspondence relating to the revocation or modification of any Licenses that, if determined adversely to the Company, would individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

(y) **Title to Properties.** The Company does not own any real property. Except as disclosed in the Registration Statement or the Prospectus, the Company has good and marketable title to all other material properties and assets owned by it, in each case free from liens, charges, encumbrances and defects that would reasonably be expected to have a Material Adverse Effect and, except as disclosed in the Registration Statement or the Prospectus, the Company holds any leased real or personal property under valid and enforceable leases with no terms or provisions that would reasonably be expected to have a Material Adverse Effect.

(z) **Tax Law Compliance.** The Company has filed all federal, state, local and non-U.S. tax returns that are required to be filed by it or has requested extensions thereof (except in any case in which the failure so to file would not have a Material Adverse Effect); and except as disclosed in the Prospectus, the Company has paid all taxes (including any assessments, fines or penalties) shown as due thereon, except for any such taxes, assessments, fines or penalties currently being contested in good faith or as would not, individually or in the aggregate, have a Material Adverse Effect.

(aa) **Insurance.** The Company is insured by insurers with appropriately rated claims paying abilities against such losses and risks and in such amounts as the Company reasonably considers prudent and customary for the businesses in which it is engaged; all material policies of insurance and fidelity or surety bonds insuring the Company or its business, asset, employees, officers and directors are in full force and effect; the Company is in compliance with the terms of such policies and instruments in all material respects; and there are no claims by the Company under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; the Company has not been refused any material insurance coverage sought or applied for; and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect, except as set forth in or contemplated in the Prospectus.

(bb) **Compliance with Environmental Laws.** Except as disclosed in the Prospectus, the Company is not in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, “**environmental laws**”), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate reasonably be expected to have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

(cc) Company Not an “Investment Company.” The Company is not and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Registration Statement or the Prospectus, will not be an “investment company” as defined in the Investment Company Act of 1940, as amended (the “**Investment Company Act**”).

(dd) Absence of Manipulation. The Company has not taken, directly or indirectly, any action that is designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(ee) Absence of Market Abuse. The Company has not taken, directly or indirectly, in relation to the offering of the Shares or otherwise, any action or engaged in any course of conduct in breach of, and has taken adequate measures and has adequate procedures in place in order to ensure compliance with, and none of the issue of the Share, the sale of the Shares and the consummation of the transactions contemplated by this Agreement will constitute a violation by the Company of, any applicable European Union, Swiss, United States or any other relevant jurisdiction “insider dealing,” “insider trading” or similar legislation and, so far as the Company is aware, no person acting on its behalf has breached or is in breach of any relevant market abuse or insider trading law or regulation, including any reporting obligations to the Commission or any other authority. Neither the Company nor any person acting on its or their behalf (which, for the avoidance of doubt, shall not include the Agent or its affiliates or persons acting on their behalf, as to whom no representation, warranty or undertaking is given), has taken or omitted to take any action nor will take any action or omit to take any action which may result in the loss by any of the Agent of the ability to rely on any stabilization safe harbor with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilization measures.

(ff) Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any other person required to be described in the Registration Statement or the Prospectus which have not been described as required.

(gg) FINRA Matters. All of the information provided to the Agent or to counsel for the Agent by the Company and, to the Company’s knowledge, its counsel, officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Shares is true, complete, correct and compliant with Financial Industry Regulatory Authority, Inc.’s (“**FINRA**”) rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules or NASD Conduct Rules is true, complete and correct.

(hh) Statistical and Market Related Data. Any third-party statistical and market-related data included in the Registration Statement or the Prospectus or any written testing-the-waters communication are based on or derived from sources that the Company believes to be reliable and accurate.

(ii) No Unlawful Contributions or Other Payments. Neither the Company nor, to the best of the Company’s knowledge, any employee or agent of the Company, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office

in violation of any law or of the character required to be disclosed in the Registration Statement or the Prospectus.

(jj) Foreign Corrupt Practices Act. Neither the Company nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company (which, for the avoidance of doubt, shall not include the Agent or its affiliates or persons acting on their behalf, as to whom no representation, warranty or undertaking is given) has, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any domestic government official, “foreign official” (as defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the “**FCPA**”)) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA or any applicable non-U.S. anti-bribery statute or regulation; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, such foreign official or employee; and the Company and, to the knowledge of the Company, the Company’s affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(kk) Money Laundering Laws. The operations of the Company are, and have been conducted at all times, in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Money Laundering Laws**”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(ll) OFAC. Neither the Company nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee, affiliate or person acting on behalf of the Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”); and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that currently is the subject to any U.S. sanctions administered by OFAC or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of U.S. sanctions administered by OFAC.

(mm) Brokers. Except as disclosed in the Registration Statement or the Prospectus, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or the Agent for a brokerage commission, finder’s fee or other like payment as a result of any transactions contemplated by this Agreement.

(nn) Emerging Growth Company Status. From the time of initial filing of the Registration Statement to the Commission through the date hereof, the Company has been and is an “emerging growth company,” as defined in Section 2(a) of the Securities Act (an “**Emerging Growth Company**”).

(oo) PFIC Status. The Company believes it is likely that it was a “passive foreign investment company” (“**PFIC**”) as defined in Section 1297 of the United States Internal Revenue Code of 1986, as amended, for its most recently completed taxable year and the Company may also be classified as a PFIC in its current taxable year or one or more future taxable years.

(pp) Clinical Trials. The preclinical and clinical studies conducted by the Company, and to the knowledge of the Company, the preclinical and clinical studies conducted on behalf of or sponsored by the Company, that are described in, or the results of which are referred to in, the Prospectus were and, if still pending, are being conducted in all material respects in accordance with protocols, procedures and controls filed with the appropriate regulatory authorities for each such test or study, as the case may be, and with standard medical and scientific research procedures, except in each case where failure to so conduct would not reasonably be expected to have a Material Adverse Effect; each description of the results of such studies contained in the Prospectus is accurate and complete in all material respects and fairly presents the data derived from such studies, and the Company has no knowledge of any other studies or tests the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Prospectus; the Company has not received any notices or other correspondence from the FDA or any committee thereof or from any other U.S. or foreign government or regulatory authority (collectively, the “**Regulatory Authorities**”) requiring the termination, suspension or material modification of any preclinical or clinical studies that are described or referred to in the Prospectus, other than ordinary course communications with respect to modifications in connection with the design and implementation of such studies; and the Company has operated and currently is in compliance in all respects with all applicable rules, regulations and policies of the Regulatory Authorities except as would not reasonably be expected to have a Material Adverse Effect.

(qq) No Overindebtedness or Capital Loss. The Company is not overindebted within the meaning of article 725 para 2 CO. The Company is not suffering from capital loss within the meaning of article 725 para 1 CO.

(rr) Commercial Registry. On the date hereof, the Commercial Register has not been blocked and no challenge of the resolutions of the Company’s Board of Directors and no other action, complaint or dispute (each, an “**Action**”) is pending and, to the best of the Company’s knowledge, no Action has been publicly announced or credibly threatened, in each case against or in connection with the transactions contemplated under this Agreement or their consummation; and no laws or regulations and no decision, order, injunction or decree of any court, arbitral tribunal, authority or administrative or regulatory body or commission or exchange exists that has or may have the effect of making illegal or otherwise preventing or prohibiting, or that seeks to enjoin, restrain, impede or levy a substantial difficulty on the transactions contemplated under this Agreement or their consummation.

(ss) Duties, Transfer Taxes, Etc. No stamp or other issuance or transfer taxes or duties are payable by the Agent in the United States or any political subdivision or taxing authority

thereof or therein in connection with the execution, delivery or performance of this Agreement by the Company or the sale and delivery by the Company of the Shares.

(tt) Cybersecurity. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) the Company's information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all respects as required in connection with the operation of the business of the Company as currently conducted, free and clear of all bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants; (ii) the Company has implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses ("**Personal Data**" means (A) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (B) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (C) "personal data" as defined by the European Union General Data Protection Regulation 2016/679; or (D) any information which would qualify as "protected health information" under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act; and (E) any other piece of information that allows the identification of such natural person, including an identified person's health or sexual orientation); (iii) there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same; and (iv) the Company is presently in compliance with all applicable laws or statutes, including all applicable state and federal data privacy and security laws and regulations, and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(uu) Other Underwriting Agreements. The Company is not a party to any agreement with an agent or underwriter for any other "at the market" or continuous equity transaction.

Any certificate signed by any officer or representative of the Company and delivered to the Agent or counsel for the Agent in connection with the sale of Shares shall be deemed a representation and warranty by the Company to the Agent as to the matters covered thereby on the date of such certificate.

The Company acknowledges that the Agent and, for purposes of the opinions to be delivered pursuant to Section 4(o) hereof, counsel to the Company and counsel to the Agent, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

Section 3. ISSUANCE AND SALE OF COMMON SHARES

(a) Sale of Securities. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company and the Agent agree that the Company may from time to time seek to sell Shares through the Agent, acting as sales agent, or directly to the Agent, acting as principal, as follows, with an aggregate Sales Price of up to the Maximum Program Amount, based on and in accordance with Issuance Notices as the Company may deliver, during the Agency Period.

(b) Mechanics of Issuances.

(i) Issuance Notice. Upon the terms and subject to the conditions set forth herein, on any Trading Day during the Agency Period on which the conditions set forth in Section 5(a) and Section 5(b) shall have been satisfied, the Company may exercise its right to request a delivery of Shares by delivering to the Agent an Issuance Notice; *provided, however*, that (A) in no event may the Company deliver an Issuance Notice to the extent that (I) the sum of (x) the aggregate Sales Price of the requested Issuance Amount, plus (y) the aggregate Sales Price of all Shares delivered under all previous Issuance Notices effected pursuant to this Agreement, would exceed the Maximum Program Amount; and (B) prior to delivery of any Issuance Notice, the period set forth for any previous Issuance Notice shall have expired or been terminated. An Issuance Notice shall be considered delivered on the Trading Day that it is received by e-mail to the persons set forth in Schedule A hereto and confirmed by the Company by telephone (including a voicemail message to the persons so identified), with the understanding that, with adequate prior written notice, the Agent may modify the list of such persons from time to time.

(ii) Agent Efforts. Upon the terms and subject to the conditions set forth in this Agreement, upon the receipt of an Issuance Notice, the Agent will use its commercially reasonable efforts consistent with its normal sales and trading practices to place the Shares with respect to which the Agent has agreed to act as sales agent, subject to, and in accordance with the information specified in, the Issuance Notice, unless the sale of the Shares described therein has been suspended, cancelled or otherwise terminated in accordance with the terms of this Agreement. For the avoidance of doubt, the parties to this Agreement may modify an Issuance Notice at any time provided they both agree in writing to any such modification.

(iii) Method of Offer and Sale. The Shares may be offered and sold (A) in privately negotiated transactions with the consent of the Company; (B) as block transactions; or (C) by any other method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act, including sales made directly on the Principal Market or sales made into any other existing trading market of the Common Shares. Nothing in this Agreement shall be deemed to require either party to agree to the method of offer and sale specified in the preceding sentence, and (except as specified in clauses (A) and (B) above) the method of placement of any Shares by the Agent shall be at the Agent’s discretion.

(iv) Confirmation to the Company. If acting as sales agent hereunder, the Agent will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which it has placed Shares hereunder setting forth the number of

shares sold on such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof.

(v) Settlement. Each delivery of Shares will be settled on the applicable Settlement Date for such Shares and, subject to the provisions of Section 5, on or before each Settlement Date, the Company will cause the Fiduciary to assign and transfer the Shares being sold to the Agent, or by such other means of delivery as may be mutually agreed upon by the parties hereto and, upon receipt of such Shares, which in all cases shall be freely tradable, transferable, registered shares in good deliverable form, the Agent will deliver, by wire transfer of immediately available funds, the related Issuance Price in same day funds delivered to an account designated by the Company prior to the Settlement Date. The Company may sell Shares to the Agent as principal at a price agreed upon at each relevant time Shares are sold pursuant to this Agreement (each, a “**Time of Sale**”).

(vi) Suspension or Termination of Sales. Consistent with standard market settlement practices, the Company or the Agent may, upon notice to the other party hereto in writing or by telephone (confirmed immediately by verifiable email), suspend any sale of Shares, and the period set forth in an Issuance Notice shall immediately terminate; *provided, however*, that (A) such suspension and termination shall not affect or impair either party’s obligations with respect to any Shares placed or sold hereunder prior to the receipt of such notice; (B) if the Company suspends or terminates any sale of Shares after the Agent confirms such sale to the Company, the Company shall still be obligated to comply with Section 3(b)(v) with respect to such Shares; and (C) if the Company defaults in its obligation to deliver Shares on a Settlement Date, the Company agrees that it will hold the Agent harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company. The parties hereto acknowledge and agree that, in performing its obligations under this Agreement, the Agent may borrow Common Shares from stock lenders in the event that the Company has not delivered Shares to settle sales as required by subsection (v) above, and may use the Shares to settle or close out such borrowings. The Company agrees that no such notice shall be effective against the Agent unless it is made to the persons set forth in Schedule A hereto.

(vii) No Guarantee of Placement, Etc. The Company acknowledges and agrees that (A) there can be no assurance that the Agent will be successful in placing Shares; (B) the Agent will incur no liability or obligation to the Company or any other Person if it does not sell Shares; and (C) the Agent shall be under no obligation to purchase Shares on a principal basis pursuant to this Agreement, except as otherwise specifically agreed by the Agent and the Company.

(viii) Material Non-Public Information. Notwithstanding any other provision of this Agreement, the Company and the Agent agree that the Company shall not deliver any Issuance Notice to the Agent, and the Agent shall not be obligated to place any Shares, during any period in which the Company is in possession of material non-public information.

(c) Fees. As compensation for services rendered, the Company shall pay to the Agent, on the applicable Settlement Date, the Selling Commission for the applicable Issuance Amount (including with respect to any suspended or terminated sale pursuant to Section 3(b)(vi)) by the Agent deducting the Selling Commission from the applicable Issuance Amount.

(d) Expenses. The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Shares (including all printing and engraving costs); (ii) all fees and expenses of the registrar and transfer agent of the Shares; (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Shares; (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors; (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), the Prospectus, any Free Writing Prospectus (as defined below) prepared by or on behalf of, used by, or referred to by the Company, and all amendments and supplements thereto, and this Agreement; (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Agent in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Shares for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Agent, preparing and printing a "Blue Sky Survey" or memorandum and a "Canadian wrapper," and any supplements thereto, advising the Agent of such qualifications, registrations, determinations and exemptions; (vii) the reasonable fees and disbursements of the Agent's counsel, including the reasonable fees and expenses of counsel for the Agent in connection with, FINRA review, if any, and approval of the Agent's participation in the offering and distribution of the Shares; (viii) the filing fees incident to FINRA review, if any; (ix) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives, employees and officers of the Company and of the Agent and any such consultants, and the cost of any aircraft chartered in connection with the road show; and (x) the fees and expenses associated with listing the Shares on the Principal Market. The fees and disbursements of Agent's counsel pursuant to subsections (vi) and (vii) above shall not exceed (A) \$50,000 in connection with the first Issuance Notice and (B) \$15,000 in connection with each Triggering Event Date (as defined below) on which the Company is required to provide a certificate pursuant to Section 4(o).

Section 4. ADDITIONAL COVENANTS

The Company covenants and agrees with the Agent as follows, in addition to any other covenants and agreements made elsewhere in this Agreement:

(a) Exchange Act Compliance. During the Agency Period, the Company shall (i) file, on a timely basis, with the Commission all reports and documents required to be filed under Section 13, 14 or 15 of the Exchange Act in the manner and within the time periods required by the Exchange Act; and (ii) either (A) include in its quarterly financial statements on Form 6-K and its annual reports on Form 20-F, a summary detailing, for the relevant reporting period, (1) the number of Shares sold through the Agent pursuant to this Agreement and (2) the net proceeds received by the Company from such sales or (B) prepare a prospectus supplement containing, or include in such other filing permitted by the Securities Act or Exchange Act (each an "**Interim**

Prospectus Supplement”), such summary information and, at least once a quarter and subject to this Section 4, file such Interim Prospectus Supplement pursuant to Rule 424(b) under the Securities Act (and within the time periods required by Rule 424(b) and Rule 430B under the Securities Act).

(b) Securities Act Compliance. After the date of this Agreement, the Company shall promptly advise the Agent in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission; (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus, or any Free Writing Prospectus; (iii) of the time and date that any post-effective amendment to the Registration Statement or any Rule 462(b) Registration Statement becomes effective; and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto, any Rule 462(b) Registration Statement or any amendment or supplement to the Prospectus or of any order preventing or suspending the use of any Free Writing Prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Shares from any securities exchange upon which they are listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its commercially reasonable efforts to obtain the lifting of such order as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rule 424(b) and Rule 433, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) or Rule 433 were received in a timely manner by the Commission.

(c) Amendments and Supplements to the Prospectus and Other Securities Act Matters. If any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus so that the Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if in the opinion of the Agent or counsel for the Agent it is otherwise necessary to amend or supplement the Prospectus to comply with applicable law, including the Securities Act, the Company agrees (subject to Sections 4(d) and 4(f)) to promptly prepare, file with the Commission and furnish at its own expense to the Agent, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law including the Securities Act. Neither the Agent’s consent to, or delivery of, any such amendment or supplement shall constitute a waiver of any of the Company’s obligations under Sections 4(d) and 4(f); *provided, however* that the only remedy the Agent shall have with respect to the failure by the Company to make such filing (other than the Agent’s rights under Section 3(d) or Section 6 hereof) shall be to cease making sales under this Agreement until such amendment or supplement is filed. Notwithstanding the foregoing, the Company shall not be required to file such amendment or supplement if there is no pending Issuance Notice and the Company believes that it is in its best interest not to file such amendment or supplement.

(d) Agent's Review of Proposed Amendments and Supplements. During any period in which an Issuance Notice is pending, prior to amending or supplementing the Registration Statement (including any registration statement filed under Rule 462(b) under the Securities Act) or the Prospectus (excluding any amendment or supplement through incorporation of any report filed under the Exchange Act), insofar as such proposed amendment or supplement relates to the Shares or the transactions contemplated hereby, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each such proposed amendment or supplement, and the Company shall not file or use any such proposed amendment or supplement without the Agent's prior consent, and the Company shall file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(e) Use of Free Writing Prospectus. Neither the Company nor the Agent has prepared, used, referred to or distributed, or will prepare, use, refer to or distribute, without the other party's prior written consent, any "written communication" that constitutes a "free writing prospectus" as such terms are defined in Rule 405 under the Securities Act with respect to the offering contemplated by this Agreement (any such free writing prospectus being referred to herein as a "**Free Writing Prospectus**").

(f) Free Writing Prospectuses. During any period in which an Issuance Notice is pending, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of each proposed free writing prospectus or any amendment or supplement thereto to be prepared by or on behalf of, used by, or referred to by the Company insofar as such proposed amendment or supplement relates to the Shares or the transactions contemplated hereby, and the Company shall not file, use or refer to any proposed free writing prospectus or any amendment or supplement thereto without the Agent's consent. The Company shall furnish to the Agent, without charge, as many copies of any free writing prospectus prepared by or on behalf of, or used by the Company insofar as such proposed amendment or supplement relates to the Shares or the transactions contemplated hereby, as the Agent may reasonably request. If at any time when a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares (but in any event if at any time through and including the date of this Agreement) there occurred or occurs an event or development as a result of which any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company shall promptly amend or supplement such free writing prospectus to eliminate or correct such conflict or so that the statements in such free writing prospectus as so amended or supplemented will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at such subsequent time, not misleading, as the case may be; *provided, however*, that prior to amending or supplementing any such free writing prospectus, the Company shall furnish to the Agent for review, a reasonable amount of time prior to the proposed time of filing or use thereof, a copy of such proposed amended or supplemented free writing prospectus and the Company shall not file, use or refer to any such amended or supplemented free writing prospectus without the Agent's consent.

(g) Filing of Agent Free Writing Prospectuses. The Company shall not take any action that would result in the Agent or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Agent that the Agent otherwise would not have been required to file thereunder.

(h) Copies of Registration Statement and Prospectus. After the date of this Agreement through the last time that a prospectus is required by the Securities Act (including, without limitation, pursuant to Rule 173(d)) to be delivered in connection with sales of the Shares, the Company agrees to furnish the Agent with copies (which may be electronic copies) of the Registration Statement and each amendment thereto, and with copies (which may be electronic copies) of the Prospectus and each amendment or supplement thereto in the form in which it is filed with the Commission pursuant to the Securities Act or Rule 424(b) under the Securities Act, both in such quantities as the Agent may reasonably request from time to time; and, if the delivery of a prospectus is required under the Securities Act or under the blue sky or securities laws of any jurisdiction at any time on or prior to the applicable Settlement Date for any period set forth in an Issuance Notice in connection with the offering or sale of the Shares and if at such time any event has occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it is necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Agent and to request that the Agent suspend offers to sell Shares (and, if so notified, the Agent shall cease such offers as soon as practicable); and if the Company decides to amend or supplement the Registration Statement or the Prospectus as then amended or supplemented, to advise the Agent promptly by telephone (with confirmation in writing) and to prepare and cause to be filed promptly with the Commission an amendment or supplement to the Registration Statement or the Prospectus as then amended or supplemented that will correct such statement or omission or effect such compliance; provided, however, that if during such same period the Agent is required to deliver a prospectus in respect of transactions in the Shares, the Company shall promptly prepare and file with the Commission such an amendment or supplement.

(i) Blue Sky Compliance. The Company shall cooperate with the Agent and counsel for the Agent to qualify or register the Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws or Canadian provincial securities laws of those jurisdictions designated by the Agent, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Shares. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Agent promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its commercially reasonable efforts to obtain the withdrawal thereof as soon as practicable.

(j) Earnings Statement. As soon as practicable, the Company will make generally available to its security holders and to the Agent an earnings statement (which need not be audited) covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act.

(k) Listing. The Company will maintain the listing of the Shares on the Principal Market; and (b) the Company will at the time of each Issuance Notice, directly or through a fiduciary, keep available at all times Shares for the purpose of enabling the Company to satisfy its obligations under this Agreement.

(l) Transfer Agent. The Company shall engage and maintain, at its expense, a registrar and transfer agent for the Shares.

(m) Due Diligence. During the term of this Agreement, the Company will reasonably cooperate with any reasonable due diligence review conducted by the Agent in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during normal business hours and at the Company's principal offices, as the Agent may reasonably request from time to time.

(n) Representations and Warranties. The Company acknowledges that each delivery of an Issuance Notice and each delivery of Shares on a Settlement Date shall be deemed to be (i) an affirmation to the Agent that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such Issuance Notice or of such Settlement Date, as the case may be, as though made at and as of each such date, except as may be disclosed in the Prospectus (including any documents incorporated by reference therein and any supplements thereto); and (ii) an undertaking that the Company will advise the Agent if any of such representations and warranties will not be true and correct as of the Settlement Date for the Shares relating to such Issuance Notice, as though made at and as of each such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented relating to such Shares).

(o) Deliverables at Triggering Event Dates; Certificates. The Company agrees that on or prior to the date of the first Issuance Notice and, during the term of this Agreement after the date of the first Issuance Notice, upon:

(A) the filing of the Prospectus or the amendment or supplement of any Registration Statement or Prospectus (other than a prospectus supplement relating solely to an offering of securities other than the Shares or a prospectus filed pursuant to Section 4(a)(ii)(B)), by means of a post-effective amendment, sticker or supplement, but not by means of incorporation of documents by reference into the Registration Statement or Prospectus;

(B) the filing with the Commission of an annual report on Form 20-F or a quarterly report on Form 6-K (including any Form 20-F/A or Form 6-K/A containing amended financial information or a material amendment to the previously filed annual report on Form 20-F or quarterly report on Form 6-K), in each case, of the Company; or

(C) the filing with the Commission of a Form 6-K of the Company containing amended financial information that is material to the offering of securities of the Company in the Agent's reasonable discretion; (any such event, a "Triggering Event Date"), the Company shall furnish the Agent (but in the case of clause (C) above only if the Agent reasonably determines that the information contained in such Form 6-K of the Company is material to a holder of Common Shares and the Agent requests such certification after the filing of such amendment or Form 6-K with the Commission) with a certificate as of the Triggering Event Date, in the form and substance satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented, (A) confirming that the representations and warranties of the Company contained in this Agreement are true and correct, (B) that the Company has performed all of its obligations hereunder to be performed on or prior to the date of such certificate and as to the matters set forth in Section 5(a)(iii) hereof, and (C) containing any other certification that the Agent shall reasonably request. The requirement to provide a certificate under this Section 4(o) shall be automatically waived for any Triggering Event Date occurring at a time when no Issuance Notice is pending or a suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Shares hereunder (which for such calendar quarter shall be considered a Triggering Event Date) and the next occurring Triggering Event Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Shares following a Triggering Event Date when a suspension was in effect and did not provide the Agent with a certificate under this Section 4(o), then before the Company delivers the instructions for the sale of Shares or the Agent sells any Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 4(o) dated as of the date that the instructions for the sale of Shares are issued.

(p) Legal Opinions. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 4(o) for which no waiver is applicable and excluding the date of this Agreement, (i) a negative assurances letter and the written legal opinion of Davis Polk & Wardwell LLP, U.S. counsel to the Company, (ii) a capacity opinion of Bär & Karrer, Swiss counsel to the Company, regarding, inter alia, the execution of this agreement and a technical legal opinion confirming, inter alia, the valid issuance of a certain number of new shares required for such Issuance Notice, (iii) the written legal opinion of each of McNeill Baur PLLC, Johnson, Marcou & Isaacs LLP, Ice Miller LLP and Vossius & Partner Patentanwalte Rechtsanwälte mbB, each intellectual property counsel to the Company and (iv) a negative assurances letter and the written legal opinion of Goodwin Procter LLP, US counsel to the Agent, each dated the date of delivery, in form and substance reasonably satisfactory to Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented. In lieu of such opinions for subsequent periodic filings, in the discretion of the Agent, the Company may furnish a reliance letter from such counsel to the Agent, permitting the Agent to rely on a previously delivered opinion letter, modified as appropriate for any passage of time or Triggering Event Date (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of such Triggering Event Date).

(q) Comfort Letter. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date with respect to which the Company is obligated to deliver a

certificate pursuant to Section 4(o) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause PricewaterhouseCoopers SA, the independent registered public accounting firm who has audited the financial statements included or incorporated by reference in the Registration Statement, to furnish the Agent a comfort letter, dated the date of delivery, in form and substance reasonably satisfactory to the Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel; provided, however, that any such comfort letter will only be required on the Triggering Event Date specified to the extent that it contains financial statements filed with the Commission under the Exchange Act and incorporated or deemed to be incorporated by reference into a Prospectus. If requested by the Agent, the Company shall also cause a comfort letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event requiring the filing of a Form 6-K containing material amended financial information of the Company, including the restatement of the Company's financial statements. The Company shall be required to furnish no more than one comfort letter hereunder per calendar quarter.

(r) Secretary's Certificate. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date, the Company shall furnish the Agent a certificate executed by the Secretary of the Company, signing in such capacity, dated the date of delivery (i) certifying that attached thereto are true and complete copies of the resolutions duly adopted by the Board of Directors of the Company authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (including, without limitation, the issuance of the Shares pursuant to this Agreement), which authorization shall be in full force and effect on and as of the date of such certificate, (ii) certifying and attesting to the office, incumbency, due authority and specimen signatures of each Person who executed this Agreement for or on behalf of the Company, and (iii) containing any other certification that the Agent shall reasonably request.

(s) Chief Financial Officer's Certificate. On or prior to the date of the first Issuance Notice and on or prior to each Triggering Event Date, the Company shall furnish the Agent a certificate executed by the Chief Financial Officer of the Company, signing in such capacity, dated the date of delivery, with respect to certain financial data contained in the Registration Statement and the Prospectus, providing "management comfort" with respect to such information, in form and substance reasonably satisfactory to the Agent.

(t) Agent's Own Account; Clients' Account. The Company consents to the Agent trading, in compliance with applicable law, in the Common Shares for the Agent's own account and for the account of its clients at the same time as sales of the Shares occur pursuant to this Agreement.

(u) Investment Limitation. The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Shares in such a manner as would require the Company to register as an investment company under the Investment Company Act.

(v) Market Activities. The Company will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Shares or any other reference security, whether to facilitate the sale or resale of the Shares or otherwise, and the Company will, and shall cause each of its affiliates to, comply with all applicable provisions of Regulation M. If the limitations of Rule 102 of Regulation M

(“**Rule 102**”) do not apply with respect to the Shares or any other reference security pursuant to any exception set forth in Section (d) of Rule 102, then promptly upon notice from the Agent (or, if later, at the time stated in the notice), the Company will, and shall cause each of its affiliates to, comply with Rule 102 as though such exception were not available but the other provisions of Rule 102 (as interpreted by the Commission) did apply. The Company shall promptly notify the Agent if it no longer meets the requirements set forth in Section (d) of Rule 102.

(w) Notice of Other Sale. Without the written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares or securities convertible into or exchangeable for Common Shares (other than Shares hereunder), warrants or any rights to purchase or acquire Common Shares, during the period beginning on the third Trading Day immediately prior to the date on which any Issuance Notice is delivered to the Agent hereunder and ending on the earlier of (x) the third Trading Day immediately following the Settlement Date with respect to Shares sold pursuant to such Issuance Notice and (y) the date the Company notifies the Agent of the withdrawal of such Issuance Notice if no Shares were sold pursuant to such Issuance Notice; and will not directly or indirectly enter into any other “at the market” or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Shares (other than the Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Shares, warrants or any rights to purchase or acquire, Common Shares prior to the termination of this Agreement; provided, however, that such restrictions will not be required in connection with the Company’s (i) issuance or sale of Common Shares, options to purchase Common Shares or Common Shares issuable upon the exercise of options or other equity awards pursuant to any employee or director share option, incentive or benefit plan, share purchase or ownership plan, long-term incentive plan, dividend reinvestment plan, inducement award under Nasdaq rules or other compensation plan of the Company, as in effect on the date of this Agreement, (ii) issuance or sale of Common Shares issuable upon exchange, conversion or redemption of securities or the exercise or vesting of warrants, options or other equity awards disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent, (iii) modification of any outstanding options, warrants or any rights to purchase or acquire Common Shares, and (iv) Common Shares or securities convertible into or exchangeable for Common Shares as consideration for mergers, acquisitions, other business combinations, collaboration agreements or strategic alliances occurring after the date of this Agreement which are not issued primarily for capital raising purposes, provided that the aggregate number of shares issued pursuant to clause (iv) above shall not exceed 5.0% of the total number of outstanding shares of Common Shares immediately following the issuance and sale of the Common Shares issued pursuant to clause (iv).

Section 5. CONDITIONS TO DELIVERY OF ISSUANCE NOTICES AND TO SETTLEMENT

(a) Conditions Precedent to the Right of the Company to Deliver an Issuance Notice and the Obligation of the Agent to Sell Shares. The right of the Company to deliver an Issuance Notice hereunder is subject to the satisfaction, on the date of delivery of such Issuance Notice, and the obligation of the Agent to use its commercially reasonable efforts to place Shares during the applicable period set forth in the Issuance Notice is subject to the satisfaction, on each Trading

Day during the applicable period set forth in the Issuance Notice, of each of the following conditions:

- (i) Accuracy of the Company's Representations and Warranties; Performance by the Company. The Company shall have delivered the certificate required to be delivered pursuant to Section 4(o) on or before the date on which delivery of such certificate is required pursuant to Section 4(o). The Company shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to such date, including, but not limited to, the covenants contained in Section 4(m), Section 4(q), Section 4(r) and Section 4(s).
- (ii) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement.
- (iii) Material Adverse Changes. Except as disclosed in the Prospectus and the Time of Sale Information, (a) in the judgment of the Agent there shall not have occurred any Material Adverse Change; and (b) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the Company by any "nationally recognized statistical rating organization" as such term is defined for purposes of Section 3(a)(62) of the Exchange Act.
- (iv) No Suspension of Trading in or Delisting of Common Shares; Other Events. The trading of the Common Shares (including without limitation the Shares) shall not have been suspended by the Commission, the Principal Market or FINRA and the Common Shares (including without limitation the Shares) shall have been approved for listing or quotation on and shall not have been delisted from the Nasdaq Stock Market, the New York Stock Exchange or any of their constituent markets. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Principal Market or trading in securities generally on either the Principal Market shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges by the Commission or the FINRA; (ii) a general banking moratorium shall have been declared by any of federal or New York, authorities; or (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States'

or international political, financial or economic conditions, as in the judgment of the Agent is material and adverse and makes it impracticable to market the Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of securities.

(b) Documents Required to be Delivered on each Issuance Notice Date. The Agent's obligation to use its commercially reasonable efforts to place Shares hereunder shall additionally be conditioned upon the delivery to the Agent on or before the Issuance Notice Date of a certificate in form and substance reasonably satisfactory to the Agent, executed by the Chief Executive Officer, President or Chief Financial Officer of the Company, to the effect that all conditions to the delivery of such Issuance Notice shall have been satisfied as at the date of such certificate (which certificate shall not be required if the foregoing representations shall be set forth in the Issuance Notice).

(c) No Misstatement or Material Omission. Agent shall not have advised the Company that the Registration Statement, the Prospectus or the Times of Sales Information, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

Section 6. INDEMNIFICATION AND CONTRIBUTION

(a) Indemnification of the Agent. The Company agrees to indemnify and hold harmless the Agent, its affiliates, directors, officers, employees and agents, and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which the Agent or such affiliate, director, officer, employee, agent or controlling person may become subject, under the Securities Act, the Exchange Act, other federal or state statutory law or regulation, or the laws or regulations of Switzerland or of foreign jurisdictions where Shares have been offered or sold or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact included in the Prospectus or any free writing prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433(d) of the Securities Act (or any amendment or supplement to the foregoing), (iii) any act or failure to act or any alleged act or failure to act by the Agent in connection with, or relating in any manner to, the Shares or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clause (i) or (ii) above; or the omission or alleged omission to state therein a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading; and to reimburse the Agent and its affiliates, directors, officers, employees, agents and controlling persons for any and all reasonable expenses (including the reasonable fees and disbursements of counsel) as such expenses are incurred by the Agent or any

of its affiliates, directors, officers, employees, agents or controlling persons in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information relating to the Agent furnished to representatives of the Company in writing expressly for use in the Registration Statement, the Prospectus or any such free writing prospectus (or any amendment or supplement thereto), it being understood and agreed that the only such information consists of the information described in Section 6(b) below. The indemnity agreement and the obligations and liabilities of the Company set forth in this Section 6(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) Indemnification of the Company, its Directors and Officers. The Agent agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Agent), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue statement or alleged untrue statement of a material fact included in the Prospectus or any free writing prospectus that the Company has used, referred to or filed, or is required to file, pursuant to Rule 433 of the Securities Act or the Prospectus (or any such amendment or supplement) or the omission or alleged omission to state therein a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Prospectus, or such free writing prospectus (or any such amendment or supplement), in reliance upon and in conformity with information relating to the Agent furnished to the Company in writing expressly for use therein; and to reimburse the Company, or any such director, officer or controlling person for any and all reasonable expenses (including the reasonable fees and disbursements of counsel) as such expenses are incurred by the Company, or any such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Company hereby acknowledges that the only information that the Agent has furnished to the Company expressly for use in the Registration Statement, Prospectus, or any free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) of the Securities Act (or any amendment or supplement to the foregoing) are set forth in the tenth paragraph under the caption "Plan of Distribution". The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that the Agent may otherwise have.

(c) Notifications and Other Indemnification Procedures. Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 6, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve the indemnifying party from any liability which it may have to any indemnified party to the extent the indemnifying party is not materially prejudiced as a proximate result of such failure and shall not in any event relieve the indemnifying party from any liability that it may have otherwise than on account of this indemnity agreement. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, that if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the fees and expenses of more than one separate counsel (together with local counsel), representing the indemnified parties who are parties to such action), which counsel (together with any local counsel) for the indemnified parties shall be selected by the Agent (in the case of counsel for the indemnified parties referred to in Section 6(a), above) or by the Company (in the case of counsel for the indemnified parties referred to in Section 6(b), above) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized in writing the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the reasonable fees and expenses of counsel shall be at the expense of the indemnifying party and shall be paid as they are incurred.

(d) Settlements. The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party,

unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and does not include an admission of fault or culpability or a failure to act by or on behalf of such indemnified party.

(e) Contribution. If the indemnification provided for in Section 6 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Agent, on the other hand, from the offering of the Shares pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Agent, on the other hand, in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total proceeds from the offering of the Shares pursuant to this Agreement (before deducting expenses) received by the Company, and the total commissions received by the Agent. The relative fault of the Company, on the one hand, and the Agent, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Agent, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 6(c) any reasonable and properly documented legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 6(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 6; provided, however, that no additional notice shall be required with respect to any action for which notice has been given under Section 6(c) for purposes of indemnification.

The Company and the Agent agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 6.

Notwithstanding the provisions of this Section 6(e), the Agent shall not be required to contribute any amount in excess of the agent fees received by the Agent in connection with the offering contemplated hereby. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6(e), each

officer and employee of the Agent and each person, if any, who controls the Agent within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Agent, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

Section 7. TERMINATION & SURVIVAL

(a) Term. Subject to the provisions of this Section 7, the term of this Agreement shall continue from the date of this Agreement until the end of the Agency Period, unless earlier terminated by the parties to this Agreement pursuant to this Section 7.

(b) Termination; Survival Following Termination.

- (i) Either party may terminate this Agreement prior to the end of the Agency Period, by giving written notice as required by this Agreement, upon ten (10) Trading Days' notice to the other party; provided that, (A) if the Company terminates this Agreement after the Agent confirms to the Company any sale of Shares, the Company shall remain obligated to comply with Section 3(b)(v) with respect to such Shares and (B) Section 2, Section 6, Section 7 and Section 8 shall survive termination of this Agreement. If termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall nevertheless settle in accordance with the terms of this Agreement.
- (ii) In addition to the survival provision of Section 7(b)(i), the respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Agent or the Company or any of its or their partners, officers or directors or any controlling person, as the case may be, and, anything herein to the contrary notwithstanding, will survive delivery of and payment for the Shares sold hereunder and any termination of this Agreement.

Section 8. MISCELLANEOUS

(a) Press Releases and Disclosure. The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the date of this Agreement, and may file with the Commission on Form 6-K, with this Agreement attached as an exhibit thereto, describing the material terms of the transactions contemplated hereby, and the Company shall consult with the Agent prior to making such disclosures, and the parties hereto shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties hereto. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated hereby without the prior written approval of the other party hereto, except as may be necessary or appropriate in the reasonable opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock

exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such disclosure, and the parties shall use all commercially reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties hereto.

(b) No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (i) the transactions contemplated by this Agreement, including the determination of any fees, are arm's-length commercial transactions between the Company and the Agent, (ii) when acting as a principal under this Agreement, the Agent is and has been acting solely as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (iii) the Agent has not assumed nor will assume an advisory or fiduciary responsibility in favor of the Company with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Agent has advised or is currently advising the Company on other matters) and the Agent does not have any obligation to the Company with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement, (iv) the Agent and its respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (v) the Agent has not provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

(c) Research Analyst Independence. The Company acknowledges that the Agent's research analysts and research departments are required to and should be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and as such the Agent's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company or the offering that differ from the views of their respective investment banking divisions. The Company understands that the Agent is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

(d) Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Agent:

Jefferies LLC
520 Madison Avenue
New York, NY 10022
Facsimile:
Attention: General Counsel

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

Goodwin Procter LLP
620 8th Avenue

New York, NY 10018

Attention: Seo Salimi

Homburger AG
Prime Tower
Hardstrasse 201
CH-8005 Zurich, Switzerland
Facsimile: +41 (0)43 222 15 00
Attention: Dr. iur. Dieter Gericke and Dr. iur. Benjamin Leisinger

If to the Company:

AC Immune SA
EPFL Innovation Park Building B
1050 Lausanne, Switzerland
Facsimile: +41 21 345 91 20
Attention: Chief Financial Officer

with copies to:

Bär & Karrer
Brandschenkestrasse 90
CH-8027 Zurich, Switzerland
Facsimile: +41 58 261 50 01
Attention: Prof. Dr. iur. Rolf Watter

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Facsimile: (212) 701-5322
Attention: Derek Dostal

Any party hereto may change the address for receipt of communications by giving written notice to the others in accordance with this Section 8(d).

(e) Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 6, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Shares as such from the Agent merely by reason of such purchase.

(f) Partial Unenforceability. The invalidity or unenforceability of any Article, Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Article, Section, paragraph or provision hereof. If any Article, Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed

to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

(g) Governing Law Provisions. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby (“**Related Proceedings**”) may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a “**Related Judgment**”), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

(h) General Provisions. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and may be delivered by facsimile transmission or by electronic delivery of a portable document format (PDF) file. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Article and Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[Signature Page Immediately Follows]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms

Very truly yours,

AC IMMUNE SA

By: /s/ Andrea Pfeifer

Name: Andrea Pfeifer

Title: Chief Executive Officer

By: /s/ Joerg Hornstein

Name: Joerg Hornstein

Title: Chief Financial Officer

The foregoing Agreement is hereby confirmed and accepted by the Agent in New York, New York as of the date first above written.

JEFFERIES LLC

By: /s/ Michael Magarro

Name: Michael Magarro

Title: Managing Director

EXHIBIT A

ISSUANCE NOTICE

[Date]

Jefferies LLC
520 Madison Avenue
New York, New York 10022

Attn: [_____]

Reference is made to the Open Market Sale Agreement between AC Immune SA (the “**Company**”) and Jefferies LLC (the “**Agent**”) dated as of April [●], 2021. The Company confirms that all conditions to the delivery of this Issuance Notice are satisfied as of the date hereof.

Date of Delivery of Issuance Notice (determined pursuant to Section 3(b)(i)): _____

Issuance Amount (equal to the total Sales Price for such Shares):

\$ _____

Number of days in selling
period:

First date of selling period:

Last date of selling period:

Settlement Date(s) if other than standard T+2 settlement:

Floor Price Limitation (in no event less than \$1.00 without the prior written consent of the Agent, which consent may be withheld in the Agent’s sole discretion): \$ ____ per share

Comments: _____

By: _____
Name:
Title:

Schedule A

Notice Parties

The Company

Andrea Pfeifer (andrea.pfeifer@acimmune.com)

Joerg Hornstein (joerg.hornstein@acimmune.com)

The Agent

Michael Magarro (mmagarro@jefferies.com)

Jack Fabbri (jfabbri@jefferies.com)

Postfach 1548 | CH-8002 Zürich

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022
United States of America

Zurich, 5 May 2021

AC Immune SA — Technical Legal Opinion

Ladies, Gentlemen

We have acted as Swiss legal counsel to AC Immune SA (the "**Issuer**") in connection with the open market sale agreementSM dated 5 May 2021 between the Issuer and Jefferies LLC (the "**Agreement**").

This technical legal opinion is rendered to you pursuant to section 4 p) of the Agreement. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

1 Documents

In arriving at the opinions expressed in Section 3 below, we have exclusively examined and relied on the following documents:

- a) a pdf copy of the executed Agreement;
- b) a pdf copy of the registration statement on Form F-3 filed on 28 April 2021 under the United States Securities Act of 1933, as amended, relating to the registration of certain securities of the Issuer, including common shares, each with a nominal value of CHF 0.02 (the "**Prospectus**");
- c) a pdf copy of the prospectus supplement relating to the transactions contemplated by the Agreement dated 5 May 2021 (the "**Prospectus Supplement**");

Bär & Karrer
Rechtsanwälte

Zürich
Bär & Karrer AG
Brandschenkestrasse 90
CH-8002 Zürich
Phone: +41 58 261 50 00
Fax: +41 58 261 50 01
zuerich@baerkarrer.ch

Genf
Bär & Karrer SA
12, quai de la Poste
CH-1211 Genève 11
Phone: +41 58 261 57 00
Fax: +41 58 261 57 01
geneve@baerkarrer.ch

Lugano
Bär & Karrer SA
Via Vegezzi 6
CH-6901 Lugano
Phone: +41 58 261 58 00
Fax: +41 58 261 58 01
lugano@baerkarrer.ch

Zug
Bär & Karrer AG
Baarerstrasse 8
CH-6302 Zug
Phone: +41 58 261 59 00
Fax: +41 58 261 59 01
zug@baerkarrer.ch

www.baerkarrer.ch

- d) a pdf copy of an extract from the Commercial Register of the Canton of Vaud in respect of the Issuer, certified by such Commercial Register as of 29 April 2021 (the "**Extract**");
- e) a pdf copy of the articles of association (*Statuten*) of the Issuer dated 23 February 2021 and certified on 29 April 2021, to correspond to the latest version filed with the Commercial Register of the Canton of Vaud (the "**Articles**"); and
- f) a pdf copy of the organizational regulations of the Issuer's board of directors, dated as of 19 March 2020 (the "**Organizational Regulations**") as available on the website of the Issuer;
- g) a pdf copy of an extract from the minutes of the meeting of the Issuer's board of directors (the "**Board of Directors**") dated 17 August 2020 resolving, *inter alia*, on the establishment of a transaction committee for the implementation of an at-the-market-offering (the "**Transaction Committee**" and such resolution, the "**Board Resolution**");
- h) a pdf copy of the circular resolution of the Transaction Committee dated 3 September 2020 approving, *inter alia*, the execution of the Agreement and the publication of the Prospectus Supplement (the "**TC Resolution**"); and
- i) such other documents as we deemed necessary to render our opinions expressed in Section 3 below.

2 Assumptions

In arriving at the opinions expressed in Section 3 below, we have assumed (without verification) each of the following:

- a) that all documents submitted to us in a form other than an original conform to authentic and complete originals;
 - b) that all signatures on documents examined are genuine;
 - c) that all representations and warranties (other than those, if any, to which our opinions expressed in Section 3 below explicitly relate) and all statements of fact set out in the agreements and other documents examined are true and accurate;
 - d) that the Agreement was entered into by all parties thereto at arm's-length terms and for *bona fide* commercial reasons and none of the directors or officers of any such party has or had a conflict of interest with such party in respect of the Agreement or any related documents, or otherwise lacked capacity, that would preclude such director or officer from validly representing
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(or granting a power of attorney in respect of the Agreement or any related documents for) such party;

- e) that the Extract, the Articles and the Organizational Regulations are unchanged, correct, up-to-date and in full force and effect as of the date hereof and no changes have been made in such documents;
 - f) that all written agreements, resolutions, regulations and other documents examined remain in full force and effect as of the date of this letter and have not been amended, revoked, rescinded or affected by any action subsequent to their execution or taking, and that the terms of each agreement examined reflect the true intent and the entire agreement of the parties thereto in respect of its subject-matter (except as otherwise stated therein);
 - g) that the Board Resolution is a true record of the proceedings described therein in a duly convened, quorate and constituted meeting of the Board of Directors and has not been rescinded or amended and is in full force and effect;
 - h) that the TC Resolution was adopted by the board members in the form submitted to us, is valid, has not been revoked and is in full force and effect on the date hereof;
 - i) that the signatures appearing on the pdf copy of the Agreement referred to in Section 1 lit. a) above for execution on behalf of the Issuer are the genuine signatures of the persons whose names appear therein, and that such copy, or a copy signed by the same persons and identical in content, was delivered to each party to the Agreement other than the Issuer after signing;
 - j) that each party to the Agreement, other than the Issuer, is a corporation duly organized and validly existing under all laws applicable to it, and under such laws and its constitutional documents has the necessary capacity, power and authority to enter into the Agreement and to exercise its rights and perform its obligations thereunder, and to sue and be sued in its own name, and has validly taken all necessary corporate action to authorize the execution and delivery of the Agreement;
 - k) that a copy of the Agreement identical in content to the pdf copy referred to in Section 1 lit. a) above has been duly executed and delivered to the Issuer by representatives of each party thereto, other than the Issuer, who were validly authorized for such purpose, and such execution and delivery is valid under any applicable foreign laws and is binding on all parties thereto other than the Issuer;
 - l) that by the date of this letter, none of the parties to the Agreement is insolvent or over-indebted (in case of Swiss companies in the sense of article 725 of the Swiss Code of Obligations (the "CO")), has passed a resolution for its
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dissolution, winding-up or liquidation, no petition has been presented or order made by a court or other competent authority for the dissolution, winding-up, liquidation, bankruptcy, moratorium, composition with creditors or administration of any party or for the ordering of 'measures in case of a danger of insolvency' pursuant to articles 25 et seq. of the Swiss Federal Act on Banks and Savings Institutions and no receiver, trustee in bankruptcy, administrator or similar officer has been appointed in relation to any of the parties or any of their assets or revenues;

- m) that all authorizations, consents, licenses, exemptions, notices, filings, publications or registrations which may be necessary under any applicable laws or regulations, other than the laws of Switzerland, the Articles or the Organizational Regulations, in connection with the execution and delivery of the Agreement and the filing of the Prospectus Supplement have been or will be duly obtained or made in time, remain in full force and effect at the date of this letter and, where relevant, will be obtained and maintained in the future, and that any related conditions have been fulfilled and any related covenants will be complied with;
- n) that the terms of the Agreement, including without limitation the choice of law and the submission to the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (the "**NY Courts**") expressed therein, constitute valid, binding and enforceable obligations and agreements of the parties thereto under the laws of the State of New York (USA) by which it is expressed to be governed, and under all other relevant laws other than the laws of Switzerland;
- o) that where any obligation under the Agreement is to be performed in or under the laws of a jurisdiction other than Switzerland, such performance will not be illegal or unenforceable by virtue of the laws of that jurisdiction;
- p) that each party to the Agreement other than the Issuer has performed and will perform all of its obligations under such agreement in accordance with its terms; and
- q) that there are no facts, circumstances or events not reflected in the text of the documents listed in Section 1 above which would be relevant to our opinions expressed herein.

3 Opinions

Based upon and subject to the foregoing assumptions, and subject to the qualifications and limitations set out below, we are of the opinion that under the laws of Switzerland as currently in force and interpreted:

- a) the Issuer is a company limited by shares (*Aktiengesellschaft*) incorporated and validly existing under Swiss law, established with unlimited duration, with the capacity to sue or be sued in its own name, and with the power to carry on business and to own property in accordance with the Articles;
 - b) the Issuer has the necessary corporate capacity and power to enter into the Agreement and to perform its obligations thereunder provided that the Issuer still needs to resolve on the issuance of the shares to be delivered under the Agreement;
 - c) the Agreement has been duly authorized by and executed on behalf of the Issuer;
 - d) no further consent or authorization by, or filing or registration with, any court, governmental or administrative body or agency, or official in Switzerland is required to be obtained or made in connection with the execution and delivery of the Agreement and the contemplated transactions thereunder other than as provided thereunder;
 - e) the execution and delivery of the Agreement by the Issuer and the performance by the Issuer of its obligations thereunder, if conducted as described in the Agreement, do not and will not violate Swiss law or the Articles;
 - f) the publication of the Prospectus Supplement has been duly authorized by the Issuer;
 - g) no voluntary winding-up resolution adopted by the Issuer nor an order for winding-up, bankruptcy or administration of all assets of the Issuer (each a "**Liquidation Event**") is reflected in the Extract;
 - h) except as otherwise described in the Prospectus and in the Prospectus Supplement, there are no legal restrictions on the sale, transfer or distribution of the shares to be delivered under the Agreement under the laws of Switzerland or the Articles;
 - i) the choice by the parties to the Agreement of the laws of the State of New York as expressed in section 8 g) of the Agreement, would be recognized as a valid choice of law among the parties thereto under the Federal Act on International Private Law of 18 December 1987, as amended (SR 291; "**IPLA**");
 - j) the submission by the parties to the Agreement to the exclusive jurisdiction of NY Courts would be recognized as a valid submission to jurisdiction in the courts of Switzerland; and
 - k) a final and conclusive judgment by a New York court which is enforceable in New York and which decides a dispute under the Agreement between the
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Issuer and Jefferies LLC will be amenable to enforcement against the Issuer in the courts of Switzerland subject to the conditions and limitations set out in the IPLA;

4 Qualifications and Limitations

This letter is subject to Swiss law. The opinions expressed herein are limited to questions arising under the laws of Switzerland, and we express no opinion as to the laws of any other jurisdiction. The opinions expressed herein are subject to the effects of Swiss laws on debt enforcement and insolvency and similar laws affecting the rights of creditors in general (including laws in respect of bankruptcy, moratoria, protective measures and composition or reconstruction proceedings, and related provisions for the avoidance of transactions made to the detriment of or creating a preference among creditors), as well as to the laws and rules of civil procedure and, as the case may be, arbitration rules as applicable to creditors or debtors and claimants and defendants generally. We express no opinion herein as to any matter of accounting or taxation, or as to any regulatory or commercial matter. Our opinions expressed in Section 3 above are further subject to the following qualifications and limitations:

- a) except as explicitly otherwise stated in Section 3 above, we express no opinion on the accuracy of any representation, warranty, calculation, valuation, or statement of fact as may be contained in the documents examined, or any factual backgrounds therein assumed, or on the question whether any conditions therein stated have been fulfilled;
 - b) in referring to the terms of agreements or other documents, we express no opinion on whether and to what extent these are sufficiently specific or leave room for interpretation which may become a matter of the discretion of the courts or of an arbitral tribunal;
 - c) we express no opinion on the accuracy, correctness or completeness of the Prospectus and Prospectus Supplement; in particular, we express no opinion on whether the Prospectus and Prospectus Supplement provides sufficient information for knowledgeable investors to reach an informed assessment of the Issuer and its securities;
 - d) the enforceability of the indemnities given by the Issuer to Jefferies LLC may be limited if a court or arbitral tribunal finds that the respective indemnity undertakings were subject to (i) articles 678 and 680 CO, or (ii) public policy considerations in connection with articles 20 and 21 CO and article 2 of the Swiss Civil Code. In view of these provisions, a Swiss corporation may not repay the nominal share capital and the general reserves in the amount of half or one fifth (in case of a holding company) of the paid in share capital to its shareholders (or to third parties affiliated with shareholders) and may not enter into transactions that are outside of its corporate scope (*ultra vires*). It is controversial, however, to what extent the prohibitions and limitations
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expressed above also apply to indemnities given in connection with an underwriting. If the courts were to apply these provisions, certain indemnities and representations and warranties of the Issuer under the Agreement might not be enforceable;

- e) enforceability may further be limited with respect to the indemnification undertakings provided by the Issuer if a court considers that an indemnified person has acted willfully or with gross negligence (as set out in article 100 CO) or if a court qualifies the activities conducted by Jefferies LLC as a business carried out under an official license (*obligkeitlich konzessioniertes Gewerbe*) within the meaning of article 100 para. 2 CO;
 - f) we express no opinion as regards the preservation of shareholders' subscription rights (*Bezugsrechte*) in connection with the transactions contemplated by the Agreement;
 - g) while any Liquidation Event (as defined above) in respect of the Issuer would be required by law to be registered in the relevant Commercial Register, some time may elapse before such registration is made, and the Liquidation Event may deploy its effects prior to and independently of such registration. The absence of registration of any Liquidation Event in the Commercial Register should therefore not be taken as a guarantee that no such event has occurred;
 - h) under Swiss substantive law:
 - (i) the validity, binding effect and enforceability of rights and obligations of the parties to an agreement may be or become limited by rules of civil and commercial law of general application, including rules in respect of contracting under the influence of error, fraud, misrepresentation, threat or duress, exploitation, insufficiently determined or excessive undertakings, impossibility of performance, material alteration of relevant circumstances (*clausula rebus sic stantibus* set-off, the exercise of rights and performance of obligations in good faith (*Treu und Glauben*), and the prohibition of an abuse of rights (*Rechtsmissbrauch*);
 - (ii) notwithstanding a contractual term to the contrary, any power of attorney (or similar type of authorization, power or proxy, including the appointment of a process agent) may be revoked at any time, and such power may be deemed terminated or revoked by operation of law in certain cases;
 - (iii) where a person is bound in principle to indemnify another for a damage as a consequence of the breach or non-performance of a contract, a court may set the amount of the indemnification at part only of such
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damage, depending on considerations of the degree of fault, contributory fault, the parties' financial capacity, and other circumstances;

- (iv) the enforcement of the obligations of a party to an agreement, whether before or after judgment, may be limited by prescription or otherwise as a consequence of the lapse of time;
 - (v) limitations apply to the validity, binding effect and/or enforceability of contractual terms if and to the extent that they:
 - provide for a party's or third person's determinations to be binding or conclusive upon the parties, or for a party or third person to be entitled to proceed or make determinations in its sole discretion or opinion, in matters affecting the legitimate interests of other parties;
 - provide for the indemnification of a party, or for the exoneration of a party from liability, if a court considers that such party (or any person whose acts are for that purpose imputed to it) caused or incurred the relevant damage in a wilful or negligent manner;
 - provide for an obligation of a party that the court considers to constitute a contractual penalty;
 - require a party to provide information, in any instance where the disclosure of such information would be unlawful in view of its nature or the circumstances; or
 - direct that a delivery or communication shall be deemed effective, where such delivery or communication was not in fact made or received;
- i) before a Swiss court:
- (i) the allocation of litigation costs (whether costs of the court or costs of the parties), and obligations to indemnify for such costs, may be determined independently of contractual terms;
 - (ii) proceedings may not be commenced, or may be stayed, if their subject matter is already being considered (or has already been decided upon) by another Swiss or foreign court, or an arbitral tribunal;
 - (iii) a contractual term to the effect that the court should accept or not accept something as evidence (or as *prima facie* evidence) for a fact may not be effective;
 - (iv) the recognition and enforceability of a final judgement of a New York court in Switzerland is subject to the conditions and limitations set forth in the IPLA. In particular and without limitation to the foregoing, a final judgment of a New York court may not be recognized or enforced in Switzerland if the relevant Swiss authority finds that such recognition
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or enforcement would contravene Swiss public policy (*ordre public*) (art. 27 para. 1 IPLA), or that a party was not properly served with process pursuant to the law at its domicile or permanent residence, the foreign court's proceedings did not observe basic principles of due process pursuant to Swiss law, or a dispute on the same subject had been submitted to or decided by another court at an earlier time (art. 27 para. 2 IPLA);

- j) the transmission of judicial documents, including service of process, in a manner other than provided by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 could be held invalid by a court in Switzerland despite a Swiss party having consented to such service and notification;
 - k) the enforceability in Switzerland of a foreign judgment rendered against the Issuer is subject to the limitations set forth in (i) the revised Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007, as amended, (ii) such other international treaties under which Switzerland is bound, and (iii) the Swiss Private International Law Act of 18 December 1987, as amended;
 - l) notwithstanding a valid choice of law by the parties to an agreement, a Swiss court will not apply a provision of foreign law if and to the extent that this would, in the court's view, lead to a result violating Swiss public policy (*ordre public*). Moreover, a Swiss court will apply, notwithstanding a valid choice of foreign law by the parties, any provisions of Swiss law (and, subject to further conditions, of another foreign law) which in the court's view imperatively demand application in view of their specific purpose (*lois d'application immédiate*). The particulars of performance or examination under an agreement may be governed by the law of the jurisdiction where they do or should occur, rather than by the law generally governing the agreement. In disputes of a commercial nature, a Swiss court may furthermore require a party invoking the applicability of foreign laws to prove their content, and in the absence of such proof apply Swiss substantive law instead;
 - m) a Swiss court may disregard an otherwise valid submission to jurisdiction if it considers that a party would thereby be improperly deprived of a Swiss forum;
 - n) the enforceability of obligations (including judgment obligations) in Switzerland may be or become affected by rules enacted under the Swiss Federal Act on the Enforcement of International Sanctions of 22 March 2002, as amended (Embargo Act) and/or otherwise in connection with international sanction regimes; and
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- o) for the purposes of enforcement or insolvency proceedings in Switzerland, any claim, judgment or arbitral award expressed in a currency other than Swiss francs will have to be converted into Swiss francs.

In this letter, Swiss legal concepts are expressed in English terms and not in their original terms in an official language of Switzerland. The concepts concerned may not be identical to the concepts described by the same English terms as they exist under the laws of other jurisdictions. This letter may, therefore, only be relied upon under the express condition that any issues of interpretation or liability arising hereunder will be governed by Swiss law.

This letter sets out our opinion on certain matters of Swiss law only, as it is in force, interpreted and applied by the Swiss courts (pursuant to generally accessible legal sources) at the date hereof.

This letter is confidential and rendered solely to the persons to whom it is addressed, as stated on its first page (the "**Addressees**"), and for the purpose of the transactions herein referred to. We have taken instructions solely from the Issuer, and this letter shall not give rise to an attorney-client relationship between us and any other person. This letter (or the fact of its existence) may not be disclosed to any person other than the Addressees (except, on a confidential and non-reliance basis, to the Addressees' affiliates, the Addressees' auditors and their advisors in respect of those transactions, or as required by law or regulation or order of court, or in seeking to establish a defense in any legal or regulatory proceeding or investigation relating to the matters set out herein), or quoted or referred to in any public document, and it may not be used or relied upon by any other person (including persons to whom disclosure is permitted) or for any other purpose, without our prior written consent in each instance.

This letter is governed by and shall be interpreted in accordance with Swiss law. Our opinions, as set out in Section 3 of this letter, are strictly limited to the matters there explicitly stated, and do not apply by implication to any other matters. We do not assume any obligation to inform you of any facts or changes of law occurring or coming to our attention after the date of this letter, and which might have an impact on any matters addressed in our opinions.

Yours faithfully,

/s/ Bär & Karrer AG
